

**R17. Administrative Services, Archives and Records Service.**

**R17-5. Definitions for Rules in Title R17.**

**R17-5-1. Definitions.**

In addition to terms defined in Section 63G-2-103, Utah Code, the following terms apply to rules in Title R17.

(1) "AIIM" means the Association for Information and Image Management.

(2) "ANSI" means American National Standards Institute.

(3) "Certification" means the confirmation that images recorded on microfilm are accurate, complete, and unaltered reproductions of original records.

(4) "Official Custody" means the responsibility for and implementing policy for the care and access of records.

**KEY: records retention, public information, access to information**

**August 20, 2008**

**63A-12-104**

**Notice of Continuation May 17, 2013**

**R17. Administrative Services, Archives and Records Service.****R17-6. Records Storage and Disposal at the State Records Center.****R17-6-1. Authority and Purpose.**

In accordance with Subsection 63A-12-104(1), this rule establishes a procedure for the storage and disposal of records at the State Records Center.

**R17-6-2. Records Storage and Disposal -- Agency Responsibility.**

(1) An agency may transfer semi-active records to the Records Center for storage.

(2) Prior to transfer, the agency must verify that records have a State Archives record series number, an approved retention schedule, and have met all in office retention requirements.

(3) Records stored in the State Records Center remain in the official custody of the agency that transferred them.

(4) In the event that an agency has not transferred records to the Records Center, it is the agency's responsibility to manage, maintain, and destroy records in its custody in accordance with the records series' approved retention schedule and to document the records destruction.

**R17-6-3. Records Storage and Disposal -- Archives Responsibility.**

(1) The State Archives stores semi-active records with a scheduled retention of less than 100 years at the State Records Center in accordance with the approved retention schedule. The State Records Center may accept records for which a proposed retention has been presented to the State Records Committee with the provision that if the committee does not approve the retention, the records will be returned to the agency.

(2) The State Archives destroys records stored at the Records Center in accordance with the approved retention schedule and upon authorization from the creating agency. If the creating agency does not respond to the second request for authorized destruction within ninety (90) days, the records may be returned to the agency.

(3) In the event that a record has met its scheduled retention requirements and the Records Center is unable to locate an authorized agency to provide destruction approval, the records will become the official custody of the Utah State Archives and the archivist will determine the disposition of the records.

**KEY: records retention, public information, access to information**

**August 20, 2008**

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**Notice of Continuation May 17, 2013**

**R17. Administrative Services, Archives and Records Service.****R17-7. Archival Records Care and Access at the State Archives.****R17-7-1. Authority and Purpose.**

In accordance with Subsection 63A-12-104(1), this rule establishes a procedure for the care and access of records in the custody of the State Archives, including classification or reclassification.

**R17-7-2. Custody of Records, Care and Access.**

(1) The State Archives accepts records which are placed in the official custody of the State Archivist in accordance with Sections 63G-2-604, 63A-12-102, 63A-12-103, and 63A-12-105.

(2) Records in the State Archives are available for public use in the State Archives insofar as use of the records is not restricted by law.

(3) Except as otherwise provided by law, records may not be removed or loaned for research use outside the State Archives.

**R17-7-3. Access to Records.**

(1) Records are made available for public use in the State Archives Research Center. Patrons must observe Research Center procedures for the protection and control of the records.

(2) Patrons are required to register to use the Research Center and Research Center staff may require patrons to provide photographic identification.

(3) Patrons shall only use a pencil when making personal notes, shall not mark public records, and shall maintain the original order of the public records consulted.

(4) Persons may not smoke, drink, or eat in the Research Center.

(5) Patrons may take only paper and research materials into the Research Center. Patrons must check brief cases, purses, backpacks, or similar items at the desk before entering the research area.

(6) Patrons shall use care in handling fragile materials. Patrons shall not alter, mutilate, or otherwise deface public records.

(7) Patrons may not remove government records from the Research Center.

(8) Patrons may only use equipment and resources in the Research Center for the purposes of research associated with the Utah State Archives or Utah State History.

**R17-7-4. Enforcement.**

(1) If a patron violates R17-7-3, Research Center staff may issue a verbal warning.

(2) If, after unheeded warning, or if there is risk of immediate or severe damage to records, staff may request the patron to leave immediately.

(3) If a patron fails to promptly comply with staff request to leave, staff may request assistance from building security personnel and from city police.

(4) These enforcement subsections do not limit Archives from performing its duties and enforcing these rules as otherwise allowed by law.

**R17-7-5. Classification.**

(1) Upon receiving a request to classify or reclassify a record or information within a record that is in the official custody of State Archives, State Archives may provide notice to any existing governmental entity that has classified the record series or record.

(2) No later than three days after the date of the notice, the governmental entity may notify State Archives of any decision regarding the classification of the record or information within

the record.

(3) If the governmental agency fails to notify State Archives of any decision, then State Archives must classify or reclassify the record or information within the record as required by law or may classify or reclassify the record or information as allowed by law.

**KEY: records retention, public information, access to information**

**May 17, 2010**

**63A-12-104**

**Notice of Continuation May 28, 2013**

**R17. Administrative Services, Archives and Records Service.****R17-8. Application of Microfilm Standards.****R17-8-1. Authority and Purpose.**

In accordance with Subsection 63A-12-104(1), this rule establishes a procedure for the microfilming standards of permanent and long-term records.

**R17-8-2. Micrographic Standards.**

(1) Anyone microfilming Utah state and local government documents for retention purposes shall microfilm these records in conformity with the ANSI/AIIM Imaging Guidelines 2004, which are incorporated by reference.

(2) The State Archives must certify that each roll of microfilm complies with these Imaging Guidelines prior to the destruction of the original records.

(3) The State Archives is the official custodian of all master microfilm of permanent and long-term records.

(4) Access to microfilmed records is permitted in accordance with the approved retention and classification for the records series.

**KEY: records retention, public information, access to information**

**August 20, 2008**

**63A-12-104**

**Notice of Continuation May 17, 2013**

**R68. Agriculture and Food, Plant Industry.****R68-16. Quarantine Pertaining to Pine Shoot Beetle, *Tomicus piniperda*.****R68-16-1. Authority.**

A. Promulgated under authority of Subsection 4-2-2(1)(k), and Section 4-35-9.

B. Refer to the Notice of Quarantine, Pine Shoot Beetle, *Tomicus piniperda* (Linnaeus), Effective December 28, 1992, issued by Utah Department of Agriculture and Food.

**R68-16-2. Pest.**

Pine Shoot Beetle, *Tomicus Piniperda* (Linnaeus), a beetle, family Scolytidae, is a serious pest of pine trees, and also known to damage fir, larch, and spruce trees by attacking the trunks and stems.

**R68-16-3. Areas Under Quarantine.**

All areas of the United States and Canada that are declared high risk by the United States Department of Agriculture, Animal and Plant Health Inspection Service, plant protection and quarantine or Utah Commissioner of Agriculture and Food.

**R68-16-4. Articles and Commodities Under Quarantine.**

The following are hereby declared to be regulated articles, hosts, and possible carriers of the Pine Shoot Beetle:

A. The Pine Shoot Beetle, *Tomicus piniperda* (Linnaeus), in any living stage of development.

B. Plants of the genus *Pinus* spp. whether balled and burlapped or cut live for use as Christmas trees.

C. Timber pine bark products or whole log forms of the genus *Pinus* spp., *Abies* spp., *Larix* spp., and *Picea* spp. with any bark intact.

D. Ornamental foliage from the genus *Pinus* spp. including pine wreaths and garlands, raw materials for wreaths and garlands, bark nuggets and bark chips.

E. Any other plant, plant part, article, or means of conveyance when it is determined by the Commissioner of the Department of Agriculture and Food or the Commissioner's duly authorized agent to present a hazard of spreading live Pine Shoot Beetle due to infestation or exposure to infestation by Pine Shoot Beetle.

**R68-16-5. Restrictions.**

A. All articles and commodities under quarantine are prohibited entry into Utah from an area under quarantine with the following exceptions:

1. From uninfested areas of the states listed in R68-16-3 when accompanied by a certificate of origin stating the origin of the material and that the plant material originated from an area not known to be infested with the Pine Shoot Beetle.

2. Regulated articles as listed in 7 CFR Chapter III 301.51-2.

**R68-16-6. Treatment and Management Methods.**

All treatment shall follow procedures as described in 7 CFR Chapter III 301.50-10.

**R68-16-7. Disposition of Violations.**

Any or all shipments or lots of quarantined articles or commodities listed in R68-16-4, arriving in Utah in violation of this quarantine shall immediately be sent out of the state, destroyed, or treated by a method and in a manner as directed by the Commissioner of the Utah Department of Agriculture and Food or his agent. Treatment shall be performed at the expense of the owner, or owners, or their duly authorized agent.

**KEY: quarantine**

**July 2, 2008**

**Notice of Continuation May 30, 2013**

**4-2-2(1)(k)**

**4-35-9**

**R81. Alcoholic Beverage Control, Administration.****R81-10. Off-Premise Beer Retailers.****R81-10-1. Separation of Alcoholic Beverages from Non-Alcoholic Beverages and Required Signage.**

(1) Authority and General Purpose. This rule is pursuant to 32B-7-202(5) that requires:

(a) an off-premise beer retailer to display beer sold by the retailer in an area that is visibly separate and distinct from the area where a nonalcoholic beverage is displayed, and requires the commission to define by rule what constitutes an "area that is visibly separate and distinct from the area where a nonalcoholic beverage is displayed"; and

(b) an off-premise beer retailer to prominently post in the separate and distinct area where beer is sold, an easily readable sign that reads in print that is no smaller than .5 inches, bold type, "These beverages contain alcohol. Please read the label carefully," and requires the commission to define by rule the format of the sign.

(2) Application of the Rule.

(a) Display requirements.

(i) Pursuant to 32B-7-202(5), an off-premise beer retailer must display beer products in an "area that is visibly separate and distinct from the area where a non-alcoholic beverage is displayed."

(ii) This requires that under no circumstances may there be a co-mingling or interspersing of beer products with non-alcoholic beverages, except that non-alcoholic beers may be displayed with beer products.

(iii) The separation must clearly and unambiguously convey to a consumer those beverage products that contain alcohol and those that do not. This may be satisfied by any of the following means:

(A) An entire display cabinet, cooler, shelf, aisle, end-cap, side-stack, or stand alone floor display, or room where the only beverages displayed are beer products, accompanied by the prominent and unambiguous posting of the sign required by 32B-7-202(5); or

(B) A shared display cabinet, cooler, shelf, aisle, or room where beer products are displayed separately from non-alcoholic beverages by way of a physical barrier or visible divider of sufficient prominence to create a clear divide between the beer products and the non-alcoholic beverages. The area where beer products are displayed must have a prominent and unambiguous posting of the sign required by 32B-7-202(5). End-cap, side-stack, or stand-alone floor displays may not contain both beer products and non-alcoholic beverages other than non-alcoholic beers.

(b) Sign requirements.

(i) The sign required by 32B-7-202(5) must be:

(A) prominently posted in the area where beer is sold;

(B) easily readable;

(C) in print that is no smaller than .5 inches, bold type.

(ii) The print on the sign must be clearly readable and on a solid, contrasting background.

(iii) The size of the sign, and the size of the print must be sufficiently large so as to be readable, and clearly and unambiguously convey to a consumer that the beverage products displayed in that area contain alcohol. In no instance may the sign be smaller than 8.5 inches x 3.5 inches.

(iv) Additional signs may be necessary depending on the size and type of display area. For example, an entire aisle devoted to beer products may require more than one sign to adequately inform the consumer.

**KEY: alcoholic beverages****June 27, 2008****32A-1-107****Notice of Continuation May 31, 2013**

**R162. Commerce, Real Estate.****R162-2f. Real Estate Licensing and Practices Rules.****R162-2f-101. Title and Authority.**

(1) This chapter is known as the "Real Estate Licensing and Practices Rules."

(2) The authority to establish rules for real estate licensing and practices is granted by Section 61-2f-103.

(3) The authority to establish rules governing undivided fractionalized long-term estates is granted by Section 61-2f-307.

(4) The authority to collect fees is granted by Section 61-2f-105.

**R162-2f-102. Definitions.**

(1) "Active license" means a license granted to an applicant who:

(a) qualifies for licensure under Section 61-2f-203 and these rules;

(b) pays all applicable nonrefundable license fees; and  
(c) affiliates with a principal brokerage.

(2) "Advertising" means solicitation through:

(a) newspaper;

(b) magazine;

(c) Internet;

(d) e-mail;

(e) radio;

(f) television;

(g) direct mail promotions;

(h) business cards;

(i) door hangers;

(j) signs; or

(k) any other medium.

(3) "Affiliate":

(a) when used in reference to licensure, means to form, for the purpose of providing a real estate service, an employment or non-employment association with another individual or entity licensed or registered under Title 61, Chapter 2f et seq. and these rules; and

(b) when used in reference to an undivided fractionalize long-term estate, means an individual or entity that directly or indirectly, through one or more intermediaries, controls or is controlled by, or is under common control with, a specified individual or entity.

(4) "Branch broker" means an associate broker who manages a branch office under the supervision of the principal broker.

(5) "Branch office" means a principal broker's real estate brokerage office other than the principal broker's main office.

(6) "Brokerage" means a real estate sales or a property management company.

(7) "Brokerage record" means any record related to the business of a principal broker, including:

(a) record of an offer to purchase real estate;

(b) record of a real estate transaction, regardless of whether the transaction closed;

(c) licensing records;

(d) banking and other financial records;

(e) independent contractor agreements;

(f) trust account records, including:

(i) deposit records in the form of a duplicate deposit slip, deposit advice, or equivalent document; and

(ii) conveyance records in the form of a check image, wire transfer verification, or equivalent document; and

(g) records of the brokerage's contractual obligations.

(8) "Business day" is defined in Subsection 61-2f-102(3).

(9) "Certification" means authorization from the division to:

(a) establish and operate a school that provides courses approved for prelicensing education or continuing education; or

(b) function as an instructor for courses approved for

prelicensing education or continuing education.

(10) "Commission" means the Utah Real Estate Commission.

(11) "Continuing education" means professional education required as a condition of renewal in accordance with Section R162-2f-204 and may be either:

(a) core: topics identified in Subsection R162-2f-206c(5)(c); or

(b) elective: topics identified in Subsection R162-2f-206c(5)(e).

(12) "Day" means calendar day unless specified as "business day."

(13) "Distance education" means education in which the instruction does not take place in a traditional classroom setting, but occurs through other interactive instructional methods where teacher and student are separated by distance and sometimes by time, including:

(a) computer conferencing;

(b) satellite teleconferencing;

(c) interactive audio;

(d) interactive computer software;

(e) Internet-based instruction; and

(f) other interactive online courses.

(14) "Division" means the Utah Division of Real Estate.

(15) "Double contract" means executing two or more purchase agreements, one of which is not made known to the prospective lender or loan funding entity.

(16) "Expired license" means a license that is not renewed pursuant to Section 61-2f-204 and Section R162-2f-204 by:

(a) the close of business on the expiration date, if the expiration date falls on a day when the division is open for business; or

(b) the next business day following the expiration date, if the expiration date falls on a day when the division is closed.

(17) "Guaranteed sales plan" means:

(a) a plan in which a seller's real estate is guaranteed to be sold; or

(b) a plan whereby a licensee or anyone affiliated with a licensee agrees to purchase a seller's real estate if it is not purchased by a third party:

(i) in the specified period of a listing; or

(ii) within some other specified period of time.

(18) "Inactive license" means a license that has been issued pursuant to Sections R162-2f-202a through 202c or renewed pursuant to Section R162-2f-204, but that may not be used to conduct the business of real estate because the license holder is not affiliated with a principal broker. Pursuant to Section R162-2f-203, a license may be inactivated:

(a) voluntarily, with the assent of the license holder; or

(b) involuntarily, without the assent of the license holder.

(19) "Informed consent" means written authorization, obtained from both principals to a single transaction, to allow a licensee to act as a limited agent.

(20) "Limited agency" means the representation of all principals in the same transaction to negotiate a mutually acceptable agreement:

(a) subject to the terms of a limited agency agreement; and

(b) with the informed consent of all principals to the transaction.

(21) "Net listing" means a listing agreement under which the real estate commission is the difference between the actual selling price of the property and a minimum selling price as set by the seller.

(22) "Nonresident applicant" means a person:

(a) whose primary residence is not in Utah; and

(b) who qualifies under Title 61, Chapter 2f et seq. and these rules for licensure as a principal broker, associate broker, or sales agent.

(23) "Principal brokerage" means the main real estate or

property management office of a principal broker.

(24) "Principal" in a transaction means an individual who is represented by a licensee and may be:

- (a) the buyer or lessee;
- (b) an individual having an ownership interest in the property;
- (c) an individual having an ownership interest in the entity that is the buyer, seller, lessor, or lessee; or
- (d) an individual who is an officer, director, partner, member, or employee of the entity that is the buyer, seller, lessor, or lessee.

(25) "Property management" is defined in Subsection 61-2f-102(19).

(26) "Registration" means authorization from the division to engage in the business of real estate as:

- (a) a corporation;
- (b) a partnership;
- (c) a limited liability company;
- (d) an association;
- (e) a dba;
- (f) a professional corporation;
- (g) a sole proprietorship; or
- (h) another legal entity of a real estate brokerage.

(27) "Reinstatement" is defined in Subsection 61-2f-102(22).

(28) "Reissuance" is defined in Subsection 61-2f-102(23).

(29) The acronym RELMS means "real estate licensing and management system," which is the online database through which licensees can submit certain licensing information to the division.

(30) "Renewal" is defined in Subsection 61-2f-102(24).

(31) "Residential property" means real property consisting of, or improved by, a single-family one- to four-unit dwelling.

(32) "School" means:

- (a) any college or university accredited by a regional accrediting agency that is recognized by the United States Department of Education;
- (b) any community college or vocational-technical school;
- (c) any local real estate organization that has been approved by the commission as a school; or
- (d) any proprietary real estate school.

(33) "Sponsor" means the party that is the seller of an undivided fractionalized long-term estate.

(34) "Third party service provider" means an individual or entity that provides a service necessary to the closing of a specific transaction and includes:

- (a) mortgage brokers;
- (b) mortgage lenders;
- (c) loan originators;
- (d) title service providers;
- (e) attorneys;
- (f) appraisers;
- (g) providers of document preparation services;
- (h) providers of credit reports;
- (i) property condition inspectors;
- (j) settlement agents;
- (k) real estate brokers;
- (l) marketing agents;
- (m) insurance providers; and
- (n) providers of any other services for which a principal or investor will be charged.

(35) "Traditional education" means education in which instruction takes place between an instructor and students where all are physically present in the same classroom.

(36) "Undivided fractionalized long-term estate" is defined in Subsection 61-2f-102(26).

#### **R162-2f-105. Fees.**

Any fee collected by the division is nonrefundable.

#### **R162-2f-201. Qualification for Licensure.**

(1) Character. Pursuant to Subsection 61-2f-203(1)(c), an applicant for licensure as a sales agent, associate broker, or principal broker shall evidence honesty, integrity, truthfulness, and reputation.

(a) An applicant shall be denied a license for:

(i) a felony that resulted in:

(A) a conviction occurring within the five years preceding the date of application;

(B) a plea agreement occurring within the five years preceding the date of application; or

(C) a jail or prison term with a release date falling within the five years preceding the date of application; or

(ii) a misdemeanor involving fraud, misrepresentation, theft, or dishonesty that resulted in:

(A) a conviction occurring within the three years preceding the date of application; or

(B) a jail or prison term with a release date falling within the three years preceding the date of application.

(b) An applicant may be denied a license or issued a restricted license for incidents in the applicant's past that reflect negatively on the applicant's honesty, integrity, truthfulness, and reputation. In evaluating an applicant for these qualities, the division and commission may consider:

(i) criminal convictions or plea agreements other than those specified in this Subsection (1)(a);

(ii) past acts related to honesty or truthfulness, with particular consideration given to any such acts involving the business of real estate, that would be grounds under Utah law for sanctioning an existing license;

(iii) civil judgments in lawsuits brought on grounds of fraud, misrepresentation, or deceit;

(iv) court findings of fraudulent or deceitful activity;

(v) evidence of non-compliance with court orders or conditions of sentencing; and

(vi) evidence of non-compliance with:

(A) terms of a diversion agreement not yet closed and dismissed;

(B) a probation agreement; or

(C) a plea in abeyance.

(c)(i) An applicant who, as of the date of application, is serving probation or parole for a crime that contains an element of violence or physical coercion shall, in order to submit a complete application, provide for the commission's review current documentation from two licensed therapists, approved by the division, stating that the applicant does not pose an ongoing threat to the public.

(ii) For purposes of applying this rule, crimes that contain an element of violence or physical coercion include, but are not limited to, the following:

(A) assault, including domestic violence;

(B) rape;

(C) sex abuse of a child;

(D) sodomy on a child;

(E) battery;

(F) interruption of a communication device;

(G) vandalism;

(H) robbery;

(I) criminal trespass;

(J) breaking and entering;

(K) kidnapping;

(L) sexual solicitation or enticement;

(M) manslaughter; and

(N) homicide.

(iii) Information and documents submitted in compliance with this Subsection (1)(c) shall be reviewed by the commission, which may exercise discretion in determining whether the applicant qualifies for licensure.

(2) Competency. In evaluating an applicant for



competency, the division and commission may consider evidence including:

- (a) civil judgments, with particular consideration given to any such judgments involving the business of real estate;
  - (b) failure to satisfy a civil judgment that has not been discharged in bankruptcy;
  - (c) suspension or revocation of a professional license;
  - (d) sanctions placed on a professional license; and
  - (e) investigations conducted by regulatory agencies relative to a professional license.
- (3) Age. An applicant shall be at least 18 years of age.
- (4) Minimum education. An applicant shall have:
- (a) a high school diploma;
  - (b) a GED; or
  - (c) equivalent education as approved by the commission.

**R162-2f-202a. Sales Agent Licensing Fees and Procedures.**

(1) To obtain a Utah license to practice as a sales agent, an individual who is not currently and actively licensed in any state shall:

- (a) evidence honesty, integrity, truthfulness, and reputation pursuant to Subsection R162-2f-201(1);
- (b) evidence competency to transact the business of real estate pursuant to Subsection R162-2f-201(2);
- (c)(i) successfully complete 120 hours of approved prelicensing education;
- (ii) evidence current membership in the Utah State Bar; or
- (iii) apply to the division for waiver of all or part of the education requirement by virtue of:
  - (A) completing equivalent education as part of a college undergraduate or postgraduate degree program, regardless of the date of the degree; or
  - (B) completing other equivalent real estate education within the 12-month period prior to the date of application;
- (d)(i) apply with a testing service designated by the division to sit for the licensing examination; and
- (ii) pay a nonrefundable examination fee to the testing center;
- (e) pursuant to this Subsection (3)(a), take and pass both the state and national components of the licensing examination;
- (f) pursuant to this Subsection (3)(b), submit to the division an application for licensure including:
  - (i) documentation indicating successful completion of the required prelicensing education;
  - (ii) a report of the examination showing a passing score for each component of the examination; and
  - (iii) the applicant's business, home, and e-mail addresses;
  - (g) if applying for an active license, affiliate with a principal broker; and
  - (h) pay the nonrefundable fees required for licensure, including the nonrefundable fee required under Section 61-2f-505 for the Real Estate Education, Research, and Recovery Fund.

(2) To obtain a Utah license to practice as a sales agent, an individual who is currently and actively licensed in another state shall:

- (a) evidence honesty, integrity, truthfulness, and reputation pursuant to Subsection R162-2f-201(1);
- (b) evidence competency to transact the business of real estate pursuant to Subsection R162-2f-201(2);
- (c)(i) successfully complete 120 hours of approved prelicensing education;
- (ii) evidence current membership in the Utah State Bar; or
- (iii) apply to the division for waiver of all or part of the education requirement by virtue of:
  - (A) completing equivalent education as part of a college undergraduate or postgraduate degree program, regardless of the date of the degree;
  - (B) completing other equivalent real estate education

within the 12-month period prior to the date of application; or

(C) having been licensed in a state that has substantially equivalent prelicensing education requirements;

- (d)(i) apply with a testing service designated by the division to sit for the licensing examination; and
- (ii) pay a nonrefundable examination fee to the testing center;
- (e)(i) pursuant to this Subsection (3)(a), take and pass both the state and national components of the licensing examination; or

(ii) if actively licensed during the two years immediately preceding the date of application in a state that has substantially equivalent licensing examination requirements:

- (A) take and pass the state component of the licensing examination; and
- (B) apply to the division for a waiver of the national component of the licensing examination;
- (f) pursuant to this Subsection (3)(b), submit to the division an application for licensure including:
  - (i) documentation indicating successful completion of the required prelicensing education;
  - (ii) a report of the examination showing a passing score for each component of the examination; and
  - (iii) the applicant's business, home, and e-mail addresses;
  - (g) provide from any state where licensed;
  - (i) a written record of the applicant's license history; and
  - (ii) complete documentation of any disciplinary action taken against the applicant's license;
  - (h) if applying for an active license, affiliate with a principal broker; and
  - (i) pay the nonrefundable fees required for licensure, including the nonrefundable fee required under Section 61-2f-505 for the Real Estate Education, Research, and Recovery Fund.

(3) Deadlines.

- (a) If an individual passes one test component but fails the other, the individual shall retake and pass the failed component:
  - (i) within six months of the date on which the individual achieves a passing score on the passed component; and
  - (ii) within 12 months of the date on which the individual completes the prelicensing education.
- (b) An application for licensure shall be submitted:
  - (i) within 90 days of the date on which the individual achieves passing scores on both examination components; and
  - (ii) within 12 months of the date on which the individual completes the prelicensing education.
- (c) If any deadline in this Section R162-2f-202a falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

**R162-2f-202b. Principal Broker Licensing Fees and Procedures.**

(1) To obtain a Utah license to practice as a principal broker, an individual shall:

- (a) evidence honesty, integrity, truthfulness, and reputation pursuant to Subsection R162-2f-201(1);
- (b) evidence competency to transact the business of real estate pursuant to Subsection R162-2f-201(2);
- (c)(i) successfully complete 120 hours of approved prelicensing education, including:
  - (A) 45 hours of broker principles;
  - (B) 45 hours of broker practices; and
  - (C) 30 hours of Utah law and testing; or
- (ii) apply to the division for waiver of all or part of the education requirement by virtue of:
  - (A) completing equivalent education as part of a college undergraduate or postgraduate degree program, regardless of the date of the degree; or
  - (B) completing other equivalent real estate education

within the 12-month period prior to the date of application;

(d)(i) apply with a testing service designated by the division to sit for the licensing examination; and

(ii) pay a nonrefundable examination fee to the testing center;

(e) pursuant to this Subsection (3)(a), take and pass both the state and national components of the licensing examination;

(f)(i) unless Subsection (2)(a) applies, evidence the individual's having, within the five-year period preceding the date of application, a minimum of three years experience related to real estate, including the following:

(A) at least two years full-time licensed, active experience selling, listing, or managing the property types identified in Appendix 1; and

(B) up to one year full-time professional experience related to real estate, as outlined in Appendix 3; and

(ii) evidence having accumulated, within the five-year period preceding the date of application, a total of at least 60 experience points as follows:

(A) 45 to 60 points pursuant to the experience points tables found in Appendices 1 and 2; and

(B) 0 to 15 points pursuant to the experience point table found in Appendix 3;

(g) pursuant to this Subsection (3)(b), submit to the division an application for licensure including:

(i) documentation indicating successful completion of the approved broker prelicensing education;

(ii) a report of the examination showing a passing score for each component of the examination; and

(iii) the applicant's business, home, and e-mail addresses;

(h) provide from any state where licensed as a real estate agent or broker:

(i) a written record of the applicant's license history; and

(ii) complete documentation of any disciplinary action taken against the applicant's license;

(i) if applying for an active license, affiliate with a registered company;

(j) pay the nonrefundable fees required for licensure, including the nonrefundable fee required under Section 61-2f-505 for the Real Estate Education, Research, and Recovery Fund; and

(k) establish real estate and property management trust accounts, as applicable pursuant to Section R162-2f-403, that:

(i) contain the term "real estate trust account" or "property management trust account", as applicable, in the account name; and

(ii) are separate from any operating account(s) of the registered entity for which the individual will serve as a broker; and

(l) identify the location(s) where brokerage records will be kept.

(2)(a) If an individual applies under this Subsection R162-2f-202b within two years of allowing a principal broker license to expire, the experience required under Subsection (1)(f) shall be accumulated within the seven-year period preceding the date of application.

(b) Pursuant to Section R162-2f-407, an individual whose application is denied by the division for failure to meet experience requirements under this Subsection (1)(f) may bring the application before the commission.

(3) Deadlines.

(a) If an individual passes one test component but fails the other, the individual shall retake and pass the failed component:

(i) within six months of the date on which the individual achieves a passing score on the passed component; and

(ii) within 12 months of the date on which the individual completes the prelicensing education.

(b) An application for licensure shall be submitted:

(i) within 90 days of the date on which the individual

achieves passing scores on both examination components; and

(ii) within 12 months of the date on which the individual completes the prelicensing education.

(c) If any deadline in this Section R162-2f-202b falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

(4) Restriction. A principal broker license may not be granted to an applicant whose sales agent license is on suspension or probation at the time of application.

(5) Dual broker licenses.

(a)(i) A person who holds or obtains a dual broker license under this Subsection may function as the principal broker of a property management company that is a separate entity from the person's real estate brokerage.

(ii) A dual broker may not conduct real estate sales activities from the separate property management company.

(iii) A principal broker may conduct property management activities from the person's real estate brokerage:

(A) without holding a dual broker license; and

(B) in accordance with Subsections R162-2f-401j and R162-2f-403a-403c;

(b) A dual broker who wishes to consolidate real estate and property management operations into a single brokerage may:

(i) at the broker's request, convert the dual broker license to a principal broker license; and

(ii)(A) convert the property management company to a branch office of the real estate brokerage, including the assignment of a branch broker and using the same name as the real estate brokerage; or

(B) close the separate property management company.

(c) As of May 8, 2013:

(i) the Division shall:

(A) cease issuing property management principal broker (PMPB) licenses;

(B) cease issuing property management company (MN) registrations except as to a second company registered under a dual broker license;

(C) convert any property management principal broker (PMPB) license to a real estate principal broker (PB) license; and

(D) as to any property management company (MN) registration that is not a second company under a dual broker license, convert the registration to a real estate brokerage (CN) registration; and

(ii) it shall be permissible to conduct real estate sales activities under any company registration that is converted pursuant to this Subsection (5)(c)(i)(C).

**R162-2f-202c. Associate Broker Licensing Fees and Procedures.**

To obtain a Utah license to practice as an associate broker, an individual shall:

(1) comply with Subsections R162-2f-202b(1)(a) through (j); and

(2) if applying for an active license, affiliate with a principal broker.

**R162-2f-203. Inactivation and Activation.**

(1) Inactivation.

(a) To voluntarily inactivate the license of a sales agent or an associate broker, the holder of the license shall complete and submit a change form through RELMS pursuant to Section R162-2f-207.

(b) To voluntarily inactivate a principal broker license, the principal broker shall:

(i) prior to inactivating the license:

(A) give written notice to each licensee affiliated with the principal broker of the date on which the principal broker

achieves passing scores on both examination components; and

(ii) within 12 months of the date on which the individual completes the prelicensing education.

(c) If any deadline in this Section R162-2f-202b falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

(4) Restriction. A principal broker license may not be granted to an applicant whose sales agent license is on suspension or probation at the time of application.

(5) Dual broker licenses.

(a)(i) A person who holds or obtains a dual broker license under this Subsection may function as the principal broker of a property management company that is a separate entity from the person's real estate brokerage.

proposes to inactivate the license; and

(B) provide to the division evidence that the licensee has complied with this Subsection (1)(b)(i)(A); and

(ii) complete and submit a change form through RELMS pursuant to Section R162-2f-207.

(c) The license of a sales agent or associate broker is involuntarily inactivated upon:

(i) termination of the licensee's affiliation with a principal broker;

(ii) expiration, suspension, revocation, inactivation, or termination of the license of the principal broker with whom the sales agent or associate broker is affiliated; or

(iii) inactivation or termination of the registration of the entity with which the licensee's principal broker is affiliated.

(d) The registration of an entity is involuntarily inactivated upon:

(i) termination of the entity's affiliation with a principal broker; or

(ii) expiration, suspension, revocation, inactivation, or termination of the license of the principal broker with whom the entity is affiliated.

(e) The license of a principal broker is involuntarily inactivated upon termination of the licensee's affiliation with a registered entity.

(f) If the division or commission orders that a principal broker's license is to be suspended or revoked:

(i) the order shall state the effective date of the suspension or revocation; and

(ii) prior to the effective date, the entity shall:

(A)(I) affiliate with a new principal broker; and

(II) submit change forms through RELMS to affiliate each licensee with the new principal broker; or

(B)(I) provide written notice to each licensee affiliated with the principal broker of the pending suspension or revocation; and

(II) comply with Subsection R162-2f-207(3)(c)(ii)(B).

(2) Activation.

(a) To activate a license, the holder of the inactive license shall:

(i) complete and submit a change card through RELMS pursuant to Section R162-2f-207;

(ii) submit proof of:

(A) having been issued an active license at the time of last renewal;

(B) having completed, within the one-year period preceding the date on which the licensee requests activation, 18 hours of continuing education, including nine hours of core topics; or

(C) having passed the licensing examination within the six-month period prior to the date on which the licensee requests activation;

(iii)(A) if applying to activate a sales agent or associate broker license, evidence affiliation with a principal broker; or

(B) if applying to activate a principal broker license, evidence affiliation with a registered entity; and

(iv) pay a non-refundable activation fee.

(b) A licensee who submits continuing education to activate a license may not use the same continuing education to renew the license at the time of the licensee's next renewal.

#### **R162-2f-204. License Renewal.**

(1) Renewal period and deadlines.

(a) A license issued under these rules is valid for a period of two years from the date of licensure.

(b) By the 15th day of the month of expiration, an applicant for renewal shall submit to the division proof of having completed all continuing education required under this Subsection (2)(b).

(c) In order to renew on time without incurring a late fee:

(i) an individual who is required to submit a renewal application through the online RELMS system shall complete the online process, including the completion and banking of continuing education credits, by the license expiration date; and

(ii) an individual whose circumstances require a "yes" answer to a disclosure question on the renewal application shall submit a paper renewal:

(A) by the license expiration date, if that date falls on a day when the division is open for business; or

(B) on the next business day following the license expiration date, if that date falls on a day when the division is closed for business.

(2) Qualification for renewal.

(a) Character and competency.

(i) An individual applying for a renewed license shall evidence that the individual maintains character and competency as required for initial licensure.

(ii) An individual applying for a renewed license may not have:

(A) a felony conviction since the last date of licensure; or

(B) a finding of fraud, misrepresentation, or deceit entered against the applicant, related to activities requiring a real estate license, by a court of competent jurisdiction or a government agency since the last date of licensure, unless the finding was explicitly considered by the division in a previous application.

(b) Continuing education.

(i) To renew at the end of the first renewal cycle, an individual shall complete:

(A) the 12-hour new sales agent course certified by the division; and

(B) an additional six non-duplicative hours of continuing education:

(I) certified by the division as either core or elective; or

(II) acceptable to the division pursuant to this Subsection (2)(b)(ii)(B).

(ii) To renew at the end of a renewal cycle subsequent to the first renewal, an individual shall:

(A) complete 18 non-duplicative hours of continuing education:

(I) certified by the division;

(II) including at least nine non-duplicative hours of core curriculum; and

(III) taken during the previous license period; or

(B) apply to the division for a waiver of all or part of the required continuing education hours by virtue of having completed non-certified courses that:

(I) were not required under Subsection R162-2f-206c(1)(a) to be certified; and

(II) meet the continuing education objectives listed in Subsection R162-2f-206c(2)(f).

(iii)(A) Completed continuing education courses will be credited to an individual when the hours are uploaded by the course provider pursuant to Subsection R162-2f-401d(1)(k).

(B) If a provider fails to upload course completion information within the ten-day period specified in Subsection R162-2f-401d(1)(k), an individual who attended the course may obtain credit by:

(I) filing a complaint against the provider; and

(II) submitting the course completion certificate to the division.

(c) Principal broker. In addition to meeting the requirements of this Subsection (2)(a) and (b), an individual applying to renew a principal broker license shall certify that:

(i) the business name under which the individual operates is current and in good standing with the Division of Corporations and Commercial Code; and

(ii) the trust account maintained by the principal broker is current and in compliance with Section R162-2f-403.

(3) Renewal and reinstatement procedures.

(a) To renew a license, an applicant shall, prior to the expiration of the license:

(i) submit the forms required by the division, including proof of having completed continuing education pursuant to this Subsection (2)(b); and

(ii) pay a nonrefundable renewal fee.

(b) To reinstate an expired license, an applicant shall, according to deadlines set forth in Subsections 61-2f-204(2)(b) - (d):

(i) submit all forms required by the division, including proof of having completed continuing education pursuant to Subsection 61-2f-204(2); and

(ii) pay a nonrefundable reinstatement fee.

(4) Transition to online renewal. An individual licensee shall submit an application for renewal through the online RELMS system unless the individual's circumstances require a "yes" answer in response to a disclosure question.

#### **R162-2f-205. Registration of Entity.**

(1) A principal broker may not conduct business through an entity, including a branch office, dba, or separate property management company, without first registering the entity with the division.

(2) Exemptions. The following locations may be used to conduct real estate business without being registered as branch offices:

(a) a model home;

(b) a project sales office; and

(c) a facility established for twelve months or less as a temporary site for marketing activity, such as an exhibit booth.

(3) To register an entity with the division, a principal broker shall:

(a) evidence that the name of the entity is registered with the Division of Corporations;

(b) certify that the entity is affiliated with a principal broker who:

(i) is authorized to use the entity name; and

(ii) will actively supervise the activities of all sales agents, associate brokers, branch brokers, and unlicensed staff;

(c) if registering a branch office, identify the branch broker who will actively supervise all licensees and unlicensed staff working from the branch office;

(d) submit an application that includes:

(i) the physical address of the entity;

(ii) if the entity is a branch office, the name and license number of the branch broker;

(iii) the names of associate brokers and sales agents assigned to the entity; and

(iv) the location and account number of any real estate and property management trust account(s) in which funds received at the registered location will be deposited;

(e) inform the division of:

(i) the location and account number of any operating account(s) used by the registered entity; and

(ii) the location where brokerage records will be kept; and

(f) pay a nonrefundable application fee.

(4) Restrictions.

(a)(i) The division shall not register an entity proposing to use a business name that:

(A) is likely to mislead the public into thinking that the entity is not a real estate brokerage or property management company;

(B) closely resembles the name of another registered entity; or

(C) the division determines might otherwise be confusing or misleading to the public.

(ii) Approval by the division of an entity's business name does not ensure or grant to the entity a legal right to use or operate under that name.

(b) A branch office shall operate under the same business name as the principal brokerage.

(c) An entity may not designate a post office box as its business address, but may designate a post office box as a mailing address.

(d) All trust accounts and operating accounts used by a registered entity shall be maintained in a bank or credit union located in the state of Utah.

(5) Registration not transferable.

(a) A registered entity shall not transfer the registration to any other person.

(b) A registered entity shall not allow an unlicensed person to use the entity's registration to perform work for which licensure is required.

(c) If a change in corporate structure of a registered entity creates a separate and unique legal entity, that entity shall obtain a unique registration, and shall not operate under an existing registration.

(d) The dissolution of a corporation, partnership, limited liability company, association, or other entity registered with the division terminates the registration.

#### **R162-2f-206a. Certification of Real Estate School.**

(1) Prior to offering real estate prelicensing or continuing education, a school shall:

(a) obtain division approval of the school name; and

(b) certify the school with the division pursuant to this Subsection (2).

(2) To certify, a school applicant shall, at least 90 days prior to teaching any course, prepare and supply the following information to the division:

(a) contact information, including:

(i) name, phone number, and address of the physical facility;

(ii) name, phone number, and address of each school director;

(iii) name, phone number, and address of each school owner; and

(iv) an e-mail address where correspondence will be received by the school;

(b) evidence that the school directors and owners meet the character requirements outlined in Subsection R162-2f-201(1) and the competency requirements outlined in Subsection R162-2f-201(2);

(c) evidence that the school name as approved by the division pursuant to this Subsection (1)(a) is registered with the Division of Corporations and Commercial Code as a real estate education provider;

(d) school description, including:

(i) type of school; and

(ii) description of the school's physical facilities;

(e) list of courses offered;

(f) list of the instructor(s), including any guest lecturer(s), who will be teaching each course;

(g) proof that each instructor is:

(i) certified by the division;

(ii) qualified as a guest lecturer by having:

(A) requisite expertise in the field; and

(B) approval from the division; or

(iii) exempt from certification under Subsection R162-2f-206d(4);

(h) schedule of courses offered, including the days, times, and locations of classes;

(i) statement of attendance requirements as provided to students;

(j) refund policy as provided to students;

(k) disclaimer as provided to students;

(l) criminal history disclosure statement as provided to students; and

- (m) any other information the division requires.
- (3) Minimum standards.
  - (a) The course schedule may not provide or allow for more than eight credit hours per student per day.
  - (b) The attendance statement shall require that each student attend at least 90% of the scheduled class periods, excluding breaks.
  - (c) The disclaimer shall adhere to the following requirements:
    - (i) be typed in all capital letters at least 1/4 inch high; and
    - (ii) state the following language: "Any student attending (school name) is under no obligation to affiliate with any of the real estate brokerages that may be soliciting for licensees at this school."
  - (d) The criminal history disclosure statement shall:
    - (i) be provided to each student prior to the school accepting payment; and
    - (ii) clearly inform the student that upon application with the division, the student will be required to:
      - (A) accurately disclose the student's criminal history according to the licensing questionnaire provided by the division;
      - (B) submit fingerprint cards to the division and consent to a criminal background check; and
      - (C) provide to the division complete court documentation relative to any criminal proceeding that the applicant is required to disclose;
      - (iii) clearly inform the student that the division will consider the applicant's criminal history pursuant to Subsection 61-2f-204(1)(e) and Subsection R162-2f-201(1) in making a decision on the application; and
      - (iv) include a section for the student's attestation that the student has read and understood the disclosure.
  - (e) Within 15 days after the occurrence of any material change in the information outlined in this Subsection (2)(a), the school shall provide to the division written notice of the change.
    - (4)(a) A school certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.
      - (b) To renew a school certification, an applicant shall:
        - (i) complete a renewal application as provided by the division; and
        - (ii) pay a nonrefundable renewal fee.
      - (c) To reinstate an expired school certification within 30 days following the expiration date, a person shall:
        - (i) comply with all requirements for a timely renewal; and
        - (ii) pay a nonrefundable late fee.
      - (d) To reinstate an expired school certification after 30 days and within six months following the expiration date, a person shall:
        - (i) comply with all requirements for a timely renewal; and
        - (ii) pay a non-refundable reinstatement fee.
      - (e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.
      - (f) If a deadline specified in this Subsection (4) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

**R162-2f-206b. Certification Prelicensing Course.**

- (1) To certify a prelicensing course for traditional education, a person shall, no later than 30 days prior to the date on which the course is proposed to begin, provide the following to the division:
  - (a) comprehensive course outline including:
    - (i) description of the course;
    - (ii) number of class periods spent on each subject area;
    - (iii) minimum of three to five learning objectives for every three hours of class time; and

- (iv) reference to the course outline approved by the commission for each topic;
  - (b) number of quizzes and examinations;
  - (c) grading system, including methods of testing and standards of grading;
  - (d)(i) a copy of at least two final examinations to be used in the course;
  - (ii) the answer key(s) used to determine if a student has passed the exam; and
  - (iii) an explanation of procedure if the student fails the final examination and thereby fails the course; and
  - (e) a list of the titles, authors and publishers of all required textbooks.
- (2) To certify a prelicensing course for distance education, a person shall, no later than 60 days prior to the date on which the course is proposed to begin, provide the following to the division:
  - (a) all items listed in this Subsection (1);
  - (b) description of each method of course delivery;
  - (c) description of any media to be used;
  - (d) course access for the division using the same delivery methods and media that will be provided to the students;
  - (e) description of specific and regularly scheduled interactive events included in the course and appropriate to the delivery method that will contribute to the students' achievement of the stated learning objectives;
  - (f) description of how the students' achievement of the stated learning objectives will be measured at regular intervals;
  - (g) description of how and when certified prelicensing instructors will be available to answer student questions; and
  - (h) attestation from the school director of the availability and adequacy of the equipment, software, and other technologies needed to achieve the course's instructional claims.
  - (3) Minimum standards. A prelicensing course shall:
    - (a) address each topic required by the course outline as approved by the commission;
    - (b) meet the minimum hourly requirement as established by Subsection 61-2f-203(1)(d)(i) and these rules;
    - (c) limit the credit that students may earn to no more than eight credit hours per day;
    - (d) be taught in an appropriate classroom facility unless approved for distance education;
    - (e) allow a maximum of 10% of the required class time for testing, including:
      - (i) practice tests; and
      - (ii) a final examination; and
      - (f) use only texts, workbooks, and supplemental materials that are appropriate and current in their application to the required course outline.
  - (4) A prelicensing course certification expires at the same time as the school certification and is renewed automatically when the school certification is renewed.

**R162-2f-206c. Certification of Continuing Education Course.**

- (1)(a) The division may not award continuing education credit for a course that is advertised in Utah to real estate licensees unless the course is certified prior to its being taught.
  - (b) A licensee who completes a course that is not required to be certified pursuant to this Subsection (1)(a), and who believes that the course satisfies the objectives of continuing education pursuant to this Subsection (2)(f), may apply to the division for an award of continuing education credit after successfully completing the course.
- (2) To certify a continuing education course for traditional education, a person shall, no later than 30 days prior to the date on which the course is proposed to begin, provide the following to the division:
  - (a) name and contact information of the course provider;

(b) name and contact information of the entity through which the course will be provided;

(c) description of the physical facility where the course will be taught;

(d) course title;

(e) number of credit hours;

(f) statement defining how the course will meet the objectives of continuing education by increasing the participant's:

(i) knowledge;

(ii) professionalism; and

(iii) ability to protect and serve the public;

(g) course outline including a description of the subject matter covered in each 15-minute segment;

(h) a minimum of three learning objectives for every three hours of class time;

(i) name and certification number of each certified instructor who will teach the course;

(j) copies of all materials to be distributed to participants;

(k) signed statement in which the course provider and instructor(s):

(i) agree not to market personal sales products;

(ii) allow the division or its representative to audit the course on an unannounced basis; and

(iii) agree to upload, within ten business days after the end of a course offering, to the database specified by the division, the following:

(A) course name;

(B) course certificate number assigned by the division;

(C) date(s) the course was taught;

(D) number of credit hours; and

(E) names and license numbers of all students receiving continuing education credit;

(l) procedure for pre-registration;

(m) tuition or registration fee;

(n) cancellation and refund policy;

(o) procedure for taking and maintaining control of attendance during class time;

(p) sample of the completion certificate;

(q) nonrefundable fee for certification as required by the division; and

(r) any other information the division requires.

(3) To certify a continuing education course for distance education, a person shall:

(a) comply with this Subsection (2);

(b) submit to the division a complete description of all course delivery methods and all media to be used;

(c) provide course access for the division using the same delivery methods and media that will be provided to the students;

(d) describe specific and regularly scheduled interactive events included in the course and appropriate to the delivery method that will contribute to the students' achievement of the stated learning objectives;

(e) describe how and when certified instructors will be available to answer student questions; and

(f) provide an attestation from the sponsor of the availability and adequacy of the equipment, software, and other technologies needed to achieve the course's instructional claims.

(4) Minimum standards.

(a) Except for distance education courses, all courses shall be taught in an appropriate classroom facility and not in a private residence.

(b) The minimum length of a course shall be one credit hour.

(c) Except for online courses, the procedure for taking attendance shall be more extensive than having the student sign a class roll.

(d) The completion certificate shall allow for entry of the

following information:

(i) licensee's name;

(ii) type of license;

(iii) license number;

(iv) date of course;

(v) name of the course provider;

(vi) course title;

(vii) number of credit hours awarded;

(viii) course certification number;

(ix) course certification expiration date;

(x) signature of the course sponsor; and

(xi) signature of the licensee.

(5) Certification procedures.

(a) Upon receipt of a complete application for certification of a continuing education course, the division shall, at its own discretion, determine whether a course qualifies for certification.

(b) Upon determining that a course qualifies for certification, the division shall determine whether the content satisfies core or elective requirements.

(c) Core topics include the following:

(i) state approved forms and contracts;

(ii) other industry used forms or contracts;

(iii) ethics;

(iv) agency;

(v) short sales or sales of bank-owned property;

(vi) environmental hazards;

(vii) property management;

(viii) prevention of real estate and mortgage fraud;

(ix) federal and state real estate laws;

(x) division administrative rules; and

(xi) broker trust accounts;

(d) If a course regarding an industry used form or contract is approved by the division as a core course, the provider of the course shall:

(i) obtain authorization to use the form(s) or contract(s) taught in the course;

(ii) obtain permission for licensees to subsequently use the form(s) or contract(s) taught in the course; and

(iii) if applicable, arrange for the owner of each form or contract to make it available to licensees for a reasonable fee.

(e) Elective topics include the following:

(i) real estate financing, including mortgages and other financing techniques;

(ii) real estate investments;

(iii) real estate market measures and evaluation;

(iv) real estate appraising;

(v) market analysis;

(vi) measurement of homes or buildings;

(vii) accounting and taxation as applied to real property;

(viii) estate building and portfolio management for clients;

(ix) settlement statements;

(x) real estate mathematics;

(xi) real estate law;

(xii) contract law;

(xiii) agency and subagency;

(xiv) real estate securities and syndications;

(xv) regulation and management of timeshares, condominiums, and cooperatives;

(xvi) resort and recreational properties;

(xvii) farm and ranch properties;

(xviii) real property exchanging;

(xix) legislative issues that influence real estate practice;

(xx) real estate license law;

(xxi) division administrative rules;

(xxii) land development;

(xxiii) land use;

(xxiv) planning and zoning;

(xxv) construction;

(xxvi) energy conservation in buildings;

- (xxvii) water rights;
- (xxviii) landlord/tenant relationships;
- (xxix) property disclosure forms;
- (xxx) Americans with Disabilities Act;
- (xxxi) fair housing;
- (xxxii) affirmative marketing;
- (xxxiii) commercial real estate;
- (xxxiv) tenancy in common;
- (xxxv) professional development;
- (xxxvi) business success;
- (xxxvii) customer relation skills;
- (xxxviii) sales promotion, including:
  - (A) salesmanship;
  - (B) negotiation;
  - (C) sales psychology;
  - (D) marketing techniques related to real estate knowledge;
  - (E) servicing clients; and
  - (F) communication skills;
- (xxxix) personal and property protection for licensees and their clients;
- (xl) any topic that focuses on real estate concepts, principles, or industry practices or procedures, if the topic enhances licensee professional skills and thereby advances public protection and safety; and
- (xli) any other topic that directly relates to the real estate brokerage practice and directly contributes to the objective of continuing education.
  - (f) Unacceptable topics include the following:
    - (i) offerings in mechanical office and business skills, including:
      - (A) typing;
      - (B) speed reading;
      - (C) memory improvement;
      - (D) language report writing;
      - (E) advertising; and
      - (F) technology courses with a principal focus on technology operation, software design, or software use;
    - (ii) physical well-being, including:
      - (A) personal motivation;
      - (B) stress management; and
      - (C) dress-for-success;
    - (iii) meetings held in conjunction with the general business of the licensee and the licensee's broker, employer, or trade organization, including:
      - (A) sales meetings;
      - (B) in-house staff meetings or training meetings; and
      - (C) member orientations for professional organizations;
    - (iv) courses in wealth creation or retirement planning for licensees; and
    - (v) courses that are specifically designed for exam preparation.
  - (g) If an application for certification of a continuing education course is denied by the division, the person making application may appeal to the commission.
- (6)(a) A continuing education course certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.
  - (b) To renew a continuing education course certification, an applicant shall:
    - (i) complete a renewal application as provided by the division; and
    - (ii) pay a nonrefundable renewal fee.
  - (c) To reinstate an expired continuing education course certification within 30 days following the expiration date, a person shall:
    - (i) comply with all requirements for a timely renewal; and
    - (ii) pay a nonrefundable late fee.
  - (d) To reinstate an expired continuing education course certification after 30 days and within six months following the

- expiration date, a person shall:
  - (i) comply with all requirements for a timely renewal; and
  - (ii) pay a non-refundable reinstatement fee.
- (e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.
- (f) If a deadline specified in this Subsection (6) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

**R162-2f-206d. Certification of Prelicensing Course Instructor.**

- (1) An instructor shall certify with the division prior to teaching a prelicensing course.
- (2) To certify, an applicant shall provide, within the 30-day period prior to the date on which the applicant proposes to begin instruction:
  - (a) evidence that the applicant meets the character requirements of Subsection R162-2f-201(1) and the competency requirements of Subsection R162-2f-201(2);
  - (b) evidence of having graduated from high school or achieved an equivalent education;
  - (c) evidence that the applicant understands the real estate industry through:
    - (i) a minimum of five years of full-time experience as a real estate licensee;
    - (ii) post-graduate education related to the course subject;
  - or
  - (iii) demonstrated expertise on the subject proposed to be taught;
  - (d) evidence of ability to teach through:
    - (i) a minimum of 12 months of full-time teaching experience;
    - (ii) part-time teaching experience equivalent to 12 months of full-time teaching experience; or
    - (iii) attendance at a division instructor development workshop totaling at least two days in length;
  - (e) evidence of having passed an examination designed to test the knowledge of the subject matter proposed to be taught;
  - (f) name and certification number of the certified prelicensing school for which the applicant will work;
  - (g) a signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the division or its representative;
  - (h) a signed statement agreeing not to market personal sales products;
    - (i) any other information the division requires;
    - (j) an application fee; and
    - (k) course-specific requirements as follows:
      - (i) sales agent prelicensing course: evidence of being a licensed sales agent or broker; and
      - (ii) broker prelicensing course: evidence of being a licensed associate broker, branch broker, or principal broker.
- (3) An applicant may certify to teach a subcourse of the broker prelicensing course by meeting the following requirements:
  - (a) Brokerage Management. An applicant shall:
    - (i) hold a current real estate broker license;
    - (ii) possess at least two years practical experience as an active real estate principal broker; and
    - (iii)(A) have experience managing a real estate office; or
    - (B) hold a certified residential broker or equivalent professional designation in real estate brokerage management.
  - (b) Advanced Real Estate Law. An applicant shall:
    - (i) hold a current real estate broker license;
    - (ii) evidence current membership in the Utah State Bar; or
    - (iii)(A) have graduated from an American Bar Association accredited law school; and
    - (B) have at least two years real estate law experience.

(c) Advanced Appraisal. An applicant shall hold:  
 (i) a current real estate broker license, or  
 (ii) a current appraiser license or certification from the division.

(d) Advanced Finance. An applicant shall:

(i) evidence at least two years practical experience in real estate finance; and

(ii)(A) hold a current real estate broker license;

(B) evidence having been associated with a lending institution as a loan officer; or

(C) hold a degree in finance.

(e) Advanced Property Management. An applicant shall hold a current real estate license and:

(i) evidence at least two years full-time experience as a property manager; or

(ii) hold a certified property manager or equivalent professional designation.

(4) A college or university may use any faculty member to teach an approved course provided the instructor demonstrates to the satisfaction of the division academic training or experience qualifying the faculty member to teach the course.

(5)(a) A preclicensing instructor certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.

(b) To renew a preclicensing course instructor certification, an individual shall:

(i) submit all forms required by the division;

(ii) evidence having taught, within the two-year period prior to the date of application, at least 20 hours of in-class instruction in a certified real estate course;

(iii) evidence having attended, within the two-year period prior to the date of application, an instructor development workshop sponsored by the division; and

(iv) pay a nonrefundable renewal fee.

(c) To reinstate an expired preclicensing course instructor certification within 30 days following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a nonrefundable late fee.

(d) To reinstate an expired preclicensing course instructor certification after 30 days and within six months following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a non-refundable reinstatement fee.

(e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.

(f) If a deadline specified in this Subsection (5) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

#### **R162-2f-206e. Certification of Continuing Education Course Instructor.**

(1) An instructor shall certify with the division before teaching a continuing education course.

(2) To certify, an applicant shall, within the 30-day period prior to the date on which the applicant proposes to begin instruction, provide the following:

(a) name and contact information of the applicant;

(b) evidence that the applicant meets the character requirements of Subsection R162-2f-201(1) and the competency requirements of Subsection R162-2f-201(2);

(c) evidence of having graduated from high school or achieved an equivalent education;

(d) evidence that the applicant understands the subject matter to be taught through:

(i) a minimum of two years of full-time experience as a real estate licensee;

(ii) college-level education related to the course subject; or

(iii) demonstrated expertise on the subject proposed to be taught;

(e) evidence of ability to teach through:

(i) a minimum of 12 months of full-time teaching experience;

(ii) part-time teaching experience equivalent to 12 months of full-time teaching experience; or

(iii) attendance at a division instructor development workshop totaling at least two days in length;

(f) a signed statement agreeing to allow the instructor's courses to be randomly audited on an unannounced basis by the division or its representative;

(g) a signed statement agreeing not to market personal sales products;

(h) any other information the division requires; and

(i) a nonrefundable application fee.

(3)(a) A continuing education course instructor certification expires 24 months from the date of issuance and must be renewed before the expiration date in order to remain active.

(b) To renew a continuing education course instructor certification, a person shall:

(i) submit all forms required by the division;

(ii)(A) evidence having taught, within the previous renewal period, a minimum of 12 continuing education credit hours; or

(B) submit written explanation outlining:

(I) the reason for not having taught a minimum of 12 continuing education credit hours; and

(II) documentation to the division that the applicant maintains satisfactory expertise in the subject area proposed to be taught; and

(iii) pay a nonrefundable renewal fee.

(c) To reinstate an expired continuing education instructor certification within 30 days following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a nonrefundable late fee.

(d) To reinstate an expired continuing education instructor certification after 30 days and within six months following the expiration date, a person shall:

(i) comply with all requirements for a timely renewal; and

(ii) pay a non-refundable reinstatement fee.

(e) A certification that is expired for more than six months may not be reinstated. To obtain a certification, a person must apply as a new applicant.

(f) If a deadline specified in this Subsection (3) falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

#### **R162-2f-207. Reporting a Change of Information.**

(1) Individual notification requirements.

(a) An individual licensed as a sales agent, associate broker, or principal broker shall report the following to the division:

(i) change in licensee's name; and

(ii) change in licensee's business, home, e-mail, or mailing address.

(b) In addition to complying with this Subsection (1)(a):

(i) an individual licensed as a sales agent or associate broker shall report to the division a change in affiliation with a principal broker; and

(ii) an individual licensed as a principal broker shall report to the division:

(A) termination of a sales agent, associate broker, or branch broker, if the change is not reported pursuant to this Subsection (1)(b)(i);

(B) change in assignment of branch broker; and

(C) termination of the principal broker's affiliation with an



entity.

(2) Entity notification requirements. A registered entity shall report the following to the division:

- (a) change in entity's name;
- (b) change in entity's affiliation with a principal broker;
- (c) change in corporate structure;
- (d) dissolution of corporation; and
- (e) change of location where brokerage records are kept.

(3) Notification procedures.

(a) Name. To report a change in name, a person shall submit to the division a paper change form and:

(i) if the person is an individual, attach to it official documentation such as a:

- (A) marriage certificate;
- (B) divorce decree;
- (C) court order; or
- (D) driver license; and

(ii) if the person is an entity:

(A) obtain prior approval from the division of the new entity name; and

(B) attach to the change form proof that the new name as approved by the division pursuant to this Subsection (3)(a)(ii)(A) is registered with, and approved by, the Division of Corporations.

(b) Address. To report a change in address, a person shall enter the change into RELMS.

(c) Affiliation.

(i) To terminate an affiliation between an individual and a principal broker, a person shall submit a change form through RELMS to inactivate or transfer the individual's license; and

(A)(I) obtain the electronic affirmation of the other party to the terminated affiliation; or

(II) comply with this Subsection (4); and

(B) if a sales agent, associate broker, or branch broker simultaneously establishes an affiliation with a new principal broker, obtain the electronic affirmation of the new principal broker on a change form.

(ii) To terminate an affiliation between a principal broker and an entity:

(A) the principal broker shall submit a paper change form to the division to inactivate or transfer the principal broker's license; and

(B) if the entity does not simultaneously affiliate with a new principal broker, the entity shall:

(I) cease operations;

(II) submit to the division a paper company/branch change form to inactivate the entity registration;

(III) submit change forms through RELMS to inactivate the license of any licensee affiliated with the entity;

(IV) advise the division as to the location where records will be stored;

(V) notify each listing and management client that the entity is no longer in business and that the client may enter into a new listing or management agreement with a different brokerage;

(VI) notify each party and cooperating broker to any existing contracts; and

(VII) retain money held in trust under the control of a signer on the trust account, or an administrator or executor, until all parties to each transaction agree in writing to the disposition or until a court of competent jurisdiction issues an order relative to the disposition.

(iii) Branch broker. To change an assignment of branch broker, a principal broker shall submit a paper change form to the division.

(d) Corporate structure.

(i) To report a change in corporate structure of a registered entity, the affiliated principal broker shall:

(A) if the change does not involve a new business license,

or a new registration with the Utah Division of Corporations and Commercial Code, submit a letter to the division, fully explaining the change; and

(B) if the change involves a new business license or a new registration with the Utah Division of Corporations and Commercial Code for a purpose other than a company name change, obtain a new registration.

(ii) To report the dissolution of an entity registered with the division, a person shall comply with this Subsection (3)(c)(ii)(B).

(e) Brokerage records. To report a change in the location where brokerage records are kept, the principal broker of the registered entity shall submit to the division a letter on brokerage letterhead.

(4) Unavailability of individual. If an individual is unavailable to sign or electronically affirm a change form, the person responsible to report the change may do so by:

(a) sending a letter by certified mail to the last known address of the individual to notify that individual of the change; and

(b) as applicable:

(i) entering the certified mail reference number into the appropriate field on the electronic change form; or

(ii) providing to the division a copy of the certified mail receipt.

(5) Fees. The division may require a notification submitted pursuant to this subsection to be accompanied by a nonrefundable change fee.

(6) Deadlines.

(a) A change in affiliation shall be reported to the division before the change is made.

(b) A change in branch manager shall be reported to the division at the time the change is made.

(c) Any other change shall be reported to the division within ten business days of the change taking effect.

(d) As to a change that requires submission of a paper form or document, if the deadline specified in this Section R162-2f-207 falls on a day when the division is closed for business, the deadline shall be extended to the next business day.

(7) Effective date. A change reported in compliance with this Section R162-2f-207 becomes effective with the division the day on which the properly executed change form is received by the division.

#### **R162-2f-307. Undivided Fractionalized Long-Term Estate.**

(1) A real estate licensee who markets an undivided fractionalized long-term estate shall:

(a) obtain from the sponsor written disclosures pursuant to this Subsection (2) regarding the sponsor and each affiliate; and

(b) provide the disclosures to purchasers prior to closing so as to allow adequate review by the purchaser.

(2) Required disclosures.

(a) Disclosure as to the sponsor and the sponsor's affiliates, including the following:

(i) current certified financial statements;

(ii) current credit reports;

(iii) information concerning any bankruptcies or civil lawsuits;

(iv) proposed use of purchaser proceeds;

(v)(A) if applicable, financial statements of the master lease tenant, audited according to generally accepted accounting principles; and

(B) if the master lease tenant is an entity formed for the sole purpose of acting as the master lease tenant, audited financial statements of the owners of that entity;

(vi) statement as to whether the sponsor is an affiliate of a master lease tenant; and

(vii) statement as to whether any affiliate of the sponsor is:

(A) a third-party service provider; or  
 (B) a master lease tenant.  
 (b) Disclosure as to the real property in which the undivided fractionalized long-term estate is offered, including the following:

- (i) material information concerning any leases or subleases affecting the real property;
- (ii) material information concerning any environmental issues affecting the real property;
- (iii) a preliminary title report on the real property;
- (iv) if available, financial statements on any tenants for the life of the entity or the last five years, whichever is shorter;
- (v) if applicable, rent rolls and operating history;
- (vi) if applicable, loan documents;
- (vii)(A) a tenants in common agreement; or  
 (B) any agreement that forms the substance of the undivided fractionalized long-term estate, including definition of the undivided fractionalized interest;
- (viii) third party reports acquired by the sponsor;
- (ix) a narrative appraisal report that:  
 (A) is effective no more than six months prior to the date the offer of sale is made; and  
 (B) includes, at a minimum:
  - (I) pictures;
  - (II) type of construction;
  - (III) age of building; and
  - (IV) site information such as improvements, parking, cross easements, site and location maps;
- (x) material information concerning the market conditions for the property class; and
- (xi) material information concerning the demographics of the general market area.

(c) Disclosure as to the asset managers and the property managers of the real property in which the undivided fractionalized long-term estate is offered, including the following:

- (i) contact information for any existing or recommended asset managers and property managers;
- (ii) description of any relationship between:
  - (A) the asset managers and the sponsor; and
  - (B) the property managers and the sponsor; and
- (iii) copies of any existing:
  - (A) asset management agreements; and
  - (B) property management agreements.

(d) Disclosure as to potential tax consequences, including the following:

- (i) a statement that there might be tax consequences for a failure to close on the purchase;
- (ii) a statement that there might be risks involved in the purchase; and
- (iii) a statement advising purchasers to consult with tax advisors and other professionals for advice concerning these matters.

(3) The division and commission shall consider any offering of a fractionalized undivided long-term estate in real property that complies with the Securities and Exchange Commission Regulation D, Rule 506, 17 C.F.R. Sec. 203.506 to be in compliance with these rules.

#### **R162-2f-401a. Affirmative Duties Required of All Licensed Individuals.**

An individual licensee shall:

(1) uphold the following fiduciary duties in the course of representing a principal:

(a) loyalty, which obligates the agent to place the best interests of the principal above all other interests, including the agent's own;

(b) obedience, which obligates the agent to obey all lawful instructions from the principal;

(c) full disclosure, which obligates the agent to inform the principal of any material fact the agent learns about:

- (i) the other party; or
- (ii) the transaction;
- (d) confidentiality, which prohibits the agent from disclosing, without permission, any information given to the agent by the principal that would likely weaken the principal's bargaining position if it were known, but excepting any known material fact concerning:

- (i) a defect in the property; or
- (ii) the client's ability to perform on the contract;
- (e) reasonable care and diligence;
- (f) holding safe and accounting for all money or property entrusted to the agent; and

(g) any additional duties created by the agency agreement;  
 (2) for the purpose of defining the scope of the individual's agency, execute a written agency agreement between the individual and the individual's principal, including:

- (a) seller(s) the individual represents;
- (b) buyer(s) the individual represents;
- (c) buyer(s) and seller(s) the individual represents as a limited agent in the same transaction pursuant to this Subsection (4);

(d) the owner of a property for which the individual will provide property management services; and

(e) a tenant whom the individual represents;

(3) in order to represent both principals in a transaction as a limited agent, obtain informed consent by:

- (a) clearly explaining in writing to both parties:
- (i) that each is entitled to be represented by a separate agent;

(ii) the type(s) of information that will be held confidentially;

(iii) the type(s) of information that will be disclosed; and

(iv) the circumstances under which the withholding of information would constitute a material misrepresentation regarding the property or regarding the abilities of the parties to fulfill their obligations;

(b) obtaining a written acknowledgment from each party affirming that the party waives the right to:

- (i) undivided loyalty;
- (ii) absolute confidentiality; and
- (iii) full disclosure from the licensee; and

(c) obtaining a written acknowledgment from each party affirming that the party understands that the licensee will act in a neutral capacity to advance the interests of each party;

(4) when acting under a limited agency agreement:

- (a) act as a neutral third party; and
- (b) uphold the following fiduciary duties to both parties:

(i) obedience, which obligates the limited agent to obey all lawful instructions from the parties, consistent with the agent's duty of neutrality;

(ii) reasonable care and diligence;

(iii) holding safe all money or property entrusted to the limited agent; and

(iv) any additional duties created by the agency agreement;

(5) prior to executing a binding agreement, disclose in writing to clients, agents for other parties, and unrepresented parties:

(a) the licensee's position as a principal in any transaction where the licensee operates either directly or indirectly to buy, sell, lease, or rent real property;

(b) the fact that the licensee holds a license with the division, whether the license status is active or inactive, in any circumstance where the licensee is a principal in an agreement to buy, sell, lease, or rent real property;

(c) the licensee's agency relationship(s);

(d)(i) the existence or possible existence of a due-on-sale clause in an underlying encumbrance on real property; and

(ii) the potential consequences of selling or purchasing a property without obtaining the authorization of the holder of an underlying encumbrance;

(6) in order to offer any property for sale or lease, make reasonable efforts to verify the accuracy and content of the information and data to be used in the marketing of the property;

(7) in order to offer a residential property for sale, disclose the source on which the licensee relies for any square footage data that will be used in the marketing of the property:

(a) in the written agreement, executed with the seller, through which the licensee acquires the right to offer the property for sale; and

(b) in a written disclosure provided to the buyer, at the licensee's direction, at or before the deadline for the seller's disclosure per the contract for sale;

(8) upon initial contact with another agent in a transaction, disclose the agency relationship between the licensee and the client;

(9) when executing a binding agreement in a sales transaction, confirm the prior agency disclosure:

(a) in the currently approved Real Estate Purchase Contract; or

(b) in a separate provision with substantially similar language incorporated in or attached to the binding agreement;

(10) when executing a lease or rental agreement, confirm the prior agency disclosure by:

(a) incorporating it into the agreement; or

(b) attaching it as a separate document;

(11) when offering an inducement to a buyer who will not pay a real estate commission in a transaction:

(a) obtain authorization from the licensee's principal broker to offer the inducement;

(b) comply with all underwriting guidelines that apply to the loan for which the borrower has applied; and

(c) provide notice of the inducement, using any method or form, to:

(i) the principal broker of the seller's agent, if the seller paying a commission is represented; or

(ii) the seller, if the seller paying a commission is not represented;

(12) if the licensee desires to act as a sub-agent for the purpose of showing property owned by a seller who is under contract with another brokerage, prior to showing the seller's property:

(a) notify the listing brokerage that sub-agency is requested; and

(b) enter into a written agreement with the listing brokerage with which the seller has contracted:

(i) consenting to the sub-agency; and

(ii) defining the scope of the agency;

(c) obtain from the listing brokerage all available information about the property; and

(d) uphold the same fiduciary duties outlined in this Subsection (1);

(13) provide copies of a lease or purchase agreement, properly signed by all parties, to the party for whom the licensee acts as an agent;

(14)(a) in identifying the seller's brokerage in paragraph 5 of the approved Real Estate Purchase Contract, use:

(i) the principal broker's individual name; or

(ii) the principal broker's brokerage name; and

(b) personally fulfill the licensee's agency relationship with the client, notwithstanding the information used to complete paragraph 5;

(15) timely inform the licensee's principal broker or branch broker of real estate transactions in which:

(a) the licensee is involved as agent or principal;

(b) the licensee has received funds on behalf of the principal broker; or

(c) an offer has been written;

(16)(a) disclose in writing to all parties to a transaction any compensation in addition to any real estate commission that will be received in connection with a real estate transaction; and

(b) ensure that any such compensation is paid to the licensee's principal broker;

(17)(a) in negotiating and closing a transaction involving a property for which a certificate of occupancy has been issued, use:

(i)(A) the standard forms approved by the commission and identified in Section R162-2f-401f;

(B) standard supplementary clauses approved by the commission; and

(C) as necessary, other standard forms including settlement statements, warranty deeds, and quit claim deeds;

(ii) forms prepared by an attorney for a party to the transaction, if:

(A) a party to the transaction requests the use of the attorney-drafted forms; and

(B) the licensee first verifies that the forms have in fact been drafted by the party's attorney; or

(iii) if no state-approved form exists to serve a specific need, any form prepared by an attorney, regardless of whether the attorney is employed for the purpose by:

(A) the principal; or

(B) an entity in the business of selling blank legal forms; and

(b) in presenting an offer on a property for which a certificate of occupancy has not been issued, use:

(i) the state-approved Real Estate Purchase Contract for Residential Construction; or

(ii) a contract that complies with Section 61-2f-306(2)(b)-(c).

(18) use an approved addendum form to make a counteroffer or any other modification to a contract;

(19) in order to sign or initial a document on behalf of a principal:

(a) obtain prior written authorization in the form of a power of attorney duly executed by the principal;

(b) retain in the file for the transaction a copy of said power of attorney;

(c) attach said power of attorney to any document signed or initialed by the individual on behalf of the principal;

(d) sign as follows: "(Principal's Name) by (Licensee's Name), Attorney-in-Fact;" and

(e) initial as follows: "(Principal's Initials) by (Licensee's Name), Attorney-in-Fact for (Principal's Name);"

(20) if employing an unlicensed individual to provide assistance in connection with real estate transactions, adhere to the provisions of Section R162-2f-401g;

(21) strictly adhere to advertising restrictions as outlined in Section R162-2f-401h;

(22) as to a guaranteed sales agreement, provide full disclosure regarding the guarantee by executing a written contract that contains:

(a) the conditions and other terms under which the property is guaranteed to be sold or purchased;

(b) the charges or other costs for the service or plan;

(c) the price for which the property will be sold or purchased; and

(d) the approximate net proceeds the seller may reasonably expect to receive;

(23) immediately deliver money received in a real estate transaction to the principal broker for deposit; and

(24) as contemplated by Subsection 61-2f-401(18), when notified by the division that information or documents are required for investigation purposes, respond with the required information or documents in full and within ten business days.

**R162-2f-401b. Prohibited Conduct As Applicable to All Licensed Individuals.**

An individual licensee may not:

(1) engage in any of the practices described in Section 61-2f-401 et seq., whether acting as agent or on the licensee's own account, in a manner that:

(a) fails to conform with accepted standards of the real estate sales, leasing, or management industries;

(b) could jeopardize the public health, safety, or welfare;

or

(c) violates any provision of Title 61, Chapter 2f et seq. or the rules of this chapter;

(2) require parties to acknowledge receipt of a final copy of any document prepared by the licensee prior to all parties signing a contract evidencing agreement to the terms thereof;

(3) make a misrepresentation to the division:

(a) in an application for license renewal; or

(b) in an investigation.

(4)(a) propose, prepare, or cause to be prepared a document, agreement, settlement statement, or other device that the licensee knows or should know does not reflect the true terms of the transaction; or

(b) knowingly participate in a transaction in which such a false device is used;

(5) participate in a transaction in which a buyer enters into an agreement that:

(a) is not disclosed to the lender; and

(b) if disclosed, might have a material effect on the terms or the granting of the loan;

(6) use or propose the use of a double contract;

(7) place a sign on real property without the written consent of the property owner;

(8) take a net listing;

(9) sell listed properties other than through the listing broker;

(10) subject a principal to paying a double commission without the principal's informed consent;

(11) enter or attempt to enter into a concurrent agency representation when the licensee knows or should know that the principal has an existing agency representation agreement with another licensee;

(12) pay a finder's fee or give any valuable consideration to an unlicensed person or entity for referring a prospect, except that:

(a) a licensee may give a gift valued at \$150 or less to an individual in appreciation for an unsolicited referral of a prospect that results in a real estate transaction; and

(b) as to a property management transaction, a licensee may compensate an unlicensed employee or current tenant up to \$200 per lease for assistance in retaining an existing tenant or securing a new tenant;

(13) accept a referral fee from:

(a) a lender; or

(b) a mortgage broker;

(14) act as a real estate agent or broker in the same transaction in which the licensee also acts as a:

(a) mortgage loan originator, associate lending manager, or principal lending manager;

(b) appraiser or appraiser trainee;

(c) escrow agent; or

(d) provider of title services;

(15) act or attempt to act as a limited agent in any transaction in which:

(a) the licensee is a principal in the transaction; or

(b) any entity in which the licensee is an officer, director, partner, member, employee, or stockholder is a principal in the transaction;

(16) make a counteroffer by striking out, whitening out, substituting new language, or otherwise altering:

(a) the boilerplate provisions of the Real Estate Purchase Contract; or

(b) language that has been inserted to complete the blanks of the Real Estate Purchase Contract;

(17) advertise or offer to sell or lease property without the written consent of:

(a) the owner of the property; and

(b) if the property is currently listed, the listing broker;

(18) advertise or offer to sell or lease property at a lower price than that listed without the written consent of the seller or lessor;

(19) represent on any form or contract that the individual is holding client funds without actually receiving funds and securing them pursuant to Subsection R162-2f-401a(23);

(20) when acting as a limited agent, disclose any information given to the agent by either principal that would likely weaken that party's bargaining position if it were known, unless the licensee has permission from the principal to disclose the information;

(21) disclose, or make any use of, a short sale demand letter outside of the purchase transaction for which it is issued;

(22) in a short sale, have the seller sign a document allowing the licensee to lien the property; or

(23) charge any fee that represents the difference between:

(a) the total concessions authorized by a seller and the actual amount of the buyer's closing costs; or

(b) in a short sale, the sale price approved by the lender and the total amount required to clear encumbrances on title and close the transaction.

**R162-2f-401c. Additional Provisions Applicable to Principal Brokers.**

(1) A principal broker shall:

(a) strictly comply with the record retention and maintenance requirements of Subsection R162-2f-401k;

(b) provide to the person whom the principal broker represents in a real estate transaction:

(i) a detailed statement showing the current status of a transaction upon the earlier of:

(A) the expiration of 30 days after an offer has been made and accepted; or

(B) a buyer or seller making a demand for such statement; and

(ii) an updated transaction status statement at 30-day intervals thereafter until the transaction either closes or fails;

(c)(i) regardless of who closes a real estate transaction, ensure that final settlement statements are reviewed for content and accuracy at or before the time of closing by:

(A) the principal broker;

(B) an associate broker or branch broker affiliated with the principal broker; or

(C) the sales agent who is:

(I) affiliated with the principal broker; and

(II) representing the principal in the transaction; and

(ii) ensure the principals in each closed real estate transaction receive copies of all documents executed in the transaction closing;

(d) in order to assign all or part of the principal broker's compensation to an associate broker or sales agent in accordance with Section 61-2f-305, provide written instructions to the title insurance agent that include the following:

(i) an identification of the property involved in the real estate transaction;

(ii) an identification of the principal broker and sales agent or associate broker who will receive compensation in accordance with the written instructions;

(iii) a designation of the amount of compensation that will be received by both the principal broker and the sales agent or associate broker;

(iv) a prohibition against alteration of the written instructions by anyone other than the principal broker; and

(v) additional instructions at the discretion of the principal broker;

(e) obtain written consent from both the buyer and the seller before retaining any portion of an earnest money deposit being held by the principal broker;

(f) exercise active supervision over the conduct of all licensees and unlicensed staff employed by or affiliated with the principal broker, whether acting as:

(i) the principal broker for an entity; or

(ii) a branch broker;

(g) strictly adhere to the rules governing real estate auctions, as outlined in Section R162-2f-401i;

(h) strictly adhere to the rules governing property management, as outlined in Section R162-2f-401j;

(i)(i) except as provided in this Subsection (1)(i)(iii), within three business days of receiving a client's money in a real estate transaction, deposit the client's money into a trust account:

(A) maintained by the principal broker pursuant to Section R162-2f-403; or

(B) if the parties to the transaction agree in writing, maintained by:

(I) a title company pursuant to Section 31A-23a-406; or

(II) another authorized escrow entity; and

(ii) within three business days of receiving money from a client or a tenant in a property management transaction, deposit the money into a trust account maintained by the principal broker pursuant to Section R162-2f-403 or forward or deposit client or tenant money into an account maintained by the property owner;

(iii) a principal broker is not required to comply with this Subsection (1)(i)(i) or (ii) if:

(A) the contract or other written agreement states that the money is to be:

(I) held for a specific length of time; or

(II) as to a real estate transaction, deposited upon acceptance by the seller; or

(B) as to a real estate transaction, the Real Estate Purchase Contract or other written agreement states that a promissory note may be tendered in lieu of good funds and the promissory note:

(I) names the seller as payee; and

(II) is retained in the principal broker's file until closing;

(j)(i) maintain at the principal business location a complete record of all consideration received or escrowed for real estate and property management transactions; and

(ii) be personally responsible at all times for deposits held in the principal broker's trust account;

(k)(i)(A)(I) in a real estate transaction, assign a consecutive, sequential number to each offer; and

(II) assign a unique identification to each property management client; and

(B) include the transaction number or client identification, as applicable, on:

(I) trust account deposit records; and

(II) trust account checks or other equivalent records evidencing the transfer of trust funds;

(ii) maintain a separate transaction file for each offer in a real estate transaction, including a rejected offer, that involves funds tendered through the brokerage and deposited into a trust account;

(iii) maintain a record of each rejected offer in a real estate transaction that does not involve funds deposited to trust:

(A) in separate files; or

(B) in a single file holding all such offers; and

(l) if the principal broker assigns an affiliated associate broker or branch broker to assist the principal broker in accomplishing the affirmative duties outlined in this Subsection

(1):

(i) actively supervise any such associate broker or branch broker; and

(ii) remain personally responsible and accountable for adequate supervision of all licensees and unlicensed staff affiliated with the principal broker.

(2) A principal broker shall not be deemed in violation of this Subsection (1)(f) where:

(a) an affiliated licensee or unlicensed staff member violates a provision of Title 61, Chapter 2f et seq. or the rules promulgated thereunder;

(b) the supervising broker had in place at the time of the violation specific written policies or instructions to prevent such a violation;

(c) reasonable procedures were established by the broker to ensure that licensees receive adequate supervision and the broker has followed those procedures;

(d) upon learning of the violation, the broker attempted to prevent or mitigate the damage;

(e) the broker did not participate in the violation;

(f) the broker did not ratify the violation; and

(g) the broker did not attempt to avoid learning of the violation.

#### **R162-2f-401d. School Conduct.**

(1) Affirmative duties. A school's owner(s) and director(s) shall:

(a) within 15 days after the occurrence of any material change in the information provided to the division under Subsection R162-2f-206a(2)(a), give the division written notice of that change;

(b)(i) provide instructors of prelicensing courses with the state-approved course outline; and

(ii) ensure that any prelicensing course adheres to the topics mandated in the state-approved course outline;

(c) ensure that all instructors comply with Section R162-2f-401e.

(d) prior to accepting payment from a prospective student for a prelicensing education course:

(i) provide the criminal history disclosure statement described in Subsection R162-2f-206a(3)(d); and

(ii) obtain the student's signature on the criminal history disclosure;

(e)(i) retain signed criminal history disclosures for a minimum of three years from the date of course completion; and

(ii) make the signed criminal history disclosures available for inspection by the division upon request;

(f) maintain for a minimum of three years after enrollment:

(i) the registration record of each student;

(ii) the attendance record of each student; and

(iii) any other prescribed information regarding the offering, including exam results, if any;

(g) ensure that course topics are taught only by:

(i) certified instructors; or

(ii) guest lecturers;

(h)(i) limit the use of approved guest lecturers to a total of 20% of the instructional hours per approved course; and

(ii) prior to using a guest lecturer to teach a portion of a course, document for the division the professional qualifications of the guest lecturer;

(i) furnish to the division an updated roster of the school's approved instructors and guest lecturers each time there is a change;

(j) at the conclusion of a course:

(i) provide to each student who completes the course a course evaluation in the form required by the division; and

(ii) submit the completed course evaluations to the division within ten business days;

(k) within ten days of teaching a course, upload course

completion information for any student who:

- (i) successfully completes the course; and
- (ii) provides an accurate name or license number within seven business days of attending the course;
- (l) substantiate, upon request by the division, any claims made in advertising; and
- (m) include in all advertising materials the continuing education course certification number issued by the division.
- (2) Prohibited conduct. A school may not:
  - (a) award continuing education credit for a course that has not been certified by the division prior to its being taught;
  - (b) award continuing education credit to any student who fails to:
    - (i) attend a minimum of 90% of the required class time; or
    - (ii) pass a course final examination;
    - (c) accept a student for a reduced number of hours without first having a written statement from the division defining the exact number of hours the student must complete;
    - (d) allow a student to challenge by examination any course or part of a course in lieu of attendance;
    - (e) allow a course approved for traditional education to be:
      - (i) taught in a private residence; or
      - (ii) completed through home study;
      - (f) make a misrepresentation in advertising about any course of instruction;
      - (g) disseminate advertisements or public notices that disparage the dignity and integrity of the real estate profession;
      - (h) make disparaging remarks about a competitor's services or methods of operation;
      - (i) attempt by any means to obtain or use the questions on the prelicensing examinations unless the questions have been dropped from the current exam bank;
      - (j) give valuable consideration to a real estate brokerage or licensee for referring students to the school;
      - (k) accept valuable consideration from a real estate brokerage or licensee for referring students to the brokerage;
      - (l) allow real estate brokerages to solicit for agents at the school during class time, including the student break time;
      - (m) obligate or require students to attend any event in which a brokerage solicits for agents;
      - (n) award more than eight credit hours per day per student;
      - (o) award credit for an online course to a student who fails to complete the course within one year of the registration date;
      - (p) advertise or market a continuing education course that has not been:
        - (i) approved by the division; and
        - (ii) issued a current continuing education course certification number; or
        - (q) advertise, market, or promote a continuing education course with language indicating that division certification is pending or otherwise forthcoming.

**R162-2f-401e. Instructor Conduct.**

- (1) Affirmative duties. An instructor shall:
  - (a) adhere to the approved outline for any course taught;
  - (b) comply with a division request for information within ten business days of the date of the request; and
  - (c) maintain a professional demeanor in all interactions with students.
- (2) Prohibited conduct. An instructor may not:
  - (a) continue to teach any course after the instructor's certification has expired and without renewing the instructor's certification; or
  - (b) continue to teach any course after the course has expired and without renewing the course certification.

**R162-2f-401f. Approved Forms.**

The following standard forms are approved by the commission and the Office of the Attorney General for use by

all licensees:

- (1) August 27, 2008, Real Estate Purchase Contract;
- (2) January 1, 1999 Real Estate Purchase Contract for Residential Construction;
- (3) January 1, 1987, Uniform Real Estate Contract;
- (4) October 1, 1983, All Inclusive Trust Deed;
- (5) October 1, 1983, All Inclusive Promissory Note Secured by All Inclusive Trust Deed;
- (6) August 5, 2003, Addendum to Real Estate Purchase Contract;
- (7) August 27, 2008, Seller Financing Addendum to Real Estate Purchase Contract;
- (8) January 1, 1999, Buyer Financial Information Sheet;
- (9) August 27, 2008, FHA/VA Loan Addendum to Real Estate Purchase Contract;
- (10) January 1, 1999, Assumption Addendum to Real Estate Purchase Contract;
- (11) January 1, 1999, Lead-based Paint Addendum to Real Estate Purchase Contract; and
- (12) January 1, 1999, Disclosure and Acknowledgment Regarding Lead-based Paint and/or Lead-based Paint Hazards.

**R162-2f-401g. Use of Personal Assistants.**

In order to employ an unlicensed individual to provide assistance in connection with real estate transactions, an individual licensee shall:

- (1) obtain the permission of the licensee's principal broker before employing the individual;
- (2) supervise the assistant to ensure that the duties of an unlicensed assistant are limited to those that do not require a real estate license, including the following:
  - (a) performing clerical duties, including making appointments for prospects to meet with real estate licensees, but only if the contact is initiated by the prospect and not by the unlicensed assistant;
  - (b) at an open house, distributing preprinted literature written by a licensee, where a licensee is present and the unlicensed person provides no additional information concerning the property or financing, and does not become involved in negotiating, offering, selling or completing contracts;
  - (c) acting only as a courier service in delivering documents, picking up keys, or similar services, so long as the courier does not engage in any discussion or completion of forms or documents;
  - (d) placing brokerage signs on listed properties;
  - (e) having keys made for listed properties; and
  - (f) securing public records from a county recorder's office, zoning office, sewer district, water district, or similar entity;
- (3) compensate a personal assistant at a predetermined rate that is not:
  - (a) contingent upon the occurrence of real estate transactions; or
  - (b) determined through commission sharing or fee splitting; and
  - (4) prohibit the assistant from engaging in telephone solicitation or other activity calculated to result in securing prospects for real estate transactions, except as provided in this Subsection (2)(a).

**R162-2f-401h. Requirements and Restrictions in Advertising.**

- (1) Advertising shall include the name of the real estate brokerage or, as applicable, the property management brokerage as shown on division records except where:
  - (a) a licensee advertises unlisted property in which the licensee has an ownership interest; and
  - (b) the advertisement identifies the licensee as "owner-agent" or "owner-broker."

(2) An advertisement that includes the name of an individual licensee shall also include the name of the licensee's brokerage in lettering that is at least one-half the size of the lettering identifying the individual licensee.

(3) An advertisement that includes a photograph of an individual who is not a licensee shall identify the individual's role in terms that make it clear that the individual is not licensed.

(4) An advertisement may not include artwork or text that states or implies that an individual has a position or status other than that of sales agent, associate broker, or principal broker affiliated with a brokerage.

(5) An advertising team, group, or other marketing entity that is not registered as a brokerage:

(a) shall, in all types of advertising, clearly:

(i) disclose that the team, group, or other marketing entity is not itself a brokerage; and

(ii) state the name of the registered brokerage with which the property being advertised is listed;

(b) shall, in any printed advertising material, clearly and conspicuously identify, in lettering that is at least one-half the size of the largest lettering used in the advertisement, the name of the registered brokerage with which the property being advertised is listed; and

(c) may not advertise as an "owner-agent" or "owner-broker."

(6)(a) A written advertisement of a guaranteed sales plan shall include, in print at least one-fourth as large as the largest print in the advertisement:

(i) a statement that costs and conditions may apply; and

(ii) information about how to contact the licensee offering the guarantee so as to obtain the disclosures required under Subsection R162-2f-401a(22).

(b) Any radio or television advertisement of a guaranteed sales plan shall include a conspicuous statement advising if any conditions and limitations apply.

#### **R162-2f-401i. Standards for Real Estate Auctions.**

A principal broker who contracts or in any manner affiliates with an auctioneer or auction company to sell at auction real property in this state shall:

(1) ensure that all aspects of the auction comply with the requirements of this section and all other laws otherwise applicable to real estate licensees in real estate transactions;

(2) ensure that advertising and promotional materials associated with an auction name the principal broker;

(3) attend and supervise the auction;

(4) ensure that any purchase agreement used at the auction:

(a) meets the requirements of Subsection R162-2f-401a(18); and

(b) is completed by an individual holding an active Utah real estate license;

(5) ensure that any money deposited at the auction is placed in trust pursuant to Subsection R162-2f-401c(1)(i); and

(6) ensure that adequate arrangements are made for the closing of any real estate transaction arising out of the auction.

#### **R162-2f-401j. Standards for Property Management.**

(1) Property management performed by a real estate brokerage, or by licensees or unlicensed assistants affiliated with the brokerage, shall be done under the name of the brokerage as registered with the division unless the principal broker holds a dual broker license and obtains a separate registration pursuant to Section R162-2f-205 for a separate business name.

(2) In addition to fulfilling all duties related to supervision per Section 61-2f-401(12), the principal broker of a registered entity, and the branch broker of a registered branch, shall implement training to ensure that each sales agent, associate broker, and unlicensed employee who is affiliated with the

licensee has the knowledge and skills necessary to perform assigned property management tasks within the boundaries of these rules, including this Subsection R162-2f-401j(3).

(3) An unlicensed individual employed by a real estate or property management company may perform the following services under the supervision of the principal broker without holding an active real estate license:

(a) providing a prospective tenant with access to a rental unit;

(b) providing secretarial, bookkeeping, maintenance, or rent collection services;

(c) quoting rent and lease terms as established or approved by the principal broker;

(d) completing pre-printed lease or rental agreements, except as to terms that may be determined through negotiation of the principals;

(e) serving or receiving legal notices;

(f) addressing tenant or neighbor complaints; and

(g) inspecting units.

(4) Within 30 days of terminating a contract with a property owner for property management services, the principal broker shall return to the property owner or the property owner's designated agent all trust money that:

(a) is due to the property owner; or

(b) is being held for the benefit of the property owner or the owner's property.

#### **R162-2f-401k. Recordkeeping Requirements.**

A principal broker shall:

(1) maintain and safeguard the following records to the extent they relate to the business of a principal broker:

(a) all trust account records;

(b) any document submitted by a licensee affiliated with the principal broker to a lender or underwriter as part of a real estate transaction;

(c) any document signed by a seller or buyer with whom the principal broker or an affiliated licensee is required to have an agency agreement; and

(d) any document created or executed by a licensee over whom the principal broker has supervisory responsibility pursuant to Subsection R162-2f-401c(1)(f);

(2) maintain the records identified in Subsection R162-2f-401k(1):

(a)(i) physically:

(A) at the principal business location designated by the principal broker on division records; or

(B) where applicable, at a branch office as designated by the principal broker on division records; or

(ii) electronically, in a storage system that complies with Title 46 Chapter 04, Utah Uniform Electronic Transactions Act; and

(b) for at least three calendar years following the year in which:

(i) an offer is rejected; or

(ii) the transaction either closes or fails;

(3) upon request of the division, make any record identified in Subsection R162-2f-401k(1) available for inspection and copying by the division;

(4) notify the division in writing within ten business days after terminating business operations as to where business records will be maintained; and

(5) upon filing for brokerage bankruptcy, notify the division in writing of:

(a) the filing; and

(b) the current location of brokerage records.

#### **R162-2f-402. Investigations.**

The investigative and enforcement activities of the division shall include the following:

- (1) verifying information provided on new license applications and applications for license renewal;
- (2) evaluation and investigation of complaints;
- (3) auditing licensees' business records, including trust account records;
- (4) meeting with complainants, respondents, witnesses and attorneys;
- (5) making recommendations for dismissal or prosecution;
- (6) preparation of cases for formal or informal hearings, restraining orders, or injunctions;
- (7) working with the assistant attorney general and representatives of other state and federal agencies; and
- (8) entering into proposed stipulations for presentation to the commission and the director.

**R162-2f-403a. Trust Accounts - General Provisions.**

- (1) A principal broker shall:
  - (a)(i) if engaged in listing or selling real estate, maintain at least one real estate trust account in a bank or credit union located within the state of Utah; and
  - (ii) if engaged in property management, refer to Subsection R162-2f-403b(4);
  - (b) at the time a trust account is established, notify the division in writing of:
    - (i) the account number;
    - (ii) the address of the bank or credit union where the account is located; and
    - (iii) the type of activity for which the account is used.
  - (2) A trust account maintained by a principal broker shall be non-interest-bearing, unless:
    - (a) the parties to the transaction agree in writing to deposit the funds in an interest-bearing account;
    - (b) the parties to the transaction designate in writing the person to whom the interest will be paid upon completion or failure of the sale;
    - (c) the person designated under this Subsection (2)(b):
      - (i) qualifies at the time of payment as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code; and
      - (ii) operates exclusively to provide grants to affordable housing programs in Utah; and
      - (d) the affordable housing program that is the recipient of the grant under this Subsection (2)(c)(ii) qualifies at the time of payment as a non-profit organization under Section 501(c)(3) of the Internal Revenue Code.
  - (3) A principal broker may not deposit into the principal broker's real estate trust account funds received in connection with rental of tourist accommodations where the rental period is less than 30 consecutive days.
  - (4) Records of deposits to a trust account shall include:
    - (a) transaction number or unique client identifier, as applicable pursuant to Subsection R162-2f-401c(1)(k);
    - (b) identification of payee and payor;
    - (c) amount of deposit;
    - (d) location of property subject to the transaction; and
    - (e) date and place of deposit.
  - (5) Any instrument by which funds are disbursed from a real estate or property management trust account shall include:
    - (a) the business name of the registered entity;
    - (b) the address of the registered entity;
    - (c) clear identification of the trust account from which the disbursement is made, including:
      - (i) account name; and
      - (ii) account number;
      - (iii) transaction number or unique client identification, as applicable, pursuant to Subsection R162-2f-401c(1)(k);
      - (iv) date of disbursement;
      - (v) clear identification of payee and payor;
      - (vi) amount disbursed;

- (vii) notation identifying the purpose for disbursement; and
- (viii) check number, wire transfer number, or equivalent bank or credit union instrument identification.

(6) Any instrument of conveyance that is voided shall be clearly marked with the term "void" and the original instrument retained pursuant to Subsection R162-2f-401k.

(7) If both parties to a contract make a written claim to money held in a principal broker's trust fund and the principal broker cannot determine from any signed agreement which party's claim is valid, the principal broker may:

- (a) interplead the funds into court and thereafter disburse:
  - (i) upon written authorization of the party who will not receive the funds; or
  - (ii) pursuant to the order of a court of competent jurisdiction; or
  - (b) within 15 days of receiving written notice that both parties claim the funds, refer the parties to mediation if:
    - (i) no party has filed a civil suit arising out of the transaction; and
    - (ii) the parties have contractually agreed to submit disputes arising out of their contract to mediation.

(8) If a principal broker is unable to disburse trust funds within five years after the failure of a transaction, the principal broker shall remit the funds to the State Treasurer's Office as unclaimed property pursuant to Title 67, Chapter 4a et seq.

(9) Trust account reconciliation. For each real estate or property management trust account operated by a registered entity, the principal broker of the entity shall:

- (a) maintain a date-sequential record of all deposits to and disbursements from the account, including or cross-referenced to the information specified in Subsections R162-2f-403(6) and (7)(f);
- (b) maintain a current, running total of the balance contained in the trust account;
- (c)(i) maintain records sufficient to detail the final disposition of all funds associated with each transaction; and
- (ii) ensure that each closed transaction balances to zero;
- (d) reconcile the brokerage trust account records with the bank or credit union records at least monthly; and
- (e) upon request, make all trust account records available to the division for auditing or investigation.

(10) The principal broker shall notify the division within 30 days if:

- (a) the principal broker receives, from a bank or credit union in which the principal broker maintains a real estate or property management trust account, documentation to evidence that the trust account is out of balance; and
- (b) the imbalance cannot be cured within the 30-day notification period.

**R162-2f-403b. Real Estate Trust Accounts.**

(1) A real estate trust account shall be used for the purpose of securing client funds:

(a) deposited with the principal broker in connection with a real estate transaction regulated under Title 61, Chapter 2f et seq.;

(b) if the principal broker is also a builder or developer, deposited under a Real Estate Purchase Contract, construction contract, or other agreement that provides for the construction of a dwelling; and

(c) collected in the performance of property management duties, pursuant to this Subsection (4).

(2) A principal broker violates Subsection 61-2f-401(4)(B) if the principal broker deposits into the real estate trust account more than \$500 of the principal broker's own funds.

(3)(a) A principal broker who regularly engages in property management on behalf of seven or more individual units shall establish at least one property management trust



account that is:

- (i) separate from the real estate trust account; and
- (ii) operated in accordance with Subsection R162-2f-403c.
- (b) A principal broker who collects rents or otherwise manages property for no more than six individual units at any given time may use the real estate trust account to secure funds received in connection with the principal broker's property management activities.
- (4) Unless otherwise agreed pursuant to this Subsection (5)(b), a principal broker may not pay a commission from the real estate trust account without first:
  - (a) obtaining written authorization from the buyer and seller, through contract or otherwise;
  - (b) closing or otherwise terminating the transaction;
  - (c) delivering the settlement statement to the buyer and seller;
  - (d) ensuring that the buyer or seller whom the principal broker represents has been paid the amount due as determined by the settlement statement;
  - (e) making a record of each disbursement; and
  - (f) depositing funds withdrawn as the principal broker's commission into the principal broker's operating account prior to further disbursing the money.
- (5) A principal broker may disburse funds from a real estate trust account only in accordance with:
  - (a) specific language in the Real Estate Purchase Contract authorizing disbursement;
  - (b) other proper written authorization of the parties having an interest in the funds; or
  - (c) court order.
- (6) A principal broker may not release for construction purposes those funds held as deposit money under an agreement that provides for the construction of a dwelling unless the purchaser authorizes such disbursement in writing.
- (7) A principal broker may not release earnest money or other trust funds associated with a failed transaction unless:
  - (a) a condition in the Real Estate Purchase Contract authorizing disbursement has occurred; or
  - (b) the parties execute a separate signed agreement containing instructions and authorization for disbursement.

**R162-2f-403c. Property Management Trust Accounts.**

- (1) As of January 1, 2014, a trust account that is used exclusively for property management purposes shall be used to secure the following:
  - (a) tenant security deposits;
  - (b) rents; and
  - (c) money tendered by a property owner as a reserve fund or for payment of unexpected expenses.
- (2) A principal broker violates Subsection 61-2f-401(4)(B) if the principal broker deposits into a property management trust account any funds belonging to the principal broker without:
  - (a) maintaining records to clearly identify the total amount belonging to the principal broker; or
  - (b) performing a monthly line-item reconciliation of all deposits and withdrawals of funds belonging to the principal broker.
- (3) A principal broker may disburse funds from a property management trust account only in accordance with:
  - (a) specific language in the property management contract or tenant lease agreement, as applicable, authorizing disbursement;
  - (b) other proper written authorization of the parties having an interest in the funds; or
  - (c) court order.
- (4) A principal broker who transfers funds from a property management trust account for any purpose shall maintain records to clearly evidence that:
  - (a) prior to making the transfer, the principal broker

verified the money as belonging to the property owner for whose benefit, or on whose instruction, the funds are transferred;

- (b) any money transferred into an operating account as the principal broker's property management fee is earned according to the terms of the principal broker's contract with the property owner;
- (c) any transfer for maintenance, repair, or similar purpose is:
  - (i) authorized according to the terms of the applicable property management contract, tenant lease agreement, or other instruction of the property owner; and
  - (ii) used strictly for the purpose for which the transfer is authorized, with any excess returned to the trust account.

**R162-2f-407. Administrative Proceedings.**

- (1) Formal adjudicative proceedings. An adjudicative proceeding conducted subsequent to the issuance of a cease and desist order shall be conducted as a formal adjudicative proceeding.
- (2) Informal adjudicative proceedings.
  - (a) An adjudicative proceeding as to any matter not specifically designated as requiring a formal adjudicative proceeding shall be conducted as an informal adjudicative proceeding.
  - (b) A hearing shall be held in an informal adjudicative proceeding only if required or permitted by the Utah Real Estate Licensing and Practices Act or by these rules.
  - (3) Hearings required. A hearing before the commission shall be held in a proceeding:
    - (a) commenced by the division for disciplinary action pursuant to Section 61-2f-401 and Subsection 63G-4-201(2); and
    - (b) to adjudicate an appeal from an automatic revocation under Subsection 61-2f-204(1)(e), if the appellant requests a hearing.
  - (4) Procedures for hearings in informal adjudicative proceedings.
    - (a) The division director shall be the presiding officer for any informal adjudicative proceeding unless the matter has been delegated to a member of the commission or an administrative law judge.
    - (b) All informal adjudicative proceedings shall adhere to procedures as outlined in:
      - (i) Utah Administrative Procedures Act Title 63G, Chapter 4;
      - (ii) Utah Administrative Code Rule R151-4 et seq.; and
      - (iii) the rules promulgated by the division.
    - (c) Except as provided in this Subsection (5)(b), a party is not required to file a written answer to a notice of agency action from the division in an informal adjudicative proceeding.
    - (d) In any proceeding under this Subsection 407, the commission and the division may at their discretion delegate a hearing to an administrative law judge or request that an administrative law judge assist the commission and the division in conducting the hearing. Any delegation of a hearing to an administrative law judge shall be in writing.
    - (e) Upon the scheduling of a hearing by the division and at least 30 days prior to the hearing, the division shall, by first class postage-prepaid delivery, mail written notice of the date, time, and place scheduled for the hearing:
      - (i) to the respondent at the address last provided to the division pursuant to Section 61-2f-207; and
      - (ii) if the respondent is an actively licensed sales agent or associate broker, to the principal broker with whom the respondent is affiliated.
    - (f) Formal discovery is prohibited.
    - (g) The division may issue subpoenas or other orders to compel production of necessary and relevant evidence:

- (i) on its own behalf; or
- (ii) on behalf of a party where the party:
  - (A) makes a written request;
  - (B) assumes responsibility for effecting service of the subpoena; and
  - (C) bears the costs of the service, any witness fee, and any mileage to be paid to a witness.
- (h) Upon ordering a licensee to appear for a hearing, the division shall provide to the licensee the information that the division will introduce at the hearing.
- (i) The division shall adhere to Title 63G, Chapter 2, Government Records Access and Management Act in addressing a request for information obtained by the division through an investigation.
- (j) The division may decline to provide a party with information that it has previously provided to that party.
- (k) Intervention is prohibited.
- (l) Hearings shall be open to all parties unless the presiding officer closes the hearing pursuant to:
  - (i) Title 63G, Chapter 4, the Utah Administrative Procedures Act; or
  - (ii) Title 52, Chapter 4, the Open and Public Meetings Act.
- (m) Upon filing a proper entry of appearance with the division pursuant to Utah Administrative Code Section R151-4-110(1)(a), an attorney may represent a party.
- (5) Additional procedures for disciplinary proceedings.
  - (a) The division shall commence a disciplinary proceeding by filing and serving on the respondent:
    - (i) a notice of agency action;
    - (ii) a petition setting forth the allegations made by the division;
    - (iii) a witness list, if applicable; and
    - (iv) an exhibit list, if applicable.
  - (b) Answer.
    - (i) At the time the petition is filed, the presiding officer, upon a determination of good cause, may require the respondent to file an answer to the petition by so ordering in the notice of agency action.
    - (ii) The respondent may file an answer, even if not ordered to do so in the notice of agency action.
    - (iii) Any answer shall be filed with the division within thirty days after the mailing date of the notice of agency action and petition.
  - (c) Witness and exhibit lists.
    - (i) Where applicable, the division shall provide its witness and exhibit lists to the respondent at the time it mails its notice of hearing.
    - (ii) The respondent shall provide its witness and exhibit lists to the division no later than thirty days after the mailing date of the division's notice of agency action and petition.
    - (iii) Any witness list shall contain:
      - (A) the name, address, and telephone number of each witness; and
      - (B) a summary of the testimony expected from the witness.
    - (iv) Any exhibit list:
      - (A) shall contain an identification of each document or other exhibit that the party intends to use at the hearing; and
      - (B) shall be accompanied by copies of the exhibits.
  - (d) Pre-hearing motions.
    - (i) Any pre-hearing motion permitted under the Administrative Procedures Act or the rules promulgated by the Department of Commerce shall be made in accordance with those rules.
    - (ii) The division director shall receive and rule upon any pre-hearing motions.

RESIDENTIAL - points can be accumulated from either the selling or the listing side of a real estate closing:	
(a) One unit dwelling	2.5 points
(b) Two- to four-unit dwellings	5 points
(c) Apartments, 5 units or over	10 points
(d) Improved lot	2 points
(e) Vacant land/subdivision	10 points
COMMERCIAL	
(f) Hotel or motel	10 points
(g) Industrial or warehouse	10 points
(h) Office building	10 points
(i) Retail building	10 points
(j) Leasing of commercial space	5 points

TABLE 2  
APPENDIX 2 - PROPERTY MANAGEMENT EXPERIENCE TABLE

RESIDENTIAL	
(a) Each unit managed	0.25 pt/month
COMMERCIAL - hotel/motel, industrial/warehouse, office, or retail building	
(b) Each contract OR each separate property address or location for which licensee has direct responsibility	1 pt/month

TABLE 3  
APPENDIX 3 - OPTIONAL EXPERIENCE TABLE

Real Estate Attorney	1 pt/month
CPA-Certified Public Accountant	1 pt/month
Mortgage Loan Officer	1 pt/month
Licensed Escrow Officer	1 pt/month
Licensed Title Agent	1 pt/month
Designated Appraiser	1 pt/month
Licensed General Contractor	1 pt/month
Bank Officer in Real Estate Loans	1 pt/month
Certified Real Estate Prelicensing Instructor	.5 pt/month

**KEY: real estate business, operational requirements, trust account records, notification requirements  
May 8, 2013**

- 61-2f-103(1)
- 61-2f-105
- 61-2f-206(4)(a)
- 61-2f-306
- 61-2f-307

**R162-2f-501. Appendices.**

TABLE 1  
APPENDIX 1 - REAL ESTATE TRANSACTIONS EXPERIENCE TABLE

**R164. Commerce, Securities.****R164-31. Administrative Fines.****R164-31-1. Guidelines for the Assessment of Administrative Fines.**

## (A) Authority and purpose.

(1) The Division enacts this rule under authority granted by Sections 61-1-6, 61-1-12, 61-1-14, 61-1-20 and 61-1-24.

(2) This rule identifies guidelines for the assessment of administrative fines. The guidelines should not be considered all-inclusive but rather are intended to provide factors to be considered when imposing a fine.

## (B) Guidelines.

(1) For the purpose of determining the amount of an administrative fine assessed against a person under the Utah Uniform Securities Act, the Commission shall consider the following factors:

(a) the seriousness, nature, circumstances, extent, and persistence of the conduct constituting the violation;

(b) the harm to other persons, including the amount of investor losses, resulting either directly or indirectly from the violation;

(c) any financial benefit, enrichment, commission, fee or other consideration received directly or indirectly by the person in connection with the violation;

(d) cooperation by the person in any inquiry conducted by the Division concerning the violation, efforts to prevent future occurrences of the violation, and efforts to mitigate the harm caused by the violation, including any restitution paid or disgorgement of ill-gotten gains to persons injured by the acts of the person;

(e) the history of previous violations by the person;

(f) the need to deter the person or other persons from committing such violations in the future;

(g) the costs of the Division incurred in investigating and prosecuting the action; and

(h) such other matters as justice may require.

**KEY: administrative fines, securities regulation, securities  
January 8, 2013**

**61-1-6****Notice of Continuation May 28, 2013****61-1-12****61-1-14****61-1-20****61-1-24**

**R277. Education, Administration.****R277-104. ADA Complaint Procedure.****R277-104-1. Definitions.**

A. "ADA" means 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 a public entity, or be subjected to discrimination by this or any such entity.

B. "The ADA Coordinator" means the designee of the Superintendent, who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities who are not USOE or USOR employees in accordance with the Americans with Disabilities Act, or provisions of this rule.

C. "Days" means calendar days.

D. "Disability" means, with respect to an individual disability, a physical or mental impairment that substantially limits one or more of the major life activities of such an individual consistent with the Americans with Disabilities Act, 42 U.S.C. 12201.

E. "Executive Director" means the Executive Director of the Utah State Office of Rehabilitation.

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

G. "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. This rule is directed at non-employees, including all types and periods of employment, of the Board, the USOE or the USOR.

H. "Superintendent" means the State Superintendent of Public Instruction.

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

J. "USOR" means the Utah State Office of Rehabilitation.

**R277-104-2. Authority and Purpose.**

A. This rule is authorized pursuant to 28 CFR 35.107 which adopts, defines, and publishes complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans with Disabilities Act, as amended.

B. The purpose of this rule is to establish USOE and USOR procedures for non-USOE, non-USOR and non-Board employees to file complaints under the federal ADA law and to provide appropriate classification of the records of complaints and appeals.

C. No qualified individual with a disability, by reason of such disability, shall be excluded from participation in or be denied the benefits of the services, programs, or activities of the USOE or USOR, or be subjected to discrimination by the USOE or USOR.

**R277-104-3. Filing of Complaints.**

A. The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but not later than 30 days from the date of the alleged act of discrimination.

B. The complaint shall be filed with the USOE's ADA Coordinator in writing or in another format reasonable for the individual and the USOE or USOR.

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 USOE's or USOR's alleged discriminatory action in sufficient detail to inform the USOE or USOR 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 legal representative.

**R277-104-4. 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 USOE's and USOR's legal, human resource, budget, and State Risk Management staff in determining what action, if any, shall be taken on the complaint.

**R277-104-5. ADA Coordinator Recommendation.**

A. Within 30 days, the ADA Coordinator shall make a recommendation outlining what action, if any, shall be taken by the USOE or USOR on the complaint to the Superintendent, Executive Director, or both depending upon the circumstances of the complaint.

B. If the ADA Coordinator does not make a recommendation to the Superintendent within 30 days, the ADA Coordinator shall notify both the complainant and the Superintendent that the decision is delayed and provide a date certain for the investigation recommendation to be provided.

**R277-104-6. Superintendent or the Executive Director or Both Review and Decision.**

A. The Superintendent shall review the recommendation of the ADA Coordinator and make a final decision about action to be taken, if any, by the USOE or USOR.

B. The Superintendent shall provide a written decision to the complainant no more than 10 working days from the receipt of the ADA Coordinator's recommendation.

C. In making the decision, the Superintendent shall consult with the Executive Director if necessary and may discuss the investigation with the ADA Coordinator or other USOE or USOR employees, may gather additional information and interview other individuals with relevant information or expertise and shall give appropriate deference to the ADA Coordinator's fact finding and review of information.

D. The Superintendent's decision is the final USOE and USOR administrative decision regarding the complaint.

(1) If the complaint and recommendation is solely about USOR services or facilities, the Superintendent shall consult with the Executive Director in making the decision.

(2) If the complaint and decision include USOE actions or facilities only, the Superintendent shall make the final administrative decision.

**R277-104-7. Classification of Records.**

A. The investigative record of each complaint and all written records produced or received as part of such investigations, recommendations, or actions, shall be classified as protected under Section 63G-2-305, until the Superintendent issues the decision.

B. Any portions of the record which pertain to individual's medical condition shall remain classified as private, as defined under Section 63G-2-302, or controlled, as defined in Section 63G-2-304. All other information gathered as part of the complaint record shall be classified as protected information.

C. The final written decision of the Superintendent shall be public information.

**R277-104-8. Relationship to Other Laws.**

This rule does not prohibit or limit the use of remedies

available to the individuals under 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: complaints, disabled persons**  
**June 7, 2012**  
**Notice of Continuation May 15, 2013**

**28 CFR 35.107**

**R277. Education, Administration.****R277-113. LEA Fiscal Policies and Accountability.****R277-113-1. Definitions.**

A. "Arm's length transaction" means a transaction between two unrelated, independent and unaffiliated parties or a transaction between two parties acting in their own self interest that is conducted as if the parties were strangers so that no conflict of interest exists.

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

C. "Exclusive contract or arrangement" means an agreement requiring a buyer to purchase or exchange all needed goods or services from one seller.

D. "Internal controls" are procedures designed to safeguard assets, detect errors and misappropriations, produce timely and accurate financial reports, and ensure compliance with laws and rules.

E. "LEA" means a local education agency, including local school boards/public school districts, charter schools, and for purposes of this rule, the Utah Schools for the Deaf and the Blind.

F. "Management" means an LEA superintendent or director, deputy or associate, business administrator or manager, or other educational administrator or designated staff.

G. "Public funds" (Utah Code Section 51-7-3(25)) means money, funds, and accounts, regardless of the source from which the funds are derived, that are owned, held, or administered by the state or any of its political subdivisions including LEAs or other public bodies.

H. "School sponsored" means an activity, fundraising event, club, camp, clinic or other event or activity that is authorized by a specific LEA or public school which supports the LEA or authorized school club, activity, sport, class or program, that also satisfies at least one of the following conditions:

(1) it is managed or supervised by an LEA or public school, or LEA or public school employee;

(2) it uses the LEA or public school's facilities, equipment, or other school resources; or

(3) it is supported or subsidized, more than inconsequentially, by public funds, including the public school's activity funds or minimum school program dollars.

I. "Utah Public Officers' and Employees' Ethics Act" (Utah Code Sections 67-16-1 through 15) means an Act that provides standards of conduct for officers and employees of the state of Utah and its political subdivisions in areas where there are actual or potential conflicts of interest between their public duties and their private interests.

**R277-113-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and by Section 53A-1-402(1)(e) which directs the Board to establish rules and minimum standards for school productivity and cost effectiveness measures.

B. The purpose of this rule is to (1) require LEAs to formally adopt and implement policies regarding the management and use of public funds; (2) provide minimum standards, procedures and definitions for LEA policies; (3) direct that LEAs make policies, procedures and training materials available to the public and readily accessible on LEA or public school websites, to the extent of resources available; (4) require LEAs to train employees in appropriate financial practices, necessary accounting procedures and ethical financial practices; and (5) provide for consistency among LEAs regarding fiscal policies, procedures and accountability practices.

**R277-113-3. Board Responsibilities.**

A. The Board shall provide training and informational materials and model policies for use by LEAs in developing LEA and public school-specific financial policies about the use and management of public funds before March 31, 2013.

B. The Board shall provide online training and resources for LEAs regarding the use and management of public funds and ethical practices for licensed Utah educators who manage, control, participate in fundraising, or expend public funds before March 31, 2013.

C. The Board may provide and establish a cycle for state review of LEA fiscal policies and standards.

D. The Board shall work with and provide information upon request to the Utah State Auditors Office, the Legislative Fiscal Auditors and other state agencies with the right to information from the Utah State Office of Education.

**R277-113-4. LEA Responsibilities.**

A. LEAs shall develop, have approved by local/charter boards and implement the fiscal policies required in R277-113-5 before September 15, 2013. These policies shall be in writing.

B. LEAs shall also develop a plan for training LEA and public school employees, at least annually, on policies enacted by the LEA specific to job function.

(1) These policies shall be available at each LEA main office, at individual public schools, and on the LEA's website.

(2) The LEA fiscal policies and training may have different components, specificity, and levels of complexity for public elementary and secondary schools.

(3) LEAs may have one policy or more than one satisfying the minimum requirements of this rule.

(4) An LEA policy shall address how often the policy shall be reviewed, including periodic updates or training and resource manuals.

(5) An LEA policy may reference specific training manuals or other resources that provide detailed descriptions of business practices which are too lengthy or detailed to include in the LEA policy.

C. An LEA shall designate board members to serve on an audit or finance committee. The LEA audit or finance committee has the following responsibilities:

(1) ensuring that management properly develops and adheres to a sound system of internal controls consistent with the requirements of R277-113-5;

(2) receiving a report of the risk assessment process undertaken by management in developing the system of internal controls;

(3) developing a process to review financial information, financial statements, and LEA and individual school records on a regular basis;

(4) ensuring that management conducts a competitive RFP process to hire external auditors and other professional services and making a recommendation to the LEA board on the results of the RFP process consistent with the State Procurement Code;

(5) receiving communication from or meeting with the external auditors annually and receiving a direct report of the audit findings, exceptions, and other matters noted by the auditor;

(6) reporting the annual audit reports and findings or other matters communicated by the external auditor or other regulatory bodies to the LEA board in a public meeting;

(7) ensuring that matters reported by external audits, internal audits, or other regulatory bodies are resolved in a timely manner.

D. The definition of school sponsored and requirements of R277-113-4F do not apply to activities, fundraising events, clinics, clubs, camps, or activities organized by a third party which have not been designated by the LEA as school sponsored. All transactions pertaining to nonschool sponsored

events shall be conducted at arm's length; revenues and expenditures shall not be commingled with public funds.

E. For nonschool sponsored events, funds may be managed or held by a public school employee, only consistent with R277-107.

F. LEAs and individual public schools shall comply with the following regarding school and nonschool sponsored activities:

(1) may enter into contractual agreements to allow for fundraising and use of LEA facilities. An agreement shall take into consideration the LEA's fiduciary responsibility for the management and use of public funds. LEAs should consult with the LEA insurer or legal counsel, or both, to ensure risks are adequately considered and managed;

(2) shall annually review fundraising activities that support or subsidize LEA or public school-authorized clubs, activities, sports, classes or programs to determine if the activities are school sponsored consistent within R277-113-1H;

(3) shall ensure that revenues raised from school sponsored activities and funds expended from the proceeds are considered public funds consistent with R277-113-1G;

(4) shall maintain adequate records to ensure that funds collected from or during school sponsored activities are in compliance with LEA cash handling policies as required by R277-113-5;

(5) shall maintain adequate records to show that expenditures made to support activities from LEA or public school funds are in compliance with LEA expenditure of funds policies as required by R277-113-5;

(6) shall make records of activities available to parents, students, and donors and shall maintain the records in sufficient detail to track individual contributions and expenditures as well as overall financial outcome. Records may be private or protected consistent with Sections 63G-2-302, 303, 305, and the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g;

G. Public Education Foundations established by LEAs shall follow the requirements provided in Section 53A-4-205.

#### **R277-113-5. Required LEA Fiscal Policies.**

A. The following fiscal policies shall be required in each LEA. LEAs shall ensure that each policy addresses the specific Utah Code references or Board Rules in each section. The required items are minimum requirements. LEAs may include other related items, provide LEA specific policy and guidance, and set policies that are more restrictive and inclusive than the minimum provisions established by the Board.

B. LEAs shall ensure that policies address applicable elements from the Utah Public Officers' and Employees' Ethics Act, Utah Educator Standards (R277-515), and the definition of public funds.

C. LEA fiscal policies shall address the following:

(1) Cash Handling: The LEA cash handling policy shall address cash receipts (cash, checks, credit cards, and other items) collected at the LEA and individual public schools through school sponsored activities and shall include:

(a) establishment of internal controls and procedures over the collection, deposit, and reconciliation of cash receipts received;

(b) compliance with Utah Code 51-4-2(2) regarding deposits.

(2) Expenditure of Public Funds: The LEA expenditure policy shall address expenditures made by checks, electronic transfers and credit/debit cards that are made by the LEA and individual public schools through school sponsored activities and shall include:

(a) establishment of internal controls and procedures over the initiation, approval and monitoring of expenditures, credit or debit card transactions, employee reimbursements, travel, and

payroll;

(b) directives regarding the appropriate use of the LEA tax exempt status number;

(c) compliance with Section 63G-6a-1204(7) regarding length of multi-year contracts;

(d) compliance with Section 63G-6a et seq., procurement state law and Board rule regarding construction and improvements, and compliance with Title IX; and

(e) procedures and documentation maintained by the LEA if the LEA chooses to enter into exclusive contracts or arrangements consistent with state procurement law and the LEA procurement policy.

(3) Fundraising: The LEA fundraising policy shall establish procedures for LEA and public school fundraising in general, establish an approval process for fundraising activities, school sponsored activities, provide for compliance with school fee and fee waiver provisions, and shall include:

(a) specific designation of employees by title or job description who are authorized to approve fundraising, school sponsored activities, and grant fee waivers with appropriate attention to student and family confidentiality;

(b) establishment of internal controls and procedures over the approval of fundraising and school sponsored activities and compliance with associated cash handling and expenditure policies;

(c) directives regarding the appropriate use of the LEA tax exempt status number, and issuance of charitable donation receipts;

(d) procedures governing LEA or public school employee interaction with parents, donors, and nonschool sponsored organizations;

(e) disclosure requirements for LEA and public school employees approving or otherwise managing or overseeing fundraising activities who also have a financial or controlling interest or access to bank accounts in the fundraising organization or company.

(f) This policy shall be in harmony with Article X of the Utah Constitution establishing a free public education system, with R277-407 regarding school fees, and compliance with Title IX.

(g) The LEA may include procedures governing student participation and incentives offered to students, allowable types of fundraising activities, and participation in school sponsored activities by volunteer or outside organizations.

(4) Donations and Gifts: The LEA donation and gift policy shall establish acceptance and approval process for monetary donations, donations and gifts with donor restrictions, donations of gifts, goods, materials or equipment, and funds or items designated for construction or improvements of facilities, and shall include:

(a) establishment of internal controls and procedures over the acceptance and approval of donations and gifts and compliance with associated cash handling and expenditure policies;

(b) directives regarding the appropriate use of the LEA tax exempt status number, and issuance of charitable donation receipts;

(c) procedures regarding the objective valuation of donations or gifts if advertising or other services are offered to the donor in exchange for a donation or gift;

(d) procedures governing LEA or public school employee conduct with parents, donors, and nonschool sponsored organizations;

(e) procedures establishing provisions to direct donations or gifts to the LEA or LEA programs, individual public school or public school programs, and restricting donations from being directed at specific LEA employees, individual students, vendors, or brand name goods or services;

(f) compliance with Title 63G, Chapter 6 regarding the

procurement code, state law and Board rule regarding construction and improvements, IRS regulations and tax deductible directives, and compliance with Title IX.

(g) The LEA may include procedures for accepting donations and gifts through an LEA's legally organized foundation, if applicable, or procedures for recognition of donors, or granting naming rights.

**R277-113-6. LEA Financial Policies and Compliance with State and Federal Law.**

A. LEAs are responsible to ensure that policies comply with the following state laws and Board Rules:

- (1) Utah Constitution Article X, Section 3;
- (2) Utah Code 63G-6a, Utah Procurement Code;
- (3) Utah Code 51-4, Deposit of Funds Due State;
- (4) Utah Code 67-16, Utah Public Officers' and Employees' Ethics Act;
- (5) 20 U.S.C. Section 1232g, Family Educational Rights and Privacy Act;
- (6) Utah Code 63G-2, Government Records Access and Management Act;
- (7) Utah Code Section 53A-12, Fees and Textbooks;
- (8) Utah Code Section 53A-4-205, Public Education Foundations;
- (9) R277-407, School Fees;
- (10) R277-107, Educational Services Outside of Educator's Regular Employment;
- (11) R277-515, Utah Educator Standards.

B. In establishing policies and providing staff training, LEAs shall consider requirements of Title IX, including:

- (1) Fundraising shall equitably benefit boys and girls;
- (2) Boys and girls shall have reasonably equal access to facilities, fields and equipment;
- (3) School sponsored activities shall be reasonably equal for boys and girls.

**KEY: school sponsored activities, public funds, fiscal policies and procedures, audit committee  
April 22, 2013**

**Art X, Sec 3  
53A-1-401(3)  
53A-1-402(1)(e)**



**R277. Education, Administration.****R277-436. Gang Prevention and Intervention Programs in the Schools.****R277-436-1. Definitions.**

A. "Student at risk" means any student who because of his individual needs requires some kind of uniquely designed intervention in order to achieve literacy, graduate and be prepared for transition from school to post-school options.

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

C. "Gang" (as defined in this rule) means a group of three or more people who form an allegiance and engage in a range of anti-social behaviors that may include violent or unlawful activity or both. These groups may have a name, turf, colors, symbols, or distinct dress, or any combination of the preceding characteristics.

D. "Gang prevention" means instructional and support strategies, activities, programs, or curricula designed and implemented to provide successful experiences for youth and families. These components shall promote cultural and social competence, self-management skills, citizenship, preparation for life skills, academic achievement, literacy, and interpersonal relationship skills required for school completion and full participation in society.

E. "Gang intervention" means specially designed services required by an individual student experiencing difficulty in cultural and social competence, self-management skills, citizenship, preparation for life skills, academic achievement, literacy, and interpersonal relationships within or outside of the school which may impact the individual's susceptibility to gang membership or gang-like activities or both.

F. "Gang Prevention and Intervention Program" means specifically designed projects and activities to help at-risk students stay in school and enhance their cultural and social competence, self-management skills, citizenship, preparation for life skills, academic achievement, literacy, and interpersonal relationship skills required for school completion and full participation in society.

G. "In kind services" means those materials, staff and equipment which are required to develop and implement gang prevention and intervention services, strategies, activities, programs, and curricula with individual students, families, or both. In kind services do not include office space and related office support.

H. "Superintendent" means the State Superintendent of Public Instruction.

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

**R277-436-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and authority over public education in the Board, by Section 53A-17a-166(1)(b) which appropriates funds to be used for Gang Prevention and Intervention Programs in the schools, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish standards and procedures for distributing funding for gang prevention and intervention programs in public schools.

**R277-436-3. Application, Distribution of Funds, and Administrative Support.**

A. Awards shall be made to individual schools and funds allocated to charter schools or to school districts to distribute to designated schools.

B. School districts may submit a single district-wide proposal for one or more schools within the district. The proposal shall:

(1) provide for distribution of funds to individual schools; and

(2) provide explanations of prevention and intervention activities and strategies planned for individual schools.

C. Charter schools may submit independent or joint proposals.

D. School districts or charter schools or charter consortia may utilize up to ten percent of their funding under the rule for the following specific purposes:

(1) administrative oversight;

(2) professional development for licensed and non-licensed employees who work directly in gang prevention/intervention activities; and

(3) professional and technical services.

E. Proposals/applications shall be provided by the USOE.

F. Awards per school shall be based on funds available.

G. Priority shall be given to applications reflecting interagency and intra-agency collaboration.

H. Proposals receiving funding shall be notified by July 1.

I. Schools or joint school applications that were funded and complied with all requirements of law and rule may reapply in subsequent years using an abbreviated proposal form provided by the USOE.

J. The USOE may retain up to five percent of the annual legislative appropriation for the following specific purposes:

(1) an amount not to exceed 2.5 percent for:

(a) site visits; and

(b) professional development, as determined and guided by the USOE.

(2) an amount not to exceed 2.5 percent for:

(a) administrative oversight; and

(b) statewide coordination training.

**R277-436-4. Evaluation and Reports.**

A. School districts and charter schools or consortia shall provide the USOE with a year-end evaluation report by June 30 for the previous fiscal year.

B. The year-end report shall include:

(1) an expenditure report;

(2) a narrative description of all activities funded;

(3) copies of any and all products developed;

(4) effectiveness report detailing evidence of individual and overall program impact on gang and gang-related activities and involvement; and

(5) other information or data as required by the USOE.

C. The USOE may require additional evaluation or audit procedures from the grant recipient to demonstrate use of funds consistent with the law and Board rules.

**R277-436-5. Waivers.**

The Superintendent may grant a written request for a waiver of a requirement or deadline which a district or school finds unduly restrictive.

**KEY: public schools, disciplinary problems, students at risk, gangs**

**August 8, 2011**

**Notice of Continuation May 15, 2013**

**Art X Sec 3**

**53A-17a-166(1)(b)**

**53A-1-401(3)**

**R277. Education, Administration.****R277-460. Distribution of Substance Abuse Prevention Account.****R277-460-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Educational materials" means visual and auditory media, curricula, textbooks, and other disposable or non-disposable items that enhance student understanding of the subject matter.
- C. "Evaluation" means a review by a person or group which assesses procedures, results and products specific to a program.
- D. "Local Substance Abuse Authority" means the person or group designated by the Legislature as the county authority to receive public funds for substance abuse prevention and treatment.
- E. "Prevention education" means proactive educational activities designed to eliminate any illegal use of controlled substances.
- F. "Superintendent" means the State Superintendent of Public Instruction.
- G. "USOE" means the Utah State Office of Education.
- H. "Utah Substance Abuse Prevention Guiding Principles" means criteria established by the Utah Division of Substance Abuse and Mental Health to be used in selecting or developing substance abuse prevention materials.

**R277-460-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution, Article X, Section 3 which vests general control and authority over public education in the Board, by Section 53A-13-102 which directs the Board to adopt rules providing for instruction on the harmful effects of controlled substances and by Section 51-9-405 which provides for funds from the Substance Abuse Prevention Account to be allocated to the USOE for:

- (1) substance abuse prevention and education;
- (2) substance abuse prevention training for teachers and administrators; and
- (3) school district, charter school or consortia programs to supplement, not supplant, existing local prevention efforts in cooperation with local substance abuse authorities.

B. The purpose of this rule is to provide for the distribution of the USOE's share of the Substance Abuse Prevention Account.

**R277-460-3. Fund Allocations.**

A. The USOE shall retain sufficient funds to pay for the salary, benefits and indirect costs of a .5 FTE Program Administrator at a salary level to be determined by the Board.

B. The remaining funds shall be allocated as follows:

- (1) An amount not to exceed fifteen percent shall remain at the USOE to purchase educational materials to support and supplement existing Utah's Substance Abuse Prevention Program, Prevention Dimensions.
- (2) An amount not to exceed fifteen percent shall remain at the USOE to encourage and support statewide substance abuse prevention training for school district/charter school teachers and administrators.
- (3) An amount not to exceed fifteen percent shall remain at the USOE to promote Utah's Substance Abuse Prevention Program and encourage its classroom use by Utah educators.
- (4) A minimum of fifty-five percent shall be distributed to school districts, charter schools or consortia for use by the school district, individual schools, charter schools or consortia in a cooperative substance abuse prevention effort based on application.

**R277-460-4. Applications.**

A. Applications shall be provided by the USOE.

B. School districts, charter schools or consortia shall submit applications to the specialist designated by the USOE.

C. The USOE specialist shall make funding recommendations to the USOE Finance Committee as soon as reasonably possible after the application deadline.

D. Awards per school districts, charter schools or consortia shall be based on funds available and specific funding amounts shall be provided in the USOE application.

E. Only applications for funding that propose projects or programs consistent with the Utah Substance Abuse Prevention Guiding Principles shall be considered for funding.

(1) Applications shall address the following:

- (a) the applicant's intention to collaborate with the local substance abuse authority and community groups within the school district, including shared plans and strategies for activities and intervention;
- (b) the applicant's plan for professional development and teachers' use of Prevention Dimensions materials within their classrooms;
- (c) the use of funds to implement applicant's plan;
- (d) teacher reports of classroom implementation and plans for classroom monitoring visits;
- (e) applicant's enhancement of Prevention Dimensions with additional substance abuse activities and strategies; and
- (f) applicant's implementation of Prevention Dimensions with school-based behavioral/health or coordinated school health initiatives.

F. Projects receiving funding shall be notified of funding approval by the USOE Finance Committee.

**R277-460-5. Limitations on Funds.**

A. Funds shall be used by the USOE, school districts, charter schools and consortia exclusively for purposes set forth in Section 51-9-405.

B. Transfer of funds between line items or the extension of project completion dates may be made only with prior written approval of the USOE.

C. Funds received by school districts, charter schools or consortia shall not be used to supplant either currently available school district or charter school funds or funds available from other state or local sources.

**R277-460-6. Evaluation and Reports.**

A. An applicant that accepts a USOE Substance Abuse Prevention award shall provide the USOE with a year-end evaluation report before July 1 of the fiscal year in which the award was made.

B. The year-end report shall include:

- (1) an expenditure report;
- (2) a narrative description of activities funded; and
- (3) copies of all products and materials developed with USOE Substance Abuse Prevention funds.

C. The USOE may require additional evaluation or audit procedures from an award recipient to demonstrate the use of funds consistent with the law and Board rules.

**R277-460-7. Waivers.**

The Superintendent may grant a written request for a waiver of a requirement or deadline which a school district, charter school or consortia finds unduly restrictive.

**KEY: public schools, substance abuse prevention****October 11, 2011****Notice of Continuation May 15, 2013****Art X Sec 3****53A-13-102****51-9-405**

**R277. Education, Administration.****R277-491. School Community Councils.****R277-491-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Candidate" means a parent or school employee who has filed for election to the school community council.
- C. "Contested race" means the election of members to a school community council when there are more candidates than open positions.
- D. "Days" means calendar days unless otherwise specifically designated.
- E. "Educator" means a person who holds a current license and is employed by the school district where the person's child attends school.
- F. "Parent" means the parent or guardian of a student attending a school district public school.
- G. "Parent or guardian member":
- (1) means a member of a school community council who is a parent or guardian of a student who is attending the school; will be enrolled at the school at any time during the parent's or guardian's initial term of office; or was enrolled at the school during the parent or guardian member's initial term of office;
  - (2) may not include an educator who is employed at the school.
- H. "School administrator" means a school principal, school assistant principal or designee as specifically assigned by the school district.
- I. "School community" means the geographic area designated by the school district as the attendance area with reasonable inclusion of the parents or legal guardians of additional students who are attending the school.
- J. "School community council" means the council organized at each school district public school as established in Section 53A-1a-108 and R277-491. The council includes the principal or designee, school employee members and parent members. There shall be at least a two parent member majority.
- K. "School employee member" means a member of a school community council who is a person employed at a school by the school or school district, including the principal.
- L. "Secure ballot box" means a closed container prepared by the school for the deposit of secret ballots for the school community council elections.
- M. "Student" means a child in public school grades kindergarten through twelve counted on the audited October 1 Fall Enrollment Report.
- N. "USDB" means the Utah Schools for the Deaf and the Blind.
- O. "USOE" means the Utah State Office of Education.

**R277-491-2. Authority and Purpose.**

- A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board and by Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.
- B. Local boards of education for school districts and the State Charter School Board for state-sponsored charter schools are responsible for school community council operations, plans, oversight, and training.
- C. The purpose of this rule is to:
- (1) provide procedures and clarifying information to school community councils to assist them in fulfilling school community council responsibilities consistent with Section 53A-1a-108(3);
  - (2) provide direction to school districts and schools in establishing and maintaining school community councils whose primary focus is to develop, approve, and assist in implementing school improvement plans, and advise school/school district administrators consistent with Sections 53A-1a-108(3) and 53A-

16-101.5;

- (3) provide a framework and support for improved academic achievement of students that is locally driven from within individual schools, through critical review of testing results and other indicators of student success, by establishing meaningful, measurable goals and implementing research-based programs and processes to reach the goals;
- (4) encourage increased participation of the parents, school employees and others that support the purposes of the school community councils; and
- (5) encourage compliance with the law.

**R277-491-3. School Community Council Member Election Provisions.**

- A. Notice of the school community council elections shall be provided at least 10 days prior to the elections. The notice shall include the dates and times of the election, the positions that are up for election and instructions about becoming a candidate.
- B. Parents may stand for election as parent members of a school community council at a school consistent with the definition of parent member in R277-491-1G.
- C. Parents may vote for the school community council parent members if their child(ren) are enrolled at the school.
- D. School community councils may establish procedures that allow for ballots to be clearly marked and mailed to the school in the case of geography or school distances that would otherwise discourage parent participation. Hand-delivered or mailed ballots shall meet the same timelines for voters voting in person.
- E. Entire school districts or schools may allow parents to vote by electronic ballot. If school districts/schools allow voting by electronic means, the opportunity shall be clearly explained on the school district/school website including:
- (1) directions for electronic voting;
  - (2) security provisions for electronic voting;
  - (3) statement to parents and community members that violations of a school district's/school's voting procedures may disqualify a parent's vote or invalidate a specific school election, or both;
  - (4) how a parent may vote by paper ballot, if preferred.
- F. Ballots and voting are required only in the event of a school community council contested race. Ballots and the results of each election shall be maintained for three years.
- G. School community councils are encouraged to establish clear and written:
- (1) procedures that are consistent with state law, Board rules, and local board policies;
  - (2) procedures for the election of school community council chairs, co-chairs or vice chairs;
  - (3) timelines and procedures for school community council elections that may include receiving information from applicants in a timely manner; and
  - (4) additional clarification and procedures to assist in the efficient operation of school community councils consistent with the law.
- H. Elections shall begin no later than 30 days after the first day of school. Voting for parent/guardian members shall extend for at least three consecutive school days and be completed no later than 35 days after the first day of school.
- I. Following the election, if there are more parent members who are educators in the district than parents who are not educators in the district elected to the council, the parents on the council shall appoint additional parent members until the number of parent members who are not educators exceeds the number of parent educators in the district.
- J. Following the election, the principal shall enter and sign a Principal's Assurance Form that assures the school community council at the school was elected, and that vacancies were filled,

as necessary, and that the school community council is properly constituted consistent with Section 53A-1a-108 and R277-477 and R277-491. The form shall be completed and uploaded to the School LAND Trust website.

K. School community council members who were duly elected prior to May 8, 2012 shall be allowed to complete the term for which they were elected. All school community council members shall satisfy requirements of Section 53A-1a-108 in subsequent terms.

**R277-491-4. School Community Council School/School Administrator Responsibilities.**

A. A school administrator may not serve as chair or co-chair of the school community council.

B. A school or school district administrator shall not prohibit or discourage a school community council from discussing any issue or concern not prohibited by law raised by any school community council member.

C. The school principal shall provide the following information to the school community:

(1) Notice of dates, times and location of school community council elections at least 10 days before the elections are held, including:

(a) timely notice of school community council positions that are up for election;

(b) instructions for applying to become a school community council member together with timelines for submitting information and applications.

(2) The school community council chair or designee shall post the school community council meeting information (time, place and date of meeting; meeting agenda and previous meeting draft minutes) on the school's website at least one week prior to each meeting.

D. The school community council chair, assisted by the school administrator, shall provide the following information on the school website and in at least one other direct delivery method ensuring that all parents are notified as provided in Section 53A-1a-108:

(1) Within the first six weeks of the school year, a list of the members of the school community council and each member's direct email or phone number, or both, and the school community council meeting schedule;

(2) By November 15 of each year, a summary of the annual report about how the School LAND Trust Program funds were used to enhance or improve academic excellence at the school, consistent with Section 53A-1a-108.1(5)(b).

E. The school community council chair, assisted by the school administrator, shall act in compliance with Section 53A-1a-108 including:

(1) ensuring that council members receive annual training about the requirements of Sections 53A-1a-108, 53A-1a-108.1 and 53A-16-101.5;

(2) posting draft minutes of the most recent meeting on the school website at least one week prior to the next meeting;

(3) posting the agenda and location of the upcoming meeting on the school's website at least one week prior to the meeting;

(4) assuring that written minutes are kept consistent with Section 53A-1a-108.1(8);

(5) assuring that written minutes are maintained, as approved, for three years as the official record of action taken at each meeting; and

(6) adopting a set of rules of order and procedures that the council shall follow to conduct a meeting. The rules shall be followed in conducting meetings, be posted on the school website and available at each meeting, and other required or appropriate activities.

F. School community council responsibilities do not allow for closed meetings, consistent with Section 53A-1a-108.1.

**R277-491-5. Parent Rights and Responsibilities.**

A. Parents of students attending a school shall receive notice of open school community council positions and of elections consistent with Section 53A-1a-108.

B. Parents of students attending a school shall have access to schedules, agendas, minutes and decisions consistent with Sections 53A-1a-108(4) and (5).

C. School community council parent members shall participate fully in the development of various school plans described in Section 53A-1a-108(3) including, at a minimum:

(1) School Improvement Plan;

(2) School LAND Trust Plan;

(3) Reading Achievement Plan (for elementary schools);

(4) Professional Development Plan; and

(5) Child Access Routing Plan.

D. Parents shall receive timely notice of school community council timelines and procedures that affect parent member elections, school community council meeting information and other parent rights or opportunities, consistent with state law, Board rules, and local board policy.

E. School websites shall fully communicate the opportunities provided to parents about serving on the school community council and how parents can directly influence the expenditure of the School LAND Trust funds. The website should include the dollar amount received each year through the program.

**R277-491-6. Additional School Community Council Information and Provisions.**

A. School community councils shall set the beginning terms for school community council members consistent with Section 53A-1a-108(5)(g).

B. Training for members of school community councils shall be provided under the direction of local boards of education, including providing applicable sections of the statutes and Board rules to council members.

C. School community councils shall report on plans, programs, and expenditures, including detailed descriptions of expenditures for professional development, at least annually to local boards of education and cooperate with the legislative and USOE monitoring, and audits.

D. School community councils may establish procedures and requirements for parent notification and election timelines that are not inconsistent with Sections 53A-1a-108, 53A-16-101.5, 52-4-101 et. seq., this rule, or local board policy.

E. Public schools that are secure facilities, juvenile detention facilities, hospital program schools, and other small special programs may receive all funds available to schools with school community councils if the schools demonstrate and document a good faith effort to recruit members, have meetings and publicize results as recognized and affirmed by local boards of education.

F. School community councils shall encourage greater participation on the school community council and may recruit potential applicants to apply for open positions on the council.

G. Local boards of education may ask school community councils to address local issues at the school community council level for discussion before bringing the issues to local boards of education. School community councils may be asked for information to inform local board decisions.

H. Local boards of education shall provide copies of statutory information (Section 53A-1a-108, School community councils authorized -- Duties -- Composition -- Election procedures and selection of members; Section 53A-1a-108.1, School Community Councils - Open and public meeting requirements; Section 53A-1a-108.5, School improvement plan; Section 53A-16-101.5, School LAND Trust Program -- Purpose -- Distribution of funds -- School plans for use of funds) to school community council members.

I. Local boards of education, and the State Charter School Board for state-sponsored charter schools, shall report approval dates of required plans to the USOE. School community councils are encouraged to advise and inform elected local board members.

J. Local boards of education make decisions in governing school districts with superintendents and principals acting under the direction and in behalf of local board of education in all areas of governance, including implementing approved School Improvement and School LAND Trust Program plans.

**KEY: school community councils**  
**July 9, 2012**  
**Notice of Continuation May 15, 2013**

**Art X Sec 3**  
**53A-1-401(3)**

**R277. Education, Administration.****R277-600. Student Transportation Standards and Procedures.****R277-600-1. Definitions.**

- A. "ADA" means average daily attendance.
- B. "ADM" means average daily membership.
- C. "AFR" means a school district's annual financial report, one component of which is the AFR for all pupil transportation costs.
- D. "Approved costs" means the Board approved costs of transporting eligible students from home to school to home once each day, after-school routes, approved routes for students with disabilities and vocational students attending school outside their regularly assigned attendance boundary, and a portion of the bus purchase prices. All approved costs are adjusted by the USOE consistent with a Board-approved formula per the annual legislative transportation appropriation.
- E. "Board" means the Utah State Board of Education.
- F. "Bus route miles" means operating a bus with passengers.
- G. "Deadhead" means operating a bus when no passengers are on board.
- H. "Extended school year (ESY)" means an extension of the school district or charter school traditional school year to provide special education and related services to a student with a disability, in accordance with the student's IEP, and at no cost to the student's parents. ESY services shall meet the standards of Part B of the Individuals with Disabilities Education Act (IDEA), 20 U.S.C. 1401(3) and the State Board of Education Special Education Rules.
- I. "Hazardous" means danger or potential danger which may result in injury or death.
- J. "IDEA" means the Individuals with Disabilities Education Act, Title 1, Part A, Section 602.
- K. "IEP" (individualized education program) means a written statement for a student with a disability that is developed and implemented under CFR Sections 300.340 through 300.347.
- L. "Local board" means the local school board of education.
- M. "M.P.V." means multipurpose passenger vehicle: any motor vehicle with less than 10 passenger positions, including the driver, which cannot be certified as a bus.
- N. "Out-of-pocket expense" means gasoline, oil, and tire expenses.
- O. "USOE" means the Utah State Office of Education.

**R277-600-2. Authority and Purpose.**

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public schools in the Board, by Section 53A-1-402(1)(d) which directs the Board to establish rules for bus routes, bus safety and other transportation needs and by Section 53A-17a-126 and 127 which provides for distribution of funds for transportation of public school students and disability standards for student bus riders.

B. The purpose of this rule is to specify the standards under which school districts may qualify for and receive state transportation funds.

**R277-600-3. General Provisions.**

A. State transportation funds are used to reimburse school districts for the costs reasonably related to transporting students to and from school. The Board defines the limits of school district transportation costs reimbursable by state funds in a manner that encourages safety, economy, and efficiency.

B. Allowable transportation costs are divided into two categories. Expenditures for regular bus routes established by the school district, and approved by the state, are A category costs. Other methods of transporting students to and from

school are B category costs. The Board devises a formula to determine the reimbursement rate for A category costs consistent with Section 53A-17a-127(3). B category costs are approved on a line-by-line basis by the USOE after comparing the costs submitted by a school district with the costs of alternative methods of performing the designated function(s) and subject to adjustment per legislative appropriation.

C. The USOE shall develop a uniform accounting procedure for the financial reporting of transportation costs. The procedure shall specify the methods used to calculate allowable transportation costs. The USOE shall also develop uniform forms for the administration of the program.

D. All student transportation costs shall be recorded. Accurate mileage, minute, and trip records shall be maintained. Records and financial worksheets shall be maintained during the fiscal year for audit purposes.

**R277-600-4. Eligibility.**

A. State transportation funds shall be used only for transporting eligible students.

B. Transportation eligibility for elementary students (K-6) and secondary students (7-12) is determined in accordance with the mileage from home specified in Section 53A-17a-127(1) and (2) to the school attended by assignment of the local board.

C. A student whose IEP identifies transportation as a necessary related service is eligible for transportation regardless of distance from the school attended by assignment of the local board.

D. Students who attend school for at least one-half day at a location other than the local board designated school are expected to walk distances up to 1 and one-half miles.

E. A school district that implements double sessions as an alternative to new building construction may transport, one-way to or from school, with Board approval, affected elementary students residing less than one and one-half miles from school, if the local board determines the transportation would improve safety affected by darkness or other hazardous conditions.

F. The distance from home to school is determined as follows: From the center of the public route (road, thoroughfare, walkway, or highway) open to public use, opposite the regular entrance of the one where the pupil is living, over the nearest public route (thoroughfare, road, walkway, or highway) open regularly for use by the public, to the center of the public route (thoroughfare, road, walkway, or highway) open to public use, opposite the nearest public entrance to the school grounds which the student is attending.

**R277-600-5. Student with Disabilities Transportation.**

A. Students with disabilities are transported on regular buses and regular routes whenever possible, unless the IEP team determines otherwise. School districts may request approval, prior to providing transportation, for reimbursement for transporting students with disabilities who cannot be safely transported on regular school bus runs.

B. School districts may be reimbursed for the costs of transporting or for alternative transportation for students with disabilities whose severity of disability, or combination of disabilities, necessitates special transportation.

C. During the regular school year, an eligible special transportation route from the assigned school site to an alternative program location shall be for a minimum of fifteen days with primarily the same group of students.

D. During the extended school year (ESY), an eligible special transportation route from the assigned school site to an alternative program location shall be for a minimum of ten days with primarily the same group of students.

E. Transportation is provided by the Utah Schools for the Deaf and the Blind for students who are transported to its self-contained classes. Exceptions may be approved by the USOE.

**R277-600-6. Bus Route Approval.**

A. Transportation is over routes proposed by local boards and approved by the USOE. Information requested by the USOE shall be provided prior to approval of a route. During the regular school year, an eligible route from the assigned school site to an alternative program location shall be for a minimum of fifteen days with primarily the same group of students. The USOE shall not approve a route for reimbursement if an equitable student transportation allowance or a subsistence allowance for the necessary transportation is more cost-effective. The USOE may approve exceptions. A route shall:

- (1) traverse the most direct public route;
- (2) be reasonably cost-effective related to other feasible alternatives;
- (3) provide adequate safety for students;
- (4) traverse roads that are constructed and maintained in a manner that does not cause property damage; and
- (5) include an economically appropriate number of students.

B. The minimum number of general education students required to establish a route is ten; the minimum number of students with disabilities is five. A route may be established for fewer students upon special permission of the State Superintendent.

C. The school district designates safe areas for bus stops.

(1) To promote efficiency, the USOE approved minimum distance between bus stops is 3/10 of a mile. The USOE may make exceptions for shorter distances between bus stops for student safety.

(2) Bus routes shall avoid, whenever possible, bus stops on dead-end roads.

(3) Students are responsible for their own transportation to bus stops up to one and one-half miles from home.

(4) Students with disabilities are responsible for their own transportation to bus stops unless the IEP team determines otherwise.

D. Changes made by school districts in existing routes or the addition of new routes shall be reported to the USOE as they occur. The USOE shall review and may refuse to fund route changes.

E. The USOE may reimburse a school district for transporting another district's students across school district boundaries so long as:

(1) the route promotes efficient transportation for both districts;

(2) the route serves a group or community of students and families rather than a single student or a single family;

(3) the local boards of both participating districts vote in an open meeting that students who reside in one district can be better and more economically served by another district; and

(4) both districts and the USOE maintain documentation annually of the boards' votes and the map of the approved route.

F. Schools may transport eligible students home after school activities held at the students' school of regular attendance and within a reasonable time period after the close of the regular school day and receive approved route mileage.

G. The USOE may approve atypical routes as alternatives to building construction if routes are needed to allow more efficient school district use of school facilities. Building construction alternatives include elementary double sessions, year-round school, and attendance across school district boundaries.

H.(1) School districts may use State Guarantee Transportation Levy or local transportation funds to transport students across state lines or out-of-state for school sponsored activities or required field trips if:

(a) the local board has a policy that includes approval of trips at the appropriate administrative level;

(b) the school or school district has considered the purpose

of the trip or activity and any competing risk or liability;

(c) given the distance, purpose and length of the trip, the school district has determined that the use of a publicly owned school bus is most appropriate for the trip or activity; and

(d) the local board has consulted with State Risk Management.

(2) If school bus routes transport students across Utah state lines or outside of Utah for required to and from routes, routes are reimbursable providing school districts maintain documentation that the routes are necessary, or are more cost-effective, or provide greater safety for students than in-state routes.

**R277-600-7. Alternative Transportation.**

Bus routes that involve a large number of deadhead miles will be analyzed by the USOE for reduction or to determine if an alternative method of transporting students is more efficient. Approved alternatives include the following:

A. The costs incurred in transporting eligible pupils in a school district multipurpose passenger vehicle (M.P.V.) are approved costs as long as the costs demonstrate efficiency.

B(1) The costs incurred in paying eligible students an allowance in lieu of school district-supplied transportation are approved costs. A student is reimbursed for the mileage to the bus stop or school, whichever is closer, to the student's home. The allowance shall not be less than the standard mileage rate deduction permitted by the United States Internal Revenue Service for charitable contributions, nor greater than the reimbursement allowance permitted by the Utah Department of Administrative Services for use of privately owned vehicles set forth in the Utah Travel Regulations;

(2) a student mileage allowance is made to only one student per family for each trip that is necessary for all the students within a family to attend school. If siblings are on different school schedules or ride buses that are on significantly different schedules, multiple students within a family may claim and be paid for student mileage allowances;

(3) if a student or the student's parent is unable to provide private transportation, with prior state approval, an amount equivalent to the student allowance may be paid to the school district to help pay the costs of school district transportation;

(4) the student's mileage shall be measured and certified in school district records. The student's ADA, as entered in school records, is used to determine the student's attendance.

C(1) The cost incurred in providing a subsistence allowance is an approved cost. If a student lives more than 60 miles (one way) on well-maintained roads from the student's assigned school, a parent may be reimbursed for the student's room and board if the student relocates temporarily to reside in close proximity to the student's assigned school. Payment shall not exceed the Substitute Care Rate for Family Services for the current fiscal year. Adjustments for changes made in the rate during the year are included in the allowance. In addition to the reimbursement for room and board, the subsistence allowance includes the costs of 18 round trips per year.

(2) A subsistence allowance is not applicable to a parent who maintains a separate home during the school year for the convenience of the family. A parent's primary residence during the school year is the residence of the child.

D. Contracting or leasing for pupil transportation

(1) The cost incurred in engaging in a contract or leasing for transportation is an approved cost at the prorated amount available to school districts.

(2) Reimbursements for school districts using a leasing arrangement are determined in accordance with the comparable cost for the school district to operate its own transportation.

(3) Under a contract or lease, the school district's transportation administrator's time shall not exceed one percent of the commercial contract cost.

(4) Eligible student counts, bus route mileage, bus route minutes, service to students with disabilities and bus inventory data are required as if the school district operated its own transportation.

**R277-600-8. Other Reimbursable Expenses.**

State transportation funds at the USOE-determined prorated amount may reimburse a school district for the following costs:

A. Salaries of clerks, secretaries, trainers, drivers, a supervisor, mechanics and other personnel necessary to operate the transportation program:

(1) a full time supervisor may be paid at the same rate as other professional directors in the school district. The supervisor's salary shall be commensurate with the number of buses, number of eligible students transported, and total responsibility relative to other school district supervisory functions. A school district may claim a percentage of the school district superintendent's or other supervisor's salary for reimbursement if the school district's eligibility count is less than 600 and a verifiable record of administrative time spent in the transportation operation is maintained;

(2) The wage time for bus drivers includes to and from school time: ten minute pre-trip inspection, actual driving time, ten minute post-trip inspection and bus cleanup, and 10 minute bus servicing and fueling;

B. Only a proportionate amount of a superintendent's or supervisor's employee benefits (health, accident, life insurance) may be paid from the school district's transportation fund;

C. Purchased property services;

D. Property, comprehensive, and liability insurance;

E. Communication expenses and travel for supervisors to workshops or the national convention;

F. Supplies and materials for vehicles, the school district transportation office and the garage;

G. Depreciation: The USOE shall provide an annual formula for school bus depreciation;

H. Training expenses to complete bus driver instruction and certification required by the Board; and

I. Other related costs approved by the USOE which may include additional bus driver training.

**R277-600-9. Non-reimbursable Expenses.**

A. AFR for all pupil transportation costs shall only include pupil transportation costs and other school district expenditures directly related to pupil transportation.

B. In determining expenditures for eligible to and from school transportation, all related costs shall be reduced on a pro rata basis for the miles not connected with approved costs.

C. Expenses determined by the USOE as not directly related to transportation of eligible students to and from school shall not be reimbursable.

D. Local boards may determine appropriate non-school uses of school buses. Local boards may lease/rent public school buses to federal, state, county, or municipal entities, and those insured by State Risk Management or to non-government entities or to those not insured through State Risk Management. In making these determinations, local boards shall:

(1) require full cost reimbursement for any non-public school use including:

- (a) cost per mile;
- (b) cost per minute;
- (c) bus depreciation.

(2) require documentation from the non-school user of insurance through State Risk Management or private insurance coverage and a fully executed agreement for full release of indemnification;

(3) require that any non-school use is revenue neutral; and

(4) consult with State Risk Management to determine

adequacy of documentation of insurance and indemnity for any entity requesting use or rental of publicly owned school buses.

E. If a local board approves the use of school buses by a non-governmental entity or an entity not insured through State Risk Management, that use shall be approved in an open board meeting.

F. In the event of an emergency, local, regional, state or federal authorities may request the use of school buses or school bus drivers or both for the period of the emergency. The local board shall grant the request so long as the use can be accommodated consistent with continuing student transportation and student safety requirements.

**R277-600-10. Board Local Levy.**

A. Costs for school district transportation of students which are not reimbursable may be paid for from general school district funds or from the proceeds of the Board Local Levy authorized under Section 53A-17a-164.

B. The revenue from the Board Local Levy may be used for transporting students and for the replacement of school buses.

C. A local board may approve the transportation of students in areas where walking constitutes a hazardous condition from general local board funds or from the Board Local Levy.

(1) Hazardous walking conditions shall be determined by an analysis by the local board of the following factors:

- (a) volume, type, and speed of vehicular traffic;
- (b) age and condition of students traversing the area;
- (c) condition of the roadway, sidewalks and applicable means of access in the area; and
- (d) environmental conditions.

(2) A local board may designate hazardous conditions.

D. Guarantee Transportation Levy

(1) Appropriated funds under Section 53A-17a-127(7) shall be distributed according to each school district's proportional share of its qualifying state contribution.

(2) The qualifying state contribution for school districts shall be the difference between 85 percent of the average state cost per qualifying mile multiplied by the number of qualifying miles and the current funds raised per school district by an amount of revenue equal to at least .0002 per dollar of taxable value of the school district's Board Local Levy under Section 53A-17a-164.

**R277-600-11. Exceptions.**

A. When undue hardships and inequities are created through exact application of these standards, school districts may request an exception to these rules from the State Superintendent on individual cases. Such hardships or inequities may include written evidence demonstrating that no significant increased costs (less than one percent of a school district's transportation budget) is incurred due to a waiver or that students cannot be provided services consistent with the law due to transportation exigencies. The State Superintendent may consult with the Pupil Transportation Advisory Committee, designated in Section 53A-17a-127(5), in considering the exemption.

B(1) a school district shall not be penalized in the computation of its state allocation for the presence on an approved to and from school route of an ineligible student who does not create an appreciable increase in the cost of the route;

(2) there is an appreciable increase in cost if, because of the presence of ineligible students, any of the following occurs:

- (a) another route is required;
- (b) a larger or additional bus is required;
- (c) a route's mileage is increased;
- (d) the number of pick-up points below the mileage limits for eligible students exceeds one;



(e) significant additional time is required to complete a route.

(3) ineligible students may ride buses on a space available basis. An eligible student may not be displaced or required to stand in order to make room for an ineligible student.

**KEY: school buses, school transportation**

**May 16, 2013**

**Art X Sec 3**

**Notice of Continuation March 12, 2013 53A-1-402(1)(d)**

**53A-17a-126 and 127**

**R277. Education, Administration.****R277-610. Released-Time Classes and Public Schools.****R277-610-1. Definitions.**

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

B. "Non-entangling criteria" means neutral course instruction and standards that are academic not devotional; promote awareness not acceptance of any religion; expose not impose a particular view; educate about religion; and inform but not seek to make students conform to any religion.

C. "Released-time" means a period of time during the regular school day when a student attending a public school is excused from the school, at the request of the student's parent.

**R277-610-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-402(1) which directs the Board to adopt minimum standards for public schools, and Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify standards and procedures for public schools regarding released-time classes.

**R277-610-3. Interaction Between Public Schools and Released-Time Classes.**

A. Students may attend released-time classes during the regular school day only upon the written request of the student's parent or legal guardian.

B. A public school shall not maintain records of attendance for released-time classes or use school personnel or school resources to regulate such attendance.

C. Teachers of released-time classes are not members of the public school faculty. Released-time teachers may participate in school activities as community members.

D. Public school teachers, administrators, or other officials shall not request teachers of released-time classes to exercise functions or assume responsibilities for the public school program which would result in a commingling of the activities of the two institutions.

E. Public school class schedules and course catalogs shall not include released-time classes by name. At the convenience of the school, registration forms may contain a space for released-time designation.

F. Public school publications shall not include pictures, reports, or records of released-time classes.

G. Public school personnel shall not participate in released-time classes. Released-time classes shall not use school resources or equipment.

**R277-610-4. Additional Conditions for Religious Released-Time Programs.**

A. Religious classes shall not be held in school buildings or on school property in any way that permits public money or property to be applied to, or that requires public employees to become entangled with, any religious worship, exercise, or instruction.

B. Religious released-time scheduling shall take place on forms and supplies furnished by the religious institution and by personnel employed or engaged by the institution and shall occur off public school premises.

C. There shall be no connection of bells, telephones, computers or other devices between public school buildings and institutions offering religious instruction except as a convenience to the public school in the operation of its own programs. When any connection of devices is permitted, the costs shall be borne by the respective institutions.

D. Records of attendance at religious released-time classes, grades, marks, or other data shall not be included in the correspondence or reports made by the public school to parents.

E. Institutions offering religious instruction are private programs or schools separate and apart from the public schools. Those relationships that are legitimately exercised between the public school and any private school are appropriate with institutions offering released-time classes, so long as public property, public funds, or other public resources are not used to aid such institutions.

F. Public schools may grant elective credit for religious released-time classes if the school district establishes neutral, non-entangling criteria with which to evaluate all released-time courses.

**KEY: released-time classes****May 16, 2013****Notice of Continuation March 12, 2013****Art X Sec 3****53A-1-402(1)****53A-1-401(3)**

**R277. Education, Administration.****R277-614. Athletes and Students with Head Injuries.****R277-614-1. Definitions.**

A. "Agent" means a coach, teacher, school employee, representative or volunteer under Section 26-53-102(1).

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

C. "LEA" means a public school or a public charter school.

D. "Parent" means a parent or legal guardian of student for whom LEA is responsible.

E. "Sporting event" means activities listed under Section 26-53-102(5) and includes games, classes, tryouts and activities that take place during the regular school day of public schools and activities sponsored by the public schools.

F. "Traumatic head injury" means any of the signs, observed or self-reported, listed under Section 26-53-102(6).

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

(4) adequate training for agents, consistent with their involvement and responsibility for supervising students in sporting events, about traumatic head injuries and response to suspected student injuries, consistent with the law; and

(5) notice at least annually to parents of students who participate in sporting events, including parents' signatures, of an LEA's traumatic head injury policy.

D. An LEA shall post its policy on a district/school or charter school website where the information will be readily accessible to the public and to parents.

**KEY: athletes, head injuries**

**November 8, 2011**

**Notice of Continuation May 15, 2013**

**Art X Sec 3**

**53A-1-401(3)**

**R277-614-2. Authority and Purpose.**

A. This rule is authorized by Utah Constitution X, Section 3 which vests general control and supervision in the Board, by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to direct LEAs under the general control and supervision of the Utah State Board of Education to adopt and enforce a head injury policy for students participating in sporting events as defined in the law, including notification to parents of the policy and receipt from parents of signed statements that parents understand and will support the LEA in the enforcement of the policy.

**R277-614-3. Board and USOE Responsibilities.**

A. The Board directs all LEAs to develop, pass, post on the LEAs' websites and make available to parents a traumatic head injury policy that meets the requirements of Section 26-53.

B. The USOE shall, in consultation with Utah State Risk Management, provide a model policy for LEAs to use in developing their policies. The model policy shall be available on the USOE website.

C. The USOE shall provide model forms for LEAs to use to inform parents of LEA policies and obtain parent signatures documenting the parents' understanding of and willingness to adhere to LEA policies.

D. The USOE shall provide professional development, as needed and to the extent of funds available, to assist LEAs with training to identify students' traumatic head injuries, to provide notice to parents and to comply with the law.

**R277-614-4. LEA Responsibilities.**

A. All LEAs are identified as amateur sports organizations for purposes of Section 26-53 and shall meet all requirements of the law.

B. Before September 15, 2011, all LEAs shall adopt a traumatic head injury policy for students:

(1) participating in recess, field days or elementary school activities;

(2) participating in physical education classes offered by the LEA; and

(3) participating in extracurricular activities sponsored by the LEA or statewide athletic associations or both groups jointly.

C. An LEA's policy shall include:

(1) direction to agents to remove a student from a sporting event if the student is suspected of sustaining a concussion or a traumatic head injury;

(2) the prohibition of a student's continued participation until the student is evaluated by a trained qualified health care professional;

(3) a written statement from a trained health care provider clearing the student to resume participation in a sporting event;

**R277. Education, Administration.****R277-702. Procedures for the Utah High School Completion Diploma.****R277-702-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "GED Test" means the General Educational Development Test developed by the American Council on Education.
- C. "Out-of-school youth" means an individual 16 to 19 years of age whose high school class has not graduated and who is no longer enrolled in a K-12 program of instruction.
- D. "Utah High School Completion Diploma" means a completion diploma issued by the Board and distributed by a GED Testing Center or GED Testing Service (GEDTS) as agents of the Board, to an individual who has passed all five subject modules of the GED Test at a Utah GED Testing Center based on Utah passing standards; measuring the major and lasting outcomes and concepts associated with a traditional four-year high school experience.

**R277-702-2. Authority and Purpose.**

- A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-402(1)(b) which directs the Board to adopt rules regarding access to programs, competency levels and graduation requirements, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.
- B. The purpose of this rule is to describe the standards and procedures for obtaining a Utah High School Completion Diploma.

**R277-702-3. Administrative Procedures and Standards for Testing and Certification.**

- A. The Board contracts with the General Educational Testing Service of the American Council on Education to administer the GED Testing Program in the state. The Board may contract with educational institutions within the state to administer the tests and provide related testing services. The number and location of the institutions designated as testing centers is determined in a manner that ensures that the test is reasonably accessible to potential applicants. Testing centers shall meet the GED Testing Service requirements in the GED Examiner's Manual, available at all Board-approved GED Testing Centers and from the USOE.
- B. Individuals desiring to take a GED Test shall follow GED Test registration procedures established by GEDTS and Pearson VUE as approved by the Board and be eligible to take the GED Test under R277-702-4.
- C. Individuals desiring to obtain a Utah High School Completion Diploma shall obtain a standard score of at least 410 on each of the five test modules of the GED Test and obtain an overall average standard score of 450 on the five test modules combined.
- D. The Board recognizes that a GED is only one type of equivalency diploma that could be offered or accepted by the Board.

**R277-702-4. Eligibility for GED Testing.**

- A. GED testing is open to all individuals regardless of race, color, national origin, gender or disabilities and is open to all individuals regardless of Utah residency.
- B. Admission to a GED Test requires the following:
  - (1) that the candidate be at least 16 years of age and is not enrolled in any Utah K-12 school that issues high school credits or diplomas or both;
  - (2) if the candidate is age 16, the candidate shall:
    - (a) as part of the GED testing registration process, complete a state of Utah GED Testing Application for 16-18

Year Old Non-Graduates available from public schools, public charter schools, private or residential special purpose schools:

- (i) completed by the school district, charter school, private or residential special purpose school not associated with a school district, stating that the candidate is not enrolled in a school, and the candidate understands and accepts the consequences and educational choices associated with the withdrawal from a K-12 program of instruction, including the prohibition from returning to a K-12 program anywhere in Utah upon successful passing of all five modules of the GED Test; and
  - (ii) signed by the candidate's parent/guardian specifically stating that the candidate and parent/guardian understand and accept the consequences and educational choices associated with the candidate's decision to withdraw from a K-12 program of instruction, and authorizing the GED Test; or
  - (iii) signed by representatives from a Utah state-sponsored Adult Education District Program stating that the candidate demonstrates academic competencies to meet with success in passing the GED Test; and
  - (iv) a marriage certificate in lieu of the parent/guardian signature if the candidate is married.
- (3) if the candidate is 17 or 18 years of age and the candidate's graduating class has not graduated, the GED testing candidate shall submit a state of Utah GED Testing Application for 16-18 Year Old Non-Graduates to a Utah state-sponsored Adult Education School District Program:

- (a) completed by the school district, charter school, private or residential special purpose school not associated with a school district, stating the candidate is not enrolled in school; and
- (b) signed by the candidate's parent/guardian authorizing the test; or
- (c) a marriage certificate in lieu of the parent/guardian signature if the candidate is married.

C. An out-of-school youth of school age who has not successfully passed all five GED Test modules shall be allowed to return to a school district, charter school, private or special purpose school not associated with a school district prior to the time his class graduates with the understanding and expectation that all necessary requirements for the traditional K-12 diploma shall be completed for a regular high school diploma.

D. An out-of-school youth of school age who has received a Utah High School completion Diploma is not eligible to return to a K-12 high school unless it is required for provision of a free appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA), 20 U.S.C., Chapter 33

E. An out-of-school youth of school age who has successfully passed all five GED Test modules and received a Utah High School Completion Diploma shall be reported as a graduate for K-12 graduation Annual Yearly Progress outcomes.

F. Individuals, as required by an employer or higher education to provide academic competency, who can not offer proof of high school completion may, upon approval of the USOE GED Testing Administrator, take the GED Test.

G. Individuals who have previously passed GED Test modules but seek higher GED Test scores for specific post-secondary institution admission may seek permission to retake the GED Test module(s) from the USOE GED Testing Administrator.

**R277-702-5. Fees.**

- A. The Board, or its designee, shall adopt uniform fees for the General Educational Development Certificate and uniform forms, deadlines, and accounting procedures to administer this program as defined by GED Testing Service and Pearson VUE.
- B. A GED Testing Center, after consultation with the Board or its designee, shall adopt fees and forms for GED testing as defined by GED Testing Service and Pearson VUE.

**R277-702-6. Official Transcripts.**

Test scores shall be accepted by the Board when original scores are reported by:

- A. Board-approved GED Testing Centers;
- B. Transcript service of the Defense Activity for Non-Traditional Educational Support (DANTES);
- C. Veterans Administration hospitals and centers; or
- D. GED Testing Service or authorized agents.

**R277-702-7. Adult High School Outcomes.**

A. A local board of education may adopt standards and procedures for awarding up to five (5) units of credit on the basis of test results which may be applied toward an Adult Education Secondary Diploma only if the student was enrolled in an Adult Education Program prior to July 1, 2009 and the GED was transcribed prior to July 1, 2009.

B. Individuals who have taken and passed the GED Tests prior to January 1, 2002 may enroll in an adult education program now and in the future to obtain an Adult Education Secondary Diploma upon completion of graduation requirements as defined in Rule 277-733 - Adult Education Programs, but may not apply for a previously issued GED Test Certificate to be converted to a Utah High School Completion Diploma.

C. Individuals who have taken and passed the GED Test in the state of Utah between the dates of January 1, 2002 and June 30, 2009 may apply after July 1, 2009 for a Utah High School Completion Diploma to replace the originally issued GED Test Certificate from the Board or they may enroll in an adult education program to complete the necessary requirements for an Adult Education Secondary Diploma.

**R277-702-8. GED Testing Security.**

A. Access to the GED Test shall be limited to the USOE Administrator of GED Testing; state authorized GED Examiners or Pearson VUE test facilitators; and during actual testing, those test candidates without high school diplomas or a GED credential. Any other access to the GED Test shall be cleared in writing through the USOE GED Testing Administrator.

B. All test facilitators shall conduct GED Test administration in strict accordance with the procedures and guidelines specified by the GED Testing Service and Pearson VUE, in the GED Test administration manual and Board rules.

C. Teachers, administrators, and school personnel shall not:

- (1) provide students directly or indirectly with specific questions or answers from any official GED Test;
- (2) allow students access to any testing material, in any form, prior to test administration; or
- (3) knowingly and intentionally do anything that would inappropriately affect the security, validity, or reliability of GED Test scores of any individual student or group taking the GED Test.

D. Intentional violation of any of these rules by licensed educators may subject them to disciplinary action under Section 53A-6-501 or R277-515, Utah Educator Standards, or both.

**KEY: adult education, educational testing, student competency**

May 16, 2013

53A-1-402(1)(b)

Notice of Continuation March 12, 2013

53A-1-401(3)

**R311. Environmental Quality, Environmental Response and Remediation.**

**R311-207. Accessing the Petroleum Storage Tank Trust Fund for Leaking Petroleum Storage Tanks.**

**R311-207-1. Definitions.**

Definitions are found in Section R311-200.

**R311-207-2. Notification of Intent and Eligibility to Claim Against the Petroleum Storage Tank Trust Fund.**

(a) Any responsible party who is making any claim against the Petroleum Storage Tank Trust Fund shall have previously satisfied the requirements of Section R311-206-3(a), have a valid certificate of compliance at the time of product release by the covered UST; and meet the requirements of 19-6-424.

(b) Except as provided in Section R311-207-2(c), a responsible party eligible to receive payments in accordance with Section 19-6-419 shall submit to the Director a written Eligibility Application to make a claim against the Petroleum Storage Tank Trust Fund,

(1) during a period for which that tank was covered by the fund; or

(2) within one year after that fund-covered tank is closed; or

(3) within six months after the end of the period during which the tank was covered by the fund; or

(4) before the responsible party expends any amount over their share in eligible costs, whichever is sooner.

(c) For eligible releases that are discovered and reported to the Director after July 1, 1994, the responsible party is required to expend the first \$10,000 in eligible costs as determined by the Director. For eligible releases that are discovered prior to July 1, 1994, the responsible party is required to expend the first \$25,000 in eligible costs as determined by the Director.

(d) A completed eligibility application form submitted by the responsible party requesting coverage, within the time frames specified in R311-207-2(b), shall constitute a claim against the fund in accordance with Section 19-6-424.

(e) The responsible party's share of eligible costs shall remain the same, regardless of the number of responsible parties who are associated with a release and covered by the fund. Only one responsible party can claim against the fund per release in accordance with 19-6-419.

(f) When a facility has an open release and a subsequent PST Fund eligible release occurs at that facility, the PST Fund allowable coverage for the subsequent release will be limited to the amount required to investigate and remediate the subsequent release up to the maximum allowable by the Utah Underground Storage Tank Act 19-6-419. Additional PST Fund monies cannot be obtained for the investigation and remediation of the original release through the coverage of a subsequent release. The Director shall determine the allowable coverage for a subsequent release. When the Director has made a determination that the clean up standards established for the site pursuant to R311-211-5 have been achieved for a release, the release shall receive a "No Further Action" status. The maximum coverages allowed in 19-6-419 for a series of releases cannot be aggregated to provide additional reimbursement over the maximum for any release included in the series.

**R311-207-3. Prerequisites for Submission of Requests for Reimbursement of Claims Against the Petroleum Storage Tank Trust Fund.**

(a) Upon making a claim for coverage under the fund, and after receiving notice from the Director of eligibility to claim against the fund, the responsible party shall respond to the compliance schedule issued by the Director with work plans. The work plans may address three phases of the compliance schedule as determined by the Director:

(1) tasks required to bring the site under control;  
(2) tasks required to determine the extent and degree of the release; and

(3) tasks required to remediate the site until the Director is satisfied that remediation has achieved the clean up goals as described in Section R311-211 or until further remediation is not feasible as determined by the Director.

(b) The work plan shall include a budget for the work. The budget shall be in compliance with R311-207-4(e)(1) and (2). The budget shall include proposed costs in an itemized format as described in Section R311-207-4(a).

(c) The consultant must have a Statement of Qualification approved by the Director.

(1) The initial Statement of Qualification submittal shall include information about the qualifications of all certified UST consultants and other persons who will be performing investigation or corrective action activities in accordance with the work plans. The Statement of Qualification shall include at least three letters of reference from entities that have retained the services of the consultant, and shall document that:

(A) the consultant and other key personnel are of good character and reputation regarding such matters as control of costs, quality of work, ability to meet deadlines, and technical competence;

(B) the consultant and other key personnel have completed applicable Occupational Safety and Health Agency-approved safety training and any other applicable safety training, as required by federal and state law; and

(C) the consultant carries the following insurance:

(i) Commercial General Liability Insurance or Comprehensive General Liability Insurance, including coverage for premises and operation, explosion, collapse and underground hazards, products and completed operations, contractual, personal injury and death, and catastrophic, with limits of \$1,000,000 minimum per occurrence, \$2,000,000 minimum general aggregate, and \$2,000,000 minimum products or completed operations aggregate;

(ii) Comprehensive Automobile Liability Insurance, with limits of \$1,000,000 minimum and \$2,000,000 aggregate; and

(iii) Workers' Compensation and Employers' Liability Insurance, as required by applicable state law.

(2) The Statement of Qualification shall be updated annually in January, and shall be approved by the Director for a period of one year. The update shall include changes in personnel and current documentation of compliance with Subsections R311-207-3(c)(1)(B) and (C).

(d) The work plan shall include information about the claimant's contract with any proposed consultant or other person performing remedial action in accordance with the work plans. That information shall demonstrate that the following requirements have been met, as determined by the Director:

(1) The contract shall be with the consultant, and shall specify the certified UST consultant and other key personnel for which qualifications are submitted under R311-207-3(c);

(2) The contract shall require a 100 percent payment bond through a United States Treasury-listed bonding company, or other equivalent assurance;

(3) The consultant shall have no cause of action against the state for payment;

(4) The contract will specify a subcontracting method consistent with the requirements of R311-207;

(5) The contract shall require, and include documentation that the consultant carries, the insurance specified in R311-207-3(c)(1)(C).

(6) Payment under the contract shall be limited to amounts that are customary, legitimate, and reasonable;

(7) The contract shall include a provision indicating that the State of Utah is not a party to the contract, unless the State of Utah is a responsible party; and

(8) Any other requirements specified by the Director.

(e) The work plan shall include any additional information required by 40 CFR 280.

(f) The Director may waive specific requirements of Section R311-207 if he determines there is good cause for a waiver, and that public health and the environment will be protected. The Director may also consider, in determining whether to grant a waiver, the extent to which the financial soundness of the fund will be affected.

(g) Once the responsible party's share of eligible costs has been spent in accordance with Section 19-6-419, the Director shall review and approve or disapprove work plans and the corrective action plan and all associated budgets. For costs to be covered by the fund, the Director must approve all work plans, corrective action plans, and associated budgets before a responsible party initiates any work, except as allowed by Sections 19-6-420(3)(b) and 19-6-420(6).

(h) A request for time and material reimbursement from the Fund must be received by the Director within one year from the date the included work was performed or reimbursement shall be denied. If there are any deficiencies in the request, the claimant shall have 90 days from the date of notification of the deficiency to correct the deficiency or the amount of the deficient item(s) shall not be reimbursed. If a release was initially denied eligibility and is subsequently found to be eligible, this provision shall apply only to the portion of work conducted following the determination that the release is eligible for reimbursement.

(i) The request for final reimbursement from the fund must be received by the Director within one year from the date of the "No Further Action" letter issued by the Director or reimbursement shall be denied. If a release is re-opened as provided for in the "No Further Action" letter, payments from the fund may be resumed when approved by the Director.

(j) For costs incurred by a consultant hired by a third party pursuant to Subsection 19-6-409(2)(e):

(1) the Director shall approve all work plans and associated budgets before the consultant initiates any work, and

(2) the contract shall comply with Subsections R311-207-3(d)(1), (3), (6), (7), and (8).

#### **R311-207-4. Submission Requirements for Requests for Reimbursement of Claims Against the Petroleum Storage Tank Trust Fund.**

(a) In order to receive payment from the fund, a claimant shall submit an invoice to the Director. The invoice from the claimant to the fund shall be on the form or forms provided by the Director. Reimbursement may be on a pay for performance or on a time and material basis as approved in advance by the Director. All costs for time and material reimbursement shall be itemized at a minimum to show the following:

- (1) amounts allocated to each approved work plan budget;
- (2) employee name, date of work, task or description of work, labor cost and the number of hours spent on each task;
- (3) sampling, reporting, and laboratory analysis costs;
- (4) equipment rental and materials;
- (5) utilities;
- (6) other direct costs; and
- (7) other items as determined by the Director.

(b) All itemized expenses shall indicate the full name and address of the company or contractor providing materials or performing services.

(c) All expenses for time and material reimbursement shall be documented on a monthly basis, or as otherwise directed by the Director, with a copy of the original bill provided to the Director by the claimant. The claimant shall provide documentation that claimed costs and associated work were reasonable, customary, and legitimate in accordance with Sections R311-207-5 and R311-207-4(e).

(d) For time and material based reimbursement, before receiving payment under Section 19-6-419, the claimant shall provide proof of past payments for services or construction rendered, in a form acceptable to, or as directed by, the Director, unless the Director has agreed to other arrangements. The responsible party shall remain primarily liable, however, for all costs incurred and should obtain lien releases from the company or contractor providing material or performing services.

(e) For time and material based reimbursement, documentation of expenses for construction or other services provided by a subcontractor retained by a consultant or contractor shall include one or more of the following items:

(1) a minimum of three competitive bids by responsive bidders. To be competitive:

(A) Two of the bids must be from bidders who are not related parties. "Related parties" for the purpose of this rule, shall mean organizations or persons related to the consultant by any of the following: marriage; blood; one or more partners in common with the consultant; one or more directors or officers in common with the consultant; more than 10% common ownership direct or indirect with the consultant.

(B) The bid specifications shall contain a clear and accurate description of the technical requirements for the material, product or service and shall not contain features which unduly restrict competition. The bid specifications shall include a statement of the qualitative nature of the material, product or service to be procured, and, when necessary shall set forth those minimum essential characteristics.

(C) For frequently used services such as drilling, competitive bid schedules may be taken by the consultant once each calendar year in January with the results provided to the Director. The prices from the lowest responsible bidder will be used for at least the following 12 months and will remain in effect until re-bid by the consultant and approved by the Director. The Director may reject bid prices that are not customary, reasonable and legitimate. The lowest bid from a responsible bidder will establish the maximum dollar amount the PST Fund will reimburse the claimant for these services, regardless of whether the claimant accepts that bid or another;

(2) sole source justification;

(A) Analytical laboratories may be justified based on service, data quality and cost;

(3) documentation that expenses have been for reasonable, customary, and legitimate purposes; or

(4) other documentation as required or requested by the Director.

(f) In accordance with Section 19-6-420, the Director may not authorize payment from the fund for services provided by consultants, contractors, or subcontractors which are in non-compliance with the requirements of Section R311-207 or any other applicable federal, state, or local law.

(g) Any third party claims brought against the responsible party or any occurrence likely to result in third party claims against the responsible party as a result of the release must be immediately reported to the State Risk Manager and to the Director.

(h) The Director may reimburse claimants based on pay for performance for the investigation, abatement or remediation of eligible PST fund sites. Under a pay for performance cleanup the claimant is reimbursed on a fixed price schedule as measurable contaminant level goals are reached. The claimant's reimbursement under pay for performance for the work anticipated shall be supported by competitive bidding, sole source justification or reasonable, customary and legitimate costs as approved by the Director. Itemization of expenses is not required for payment of a claim unless specifically required in a work plan by the Director.

#### **R311-207-5. Customary, Reasonable and Legitimate**

**Expenses.**

(a) Costs claimed by the claimant in accordance with Section 19-6-419(1) must be customary, reasonable, and legitimate, and must be expended for customary, reasonable, and legitimate work, as determined by the Director. The Director may determine the amount of fund monies that will be reimbursed to a claimant for items including, but not limited to, labor, equipment, services, and tasks established according to the provisions of R311-207-7 or such other methods that are applicable to the item or task. As conditions require, costs of the following activities may be considered to be customary, reasonable, and legitimate: performing abatement, investigation, site assessment, monitoring, or corrective action activities; providing alternative drinking water supplies; and settling or otherwise resolving third party damage claims and settlements in accordance with Section 19-6-422.

(b) This rule incorporates by reference the TABLE OF UTAH PETROLEUM STORAGE TANK TRUST FUND TIME AND MATERIAL REIMBURSEMENT STANDARDS dated November 14, 2002. This document contains specific items that will and will not be reimbursed by the Fund.

(c) This rule incorporates by reference the UTAH PETROLEUM STORAGE TANK FUND, MAXIMUM ALLOWABLE RATE LIST FOR EQUIPMENT AND SUPPLIES as revised November 14, 2002. This document contains specific rates the Fund will reimburse the responsible party or consultant for the included items.

(d) If a claim that does not comply with the requirements of R311-207 is returned by the Director to a claimant or consultant for correction, the claimant or consultant shall not claim for reimbursement the costs expended to correct and re-submit the claim.

(e) The Petroleum Storage Tank Trust Fund may reimburse a responsible party or other eligible claimant for the use or purchase of the consultant's originally designed and manufactured equipment provided the cost is customary, reasonable, and legitimate as determined by the Director. The rate of reimbursement shall not exceed the consultant's direct labor hours for manufacturing at specified fixed hourly rates in the rate schedule approved by the Director and the materials at cost to the consultant. Material costs shall include adjustments for all available discounts, refunds, rebates and allowances which the consultant reasonably should take under the circumstances, and for credits for proceeds the consultant received or should have received from salvage and material returned to suppliers. In no event shall the price paid by the Petroleum Storage Tank Trust Fund exceed the sales price of comparable equipment available to other customers through the consultant or through another source. The consultant's claimed direct labor hours for manufacturing and costs shall be documented through time sheets, original invoices or other documents acceptable to the Director. No reimbursement shall be made for undocumented labor hours and costs. No reimbursement shall be made for labor hours and costs associated with patenting or marketing.

**R311-207-6. Subrogation.**

When the State makes a payment from the Petroleum Storage Tank Trust Fund, the State shall have the right to sue or take other action as may be necessary and appropriate to recover the amount of payment from any third party who may be held responsible. The claimant who receives payment from the Fund must execute and deliver all necessary documents and cooperate as necessary to preserve the State's rights and do nothing to prejudice them.

**R311-207-7. Consultant Labor Codes, Titles, Duties and Fee Schedules.**

(a) This rule incorporates by reference the Consultant

Personnel Qualifications and Task Descriptions table, dated May 1998, and consisting of standardized personnel qualification categories and task descriptions to be used for PST Fund-reimbursable activities. Consultants must assign to one of the categories listed in the table, any service time for an individual that is billed to a claimant or directly to the PST Fund and for which reimbursement is claimed, unless the duties of the individual are so unusual that they do not closely approximate any of the listed categories. By submitting a claim for reimbursement for a labor category, the consultant warrants that the person so claimed meets the described education, skills and experience.

(b) A consultant may file with the Director, and amend once a year in January (absent unusual circumstances), the hourly fees at which it bills clients in Utah for the service of its personnel as described in (a). The Director shall calculate new allowable reimbursement rates once a year. Consultant fees, reimbursement rate schedules and amendments must be maintained in confidence by and accessible only to the staff of the Director, as the consultant's expectation of privacy is reasonable and outweighs the merits of public disclosure. The calculated maximum allowable reimbursement rates must be maintained in confidence by and accessible only to the staff of the Director.

(c) When fee schedules, from companies who have performed work reimbursed by the Fund, have been filed in a number sufficient for meaningful statistical analysis, the Director shall compute a range of allowable reimbursement rates for each code listed in (a), the maximum of each range shall be the mean fee for each code plus one standard deviation (rounded up to the nearest whole dollar) unless modified as provided for in R311-207-7(e). The Director shall then notify each filing firm whether its fees exceed the range of allowable reimbursement rates. If they do exceed the allowable range, the firm shall then resubmit a revised fee schedule that is within the allowable range. The amount by which a consultant's fee for a particular code exceeds the allowable reimbursement rate will be presumed unreasonable and will not be reimbursed by the Fund.

(d) The Director may approve a range of reimbursement rates for a particular category when proposed by a consultant. However, the maximum of this range shall not exceed the maximum reimbursement rate as calculated in R311-207-7(c). When a range is proposed, the average of the range will be used for the calculations in R311-207-7(c).

(e) If a consultant's fees exceed the maximum of the range in not more than three categories but are lower in the other categories, the average of the maximum reimbursement rates as calculated in R311-207-7(c) for the categories for which that consultant provides services will be calculated. If the average of the consultant's fees is lower than this average, the Director may approve all of the fees as proposed.

(f) The Director may request a detailed explanation of fee structures when a submitted fee appears to vary significantly from those submitted by other consultants for the same code. The Director reserves the right not to use fees that significantly vary from similar fees submitted by other consultants, fees from consultants who have not submitted claims for reimbursement, fees from consultants who have not submitted proper documentation for claim reimbursement, fees from consultants that do not currently have key personnel holding valid certification as a Certified UST Consultant and other fees not deemed acceptable by the Director.

(g) A consultant not filing its schedule of fees must submit its invoices for services formatted in accordance with R311-207-7(a). Any fees which exceed the average of allowable reimbursement rates will be presumed unreasonable.

(h) A claimant or consultant may overcome the presumption that a fee is unreasonable by presenting clear and



concise evidence to the Director that the fees are reasonable and customary. Excessive overhead factors will not meet this test.

(i) The Director may determine the amount of fund monies that will be reimbursed to a claimant for commonly performed tasks. The amount of fund monies that will be reimbursed for a particular task, item or activity may be established by R311-207-7(c), competitive bid, market survey or other applicable method as determined by the Director. Public comment will be taken before proposed reimbursement rates are adopted.

**R311-207-8. Third Party Claims Apportionment.**

To prioritize payments from the Petroleum Storage Tank Fund as required by Subsection 19-6-419(5)(a), yet promptly authorize the payment of third party claims prior to a determination that corrective action has been properly performed and completed, the Director may utilize budget projections to allocate coverage available for the payment of third party claims. The Director may amend budget projections as frequently as he deems appropriate. Costs among third party claimants shall be apportioned after the responsible party has agreed to the settlement and the state risk manager has approved the settlement. Apportionment and priority shall be based upon the order in which an approved and agreed upon claim is received by the Director.

**R311-207-9. Consultants Hired by Third Parties.**

(a) A certified UST consultant hired by a third party under Subsection 19-6-409(2)(e) shall:

- (1) have an approved PST Trust Fund Statement of Qualification in accordance with Subsection R311-207-3(c), and
- (2) have approved PST Trust Fund labor rates in accordance with Section R311-207-7.

(b) To ensure compliance with Subsection 19-6-409(4)(a)(ii), one consultant shall be designated by all known third parties claiming injury or damage from a release. The designation shall be made in writing to the Director.

(c) For the claimant to be eligible to receive payments from the Fund under Subsection 19-6-409(2)(e):

- (1) all work plans and budgets shall be pre-approved by the Director in accordance with Subsection R311-207-3(j);
- (2) the consultant shall comply with Sections R311-207-4 and R311-207-5; and
- (3) requests for reimbursement from the Fund shall be made in accordance with Subsections R311-207-3(h) and (i).

**KEY: financial responsibility, petroleum, underground storage tanks**

**October 17, 2011**

**Notice of Continuation April 10, 2012**

**19-6-105**

**19-6-403**

**19-6-409**

**19-6-419**

**R357. Governor, Economic Development.****R357-3. Refundable Economic Development Tax Credit.****R357-3-1. Authority.**

(1) Subsection 63M-1-2404 requires the office to make rules establishing the conditions that a business entity must meet to qualify for a tax credit under Part 24 of the Utah Code Annotated.

**R357-3-2. Definitions.**

(1) Terms in these rules are used as defined in UCA 63M-1-2403.

**R357-3-3. Conditions.**

(1) To qualify for an economic development tax credit a business entity must have a new commercial project which:

(a) must be within an economic development zone created under UCA 63M-1-2404;

(b) includes direct investment within the geographic boundaries of the development zone created under UCA 63M-1-2404;

(c) brings new incremental jobs to Utah;

(d) includes significant capital investment, the creation of high paying jobs, or significant purchases from Utah vendors and providers, or any combination of these three economic factors;

(e) generates new state revenues; and

(2) The business entity must follow the procedure in UCA 63M-1-2405 for obtaining a tax credit certificate.

(3) The office, with advice from the board, may enter into an agreement with a business entity authorizing a tax credit if the business entity meets the standards under subsections (1) and (2).

(4) A business entity is eligible for an economic development tax credit only if the office has entered into an agreement under subsection (3) with the business entity.

**KEY: economic development, tax credit, jobs**

**June 18, 2008**

**63M-1-2404**

**Notice of Continuation May 30, 2013**

**R380. Health, Administration.****R380-250. HIPAA Privacy Rule Implementation.****R380-250-1. Authority and Purpose.**

(1) This rule implements provisions required by 45 CFR Part 164, subpart E, dealing with the treatment of certain individually identifiable health information held by the Department of Health.

(2) This rule is authorized by Utah Code Sections 26-1-5 and 26-1-17.

**R380-250-2. Definitions.**

As used in this rule:

(1) "Covered program" means the smallest agency or program unit within the Department responsible for carrying out a covered function as that term is used in 45 CFR 164.501.

(2) "HIPAA Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information found in 45 CFR Part 160 and Subparts A and E of Part 164.

(3) "Individual" means a natural person. In the case of an individual without legal capacity or a deceased person, the personal representative of the individual.

**R380-250-3. General Compliance.**

(1) This rule applies only to those functions of the Department that are covered functions as that term is used in 45 CFR Part 164.

(2) Covered programs shall comply with the privacy requirements of 45 CFR Part 164, Subpart E in dealing with individually identifiable health information and the subjects of that information.

**R380-250-4. Changes to Rule.**

The Department reserves the right to alter this rule and its notices of privacy practices required by the HIPAA Privacy Rule.

**R380-250-5. Sanctions, Retaliation.**

(1) An employee of a covered program may be disciplined for failure to comply with the HIPAA Privacy Rule requirements found in 45 CFR Part 164, Subpart E. Discipline may include termination and civil or criminal prosecution.

(2) An employee of a covered program may not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against any person for exercising any right established by the HIPAA Privacy Rule or for opposing in good faith any act or practice made unlawful by the HIPAA Privacy Rule.

**R380-250-6. Waiver of Rights Prohibited.**

A covered program may not require individuals to waive their rights under 45 CFR 160.306 or 45 CFR Part 164, Subpart E as a condition of the provision of treatment, payment, health plan enrollment, or eligibility for benefits.

**R380-250-7. Complaints.**

(1) An individual may seek a review of a covered program's policies and procedures or its compliance with such policies and procedures through informal contact with the covered program.

(2) An individual may file a formal complaint concerning a covered program's policies and procedures implementing 45 CFR Part 164, Subpart E or its compliance with such policies and procedures or the requirements of 45 CFR Part 164, Subpart E by filing with the Office of the Executive Director of the Department a request for program action meeting the requirements of the Utah Administrative Procedures Act.

**R380-250-8. Right to Request Privacy Protection.**

(1) An individual may request restrictions on use and disclosure of protected health information as permitted in 45

CFR 164.522 by submitting a written request to the designated privacy officer for the covered program.

(2) The decision whether to grant the request, documentation of any restrictions, alternate communication methods, and conditions on providing confidential communications shall be in accordance with 45 CFR 164.522.

**R380-250-9. Individual Access to Protected Health Information.**

(1) An individual may request access to protected health information as permitted in 45 CFR 164.524 by submitting a written request to the designated privacy officer for the covered program.

(2) The right to access, decision whether to grant access, review of denials, timeliness of responses, form of access, time and manner of access, documentation and other required responses shall be in accordance with 45 CFR 164.524.

**R380-250-10. Amendment of Protected Health Information.**

(1) An individual may request amendment to protected health information about that individual that the individual believes is incorrect as permitted in 45 CFR 164.526 by submitting a written request to the designated privacy officer for the covered program.

(2) The decision whether to grant the request, the time frames for action by the covered program, amendment of the record, requirements for denial, and acting on notices of amendment from third parties shall be in accordance with 45 CFR 164.526.

**R380-250-11. Accounting for Disclosures.**

(1) An individual may request an accounting of disclosures of protected health information as permitted in 45 CFR 164.528 by submitting a written request to the designated privacy officer for the covered program.

(2) The content of the accounting and the provision of the accounting, shall be in accordance with 45 CFR 164.528.

**KEY: HIPAA, privacy****June 9, 2003****Notice of Continuation May 6, 2013****26-1-5****26-1-17**

**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. 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 under the age of 19 on whose behalf an application has been made for benefits under the Children's Health Insurance Program (CHIP), but who is not an enrollee.

(2) "Department" means the Utah Department of Health.

(3) "Enrollee" means a child under the age of 19 who has applied for and has been found eligible for benefits under CHIP.

**R382-1-3. Nature of Program and Benefits.**

(1) CHIP provides reimbursement to medical providers for the services they render to a child who meets the eligibility and application requirements of Rule R382-10. CHIP 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 CHIP;

(b) as described and limited in Section 6.2 of the State Plan for the Children's Health Insurance Program, April 17, 2009 ed., which is adopted and incorporated by reference.

(2) CHIP is not health insurance. A relationship with the Department as the insurer and the enrollee as the insured does not exist under this program.

**R382-1-4. Limitation of Abortion Benefits.**

The Department may only cover abortion in accordance with the provisions of 42 U.S.C. Sec. 1397ee.

**R382-1-5. Providers.**

The Department requires a child to enroll in one of the managed care organizations (MCO) 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 MCOs.

(2) Payment for services by the contracted MCO 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, April 17, 2009 ed., which is adopted and incorporated by reference.

**R382-1-8. Agency Conferences, Fair Hearings and Appeals.**

(1) An applicant or enrollee may request an agency conference in accordance with Section R414-301-5 at any time to resolve a problem without requesting an agency action under the Utah Administrative Procedures Act (UAPA).

(2) The applicant or enrollee, parent, legal guardian, or authorized representative may request an agency action, also called a fair hearing, if he disagrees with an agency decision regarding the individual's eligibility. The request for a fair hearing must be in accordance with the provisions and time limits of Section R414-301-6.

(3) The Department of Workforce Services (DWS) shall

conduct fair hearings on eligibility in accordance with the provisions of Section R414-301-6.

(4) If an enrollee disagrees with a decision of the MCO regarding a covered benefit or service, the enrollee may appeal the decision through the MCO.

(a) An enrollee must exhaust grievance remedies with the MCO before he requests an agency action from the Department.

(b) The enrollee may file an appeal with the Department if the enrollee disagrees with the MCO's resolution. The enrollee must file the appeal within 60 days of the date that the MCO sends the resolution notice.

(c) The Department shall conduct a review of the MCO's decision in accordance with the provisions of 42 CFR 438.408 and issue a final decision to the enrollee and the MCO.

(d) The Department shall conduct all appeals in accordance with UAPA.

(e) The enrollee may continue to receive benefits if the enrollee meets the conditions of 42 CFR 438.420.

**KEY: children's health benefits, fair hearings****June 16, 2011****Notice of Continuation May 8, 2013****26-1-5****26-40-103**

**R382. Health, Children's Health Insurance Program.****R382-10. Eligibility.****R382-10-1. Authority.**

(1) This rule is authorized by Title 26, Chapter 40.

(2) The purpose of this rule is to set forth the eligibility requirements for coverage under the Children's Health Insurance Program (CHIP).

**R382-10-2. Definitions.**

(1) The Department incorporates by reference the definitions found in Sections 2110(b) and (c) of the Compilation of Social Security Laws, in effect January 1, 2011.

(2) The Department adopts the definitions in Section R382-1-2. In addition, the Department adopts the following definitions:

(a) "American Indian or Alaska Native" means someone having origins in any of the original peoples of North and South America (including Central America) and who maintains tribal affiliation or community attachment.

(b) "Best estimate" means the eligibility agency's determination of a household's income for the upcoming eligibility period, based on past and current circumstances and anticipated future changes.

(c) "Children's Health Insurance Program" or "CHIP" means the program for benefits under the Utah Children's Health Insurance Act, Title 26, Chapter 40.

(d) "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 CHIP.

(e) "Due process month" means the month that allows time for the enrollee to return all verification, and for the eligibility agency to determine eligibility and notify the enrollee.

(f) "Eligibility agency" means the Department of Workforce Services (DWS) that determines eligibility for CHIP under contract with the Department.

(g) "Employer-sponsored health plan" means health insurance that meets the requirements of Subsection R414-320-2(9).

(h) "Income annualizing" means a process of determining the average annual income of a household, based on the past history of income and expected changes.

(i) "Income anticipating" means a process of using current facts regarding rate of pay, number of working hours, and expected changes to anticipate future income.

(j) "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.

(k) "Presumptive eligibility" means a period of time during which a child may receive CHIP benefits based on preliminary information that the child meets the eligibility criteria.

(l) "Quarterly Premium" means a payment that enrollees must pay every three months to receive coverage under CHIP.

(m) "Review month" means the last month of the eligibility period for an enrollee during which the eligibility agency redetermines an enrollee's eligibility for a new certification period.

(n) "Utah's Premium Partnership for Health Insurance" or "UPPP" means the program described in Rule R414-320.

(o) "Verification" means the proof needed to decide if a child meets the eligibility criteria to be enrolled in the program. Verification 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, legal guardian or an adult who assumes responsibility for the care or supervision of a child who is under

19 years of age 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.

(2) If the child's parent, responsible adult, or legal guardian wants to designate an authorized representative, he must so indicate in writing to the eligibility agency.

(3) A child who is under 19 years of age and is independent of a parent or legal guardian may assume these responsibilities. The eligibility agency may not require a child who is independent to have an authorized representative if the child can act on his own behalf; however, the eligibility agency may designate an authorized representative if the child needs a representative but cannot make a choice either in writing or orally in the presence of a witness.

(4) Where the statutes or rules governing the CHIP program require a child to take an action, the parent, legal guardian, designated representative or adult who assumes 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 assumes 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.

(5) The eligibility agency shall consider notice to the parent, legal guardian, designated representative, or adult who assumes responsibility for the care or supervision of a child to be notice to the child. The eligibility agency shall send notice to a child who assumes responsibility for himself.

**R382-10-4. Applicant and Enrollee Rights and Responsibilities.**

(1) A parent or an adult who assumes responsibility for the care or supervision of a child may apply or reapply for CHIP benefits on behalf of a child. A child who is independent may apply on his own behalf.

(2) If a person needs assistance to apply, the person may request assistance from a friend, family member, the eligibility agency, or outreach staff.

(3) The applicant must provide verification requested by the eligibility agency to establish the eligibility of the child, including information about the parents.

(4) Anyone may look at the eligibility policy manuals located on-line or at any eligibility agency office, except at outreach or telephone locations.

(5) If the eligibility agency determines that the child is not eligible for CHIP, the parent or legal guardian who arranges for medical services on behalf of the child must repay the Department for the cost of services.

(6) The parent or child, or other responsible person acting on behalf of a child must report certain changes to the eligibility agency within ten calendar days of the day the change becomes known. Some examples of reportable changes include:

(a) An enrollee begins to receive coverage or to have access to coverage under a group health plan or other health insurance coverage.

(b) An enrollee leaves the household or dies.

(c) An enrollee or the household moves out of state.

(d) Change of address of an enrollee or the household.

(e) An enrollee enters a public institution or an institution for mental diseases.

(7) An applicant and enrollee may review the information that the eligibility agency uses to determine eligibility.

(8) An applicant and enrollee have the right to be notified about actions that the agency takes to determine their eligibility or continued eligibility, the reason the action was taken, and the right to request an agency conference or agency action as defined in Sections R414-301-5 and R414-301-6.

(9) An enrollee in CHIP must pay quarterly premiums, co-payments, or co-insurance amounts to providers for medical

services that the enrollee receives under CHIP.

**R382-10-5. Verification and Information Exchange.**

(1) The provisions of Section R414-308-4 apply to applicants and enrollees of CHIP.

(2) The Department and the eligibility agency shall safeguard applicant and enrollee information in accordance with Section R414-301-4.

(3) The Department or the eligibility agency may release information concerning applicants and enrollees and their households to other state and federal agencies to determine eligibility for other public assistance programs.

(4) The Department and the eligibility agency shall release information to the Title IV-D agency and Social Security Administration to determine benefits.

(5) The Department and the eligibility agency 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 CHIP, a child must be a citizen or national of the United States or a qualified alien.

(2) The provisions of Section R414-302-1 regarding citizenship and alien status requirements apply to applicants and enrollees of CHIP.

**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 or Alaska Native 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 Compilation of Social Security Laws 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 eligibility agency may request an applicant 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. The eligibility agency shall use the SSN in accordance with the requirements of 42 CFR 457.340.

(2) The eligibility agency shall require that each applicant claiming to be a U.S. citizen or national provide their SSN for the purpose of verifying citizenship through the Social Security Administration in accordance with Section 2105(c)(9) of the Compilation of the Social Security Laws.

(3) The eligibility agency may request the SSN of a lawful permanent resident alien applicant, but may not deny eligibility 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 Compilation of Social Security Laws.

(2) A child who is covered under a group health plan or other health insurance that provides coverage in Utah, including coverage under a parent's or legal guardian's employer, as defined in 29 CFR 2590.701-4, 2010 ed., is not eligible for CHIP assistance.

(3) A child who is covered under health insurance 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 reaches 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 when the employer only offers coverage during an open enrollment period, and the child has had at least one chance to enroll.

(6) An eligible child who has access to an employer-sponsored health plan may choose to enroll in either CHIP or the employer-sponsored health plan.

(a) If the child chooses to enroll in the employer-sponsored health plan, the child may enroll in and receive premium reimbursement through the UPP program if enrollment is not closed. The health plan must meet the following conditions:

(i) The cost of the least expensive plan equals or exceeds 5% of the household's gross annual income; and

(ii) The plan meets the requirements of Subsection R414-320-2(19).

(b) The cost of coverage includes a deductible if the employer plan has a deductible that must be met before the plan will pay any claims. For a dependent child, if the employee must enroll to enroll the dependent child, the cost of coverage will include the cost to enroll the employee and the dependent child.

(c) If the child enrolls in the employer-sponsored health plan or COBRA coverage and UPP, but the plan does not include dental benefits, the child may receive dental-only benefits through CHIP. If the employer-sponsored health plan includes dental, the applicant may choose to enroll the child in the dental plan and receive an additional reimbursement from UPP of up to \$20 per month, or may choose not to enroll the child in the dental plan and receive dental-only benefits through CHIP.

(d) A child who chooses to enroll in the employer-sponsored health plan or COBRA coverage and UPP may discontinue the employer-sponsored health plan or COBRA coverage and switch to CHIP coverage at any time without a 90-day ineligibility period for voluntarily discontinuing health insurance. Eligibility continues through the current certification period without a new eligibility determination.

(7) The eligibility agency shall deny eligibility if the applicant or a custodial parent voluntarily terminates health insurance that provides coverage in Utah within the 90 days before the application date for enrollment under CHIP.

(a) If the 90-day ineligibility period for CHIP ends in the month of application, or by the end of the month that follows, the eligibility agency shall determine the applicant's eligibility.

(b) If eligible, enrollment in CHIP begins the day after the 90-day ineligibility period ends.

(c) If the 90-day ineligibility period does not end by the end of the month that follows the application month, the eligibility agency shall deny the application.

(8) If an applicant or an applicant's parent voluntarily terminates coverage under a Consolidated Omnibus Budget Reconciliation Act (COBRA) plan or under the Health Insurance Pool (HIP), or if an applicant is involuntarily terminated from an employer's plan, the applicant is eligible for

CHIP without a 90-day ineligibility period.

(9) A child with creditable health coverage operated or financed by the Indian Health Services is not excluded from enrolling in the program.

(10) An applicant must report at application and review whether any of the children in the household for whom enrollment is being requested have access to or are covered by a group health plan, other health insurance coverage, or a state employee's health benefits plan.

(11) The eligibility agency shall deny an application or review if the enrollee fails to respond to questions about health insurance coverage for children that the household seeks to enroll or renew in the program.

(12) A recipient must report when a child enrolls in health insurance coverage within ten calendar days of the date of enrollment or the date that benefits are effective, whichever is later. The eligibility agency shall end eligibility effective the end of the month in which the agency sends proper notice of the closure. A child may switch to UPP in accordance with Subsection R382-10-10(6) if the change is reported timely. Failure to make a timely report may result in overpayment.

#### **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, whether or not the individual is eligible to enroll in the program:

(a) At least one 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 eligible child if they are under 19 years of age. They may also be eligible for CHIP if they meet the CHIP eligibility criteria;

(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;

(f) Unborn children of anyone included in the household size; and

(g) Children of a former spouse when a divorce is finalized.

(2) Any individual described in Subsection R382-10-11(1) 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) Any household member described in Subsection R382-10-11 (1) who is not a citizen, a national, or a qualified alien is included in the household size. The eligibility agency counts the income of these individuals the same way that it counts the income for household members who are citizens, nationals, or qualified aliens.

#### **R382-10-12. Age Requirement.**

(1) A child must be under 19 years of age sometime during the application month to enroll in the program. An otherwise eligible child who turns 19 years of age during the application month may receive CHIP for the application month and the four-day grace period.

(2) The month in which a child turns 19 years of age is the last month of eligibility for CHIP enrollment.

#### **R382-10-13. Income Provisions.**

(1) 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.

(a) All gross income, earned and unearned, received by the parents and stepparents of any child who is included in the household size, counts toward household income, unless this section specifically describes a different treatment of the income.

(b) When a CHIP household is scheduled for a renewal of eligibility, the household may give consent to the eligibility agency to access the household's most recent adjusted gross income from the Utah State Tax Commission. Only CHIP eligible households can elect this option. When the household elects this option, the eligibility agency shall use the adjusted gross income from the most recent tax record as the countable income of the household to determine eligibility for CHIP.

(2) The Department may not count as income any payments from sources that federal law specifically prohibits from being counted as income to determine eligibility for federally-funded programs.

(3) The Department may count any income in a trust that is available to, or is received by any of the following household members:

(a) a parent or spouse of a parent;

(b) an eligible child who is the head of the household;

(c) a spouse of an eligible child if the spouse is 19 years of age or older; or

(d) a spouse who is under 19 years old and is the head of the household.

(4) Payments received from the Family Employment Program, General Assistance, or refugee cash assistance is countable income.

(5) 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.

(6) 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.

(7) Cash contributions made by non-household members are counted as income unless the parties have a signed written agreement for repayment of the funds.

(8) 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.

(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 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) SSI and State Supplemental Payments are countable income.

(11) Death benefits are not countable income to the extent that the funds are spent on the deceased person's burial or last illness.

(12) 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.

(13) Child Care Assistance under Title XX is not

countable income.

(14) Reimbursements of Medicare premiums received by an individual from Social Security Administration or the Department are not countable income.

(15) Needs-based Veteran's pensions are counted as income. The Department may only count the portion of a Veteran's Administration benefit to which the individual is legally entitled.

(16) The Department may not count the income of a child under the age of 19 if the child is not the head of a household.

(17) The Department shall count the income of the spouse of an eligible child if:

(a) the spouse is 19 years of age or older; or

(b) the spouse is under 19 years old and is the head of the household.

(18) 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.

(19) Reimbursements for expenses incurred by an individual are not countable income.

(20) 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.

(21) Victim's Compensation payments as defined in Pub. L. No. 101 508 are not countable income.

(22) 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.

(23) Income of an alien's sponsor or the sponsor's spouse is not countable income.

(24) If the household expects to receive less than \$500 per year in taxable interest and dividend income, then they are not countable income.

(25) Income paid by the U.S. Census Bureau to a temporary census taker to prepare for and conduct the census is not countable income.

(26) The additional \$25 a week payment to unemployment insurance recipients provided under Section 2002 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, which an individual may receive from March 2009 through June 2010 is not countable income.

(27) The one-time economic recovery payments received by individuals receiving social security, supplemental security income, railroad retirement, or veteran's benefits under the provisions of Section 2201 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, and refunds received under the provisions of Section 2202 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, for certain government retirees are not countable income.

(28) The Consolidated Omnibus Reconciliation Act (COBRA) premium subsidy provided under Section 3001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, is not countable income.

(29) The making work pay credit provided under Section 1001 of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111 5, 123 Stat. 115, is not countable income.

(30) The eligibility agency may not count as income any payments that an individual receives pursuant to the Individual Indian Money Account Litigation Settlement under the Claims Resolution Act of 2010, Pub. L. No. 111 291, 124 Stat. 3064.

(31) The eligibility agency may not count as income any federal tax refund and refundable credit that an individual receives between January 1, 2010, and December 31, 2012, pursuant to the Tax Relief Unemployment Insurance Reauthorization and Job Creation Act of 2010, Pub. L. No. 111

312, 124, Stat 3296.

#### **R382-10-14. Budgeting.**

(1) The Department shall count the gross income for parents and stepparents of any child included in the household size to determine a child's eligibility, unless the income is excluded under this rule. The Department may only deduct required expenses from the gross income to make an income available to the individual. 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) A household may elect upon renewal to have the Department use the most recent adjusted gross income (AGI) from the Utah State Tax Commission. The eligibility agency shall then use AGI instead of requesting verification of current income. If the use of AGI should result in an adverse decision or change, the household may provide verification of current income.

(5) 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.

(6) 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 may 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 may exclude more than 40% if the individual can demonstrate that the actual expenses are greater than 40%. The Department shall deduct the same expenses from gross income that the Internal Revenue Service allows as self-employment expenses.

(7) 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 Eligibility Reviews.**

(1) The applicant must complete and sign a written application or an on-line application to enroll in the CHIP



program. The application process includes gathering information and verification to determine the child's eligibility for enrollment in the program.

(2) The eligibility agency may accept 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 in person, through the mail, by fax, or online.

(4) The provisions of Section R414-308-3 apply to applicants for CHIP.

(5) Individuals can apply without having an interview. The eligibility agency may interview applicants and enrollee's, the parents or spouse, and any adult who assumes responsibility for the care or supervision of the child, when necessary to resolve discrepancies or to gather information that cannot be obtained otherwise.

(6) According to the provisions of Section 2105(a)(4)(F) of the Social Security Act, the Department provides medical assistance during a presumptive eligibility period to a child if a Medicaid eligibility worker with the Department of Human Services has determined, based on preliminary information, that:

(a) the child meets citizenship or alien status criteria as defined in Section R414-302-1;

(b) the child is not enrolled in a health insurance plan; and

(c) the child's household income exceeds the applicable income limit for Medicaid, but does not exceed 200% of the federal poverty level for the applicable household size.

(7) A child determined presumptively eligible is required to file an application for medical assistance with the eligibility agency in accordance with the requirements of Section 1920A of the Social Security Act.

(8) A child may receive medical assistance during only one presumptive eligibility period in any six month period.

(9) The eligibility agency shall complete a periodic review of an enrollee's eligibility for CHIP medical assistance at least once every 12 months. The periodic review is a review of eligibility factors that may be subject to change. The eligibility agency shall use available, reliable sources to gather necessary information to complete the review. The eligibility agency may conduct the review without requiring the enrollee to provide additional information.

(10) The eligibility agency may ask the enrollee to respond to a request to complete the review process. If the enrollee fails to respond to the request during the review month, the agency shall end the enrollee's eligibility effective at the end of the review month and send proper notice to the enrollee. If the enrollee responds to the review or reapplies in the month after the review month, the eligibility agency shall treat the response as a new application. The application processing period then applies for this new request for coverage.

(a) The eligibility agency may ask the enrollee for verification to redetermine eligibility.

(b) Upon receiving verification, the eligibility agency shall redetermine eligibility and notify the enrollee.

(i) If the enrollee is determined eligible based on this reapplication, the new certification period begins the first day of the month after the closure date.

(ii) If the enrollee fails to return verification within the application processing period or if the enrollee is determined ineligible, the eligibility agency shall send a denial notice to the enrollee.

(c) The eligibility agency may not continue eligibility while it makes a new eligibility determination.

(d) If the enrollee's case is closed for one or more calendar months, the enrollee must reapply for CHIP.

(11) If the enrollee responds to the review request during the review month, the eligibility agency may request verification from the enrollee.

(a) The eligibility agency shall send a written request for

the necessary verification.

(b) The enrollee has at least ten calendar days to provide the requested verification to the eligibility agency.

(c) If the enrollee provides all verification by the due date in the review month, the eligibility agency shall determine eligibility and notify the enrollee of its decision.

(i) If the eligibility agency sends proper notice of an adverse decision during the review month, the agency shall change eligibility for the month that follows.

(ii) If the eligibility agency does not send proper notice of an adverse change for the month that follows, the agency shall extend eligibility to that month. The eligibility agency shall send proper notice of the effective date of an adverse decision. The enrollee does not owe a premium for the due process month.

(12) If the enrollee responds to the review in the review month and the verification due date is in the month that follows, the eligibility agency shall extend eligibility to the month that follows. The enrollee must provide all verification by the verification due date.

(a) If the enrollee provides all requested verification by the verification due date, the eligibility agency shall determine eligibility and send proper notice of the decision.

(b) If the enrollee does not provide all requested verification by the verification due date, the eligibility agency shall end eligibility effective at the end of the month in which the eligibility agency sends proper notice of the closure.

(c) If the enrollee returns all verification after the verification due date and before the effective closure date, the eligibility agency shall treat the date that it receives all verification as a new application date. The eligibility agency shall determine eligibility and send a notice to the enrollee.

(d) The eligibility agency may not continue eligibility while it determines eligibility. The new certification date for the application is the day after the effective closure date if the enrollee is found eligible.

(13) The eligibility agency shall provide ten-day notice of case closure if the enrollee is determined to be ineligible or if the enrollee fails to provide verification by the verification due date.

(14) If eligibility for CHIP enrollment ends, the eligibility agency shall review the case for eligibility under any other medical assistance program without requiring a new application. The eligibility agency may request additional verification from the household if there is insufficient information to make a determination.

#### **R382-10-17. Eligibility Decisions.**

(1) The eligibility agency shall determine eligibility for CHIP within 30 days of the date of application. If the eligibility agency cannot make a decision in 30 days because the applicant fails to take a required action and requests additional time to complete the application process, or if circumstances beyond the eligibility agency's control delay the eligibility decision, the eligibility agency shall document the reason for the delay in the case record.

(2) If a child made presumptively eligible files an application for medical assistance in accordance with the requirements of Section 1920A of the Social Security Act, presumptive eligibility continues only until the eligibility agency makes an eligibility decision based on that application. Filing additional applications does not extend the presumptive eligibility period.

(3) The eligibility agency may not use the time standard as a waiting period before determining eligibility, or as a reason for denying eligibility when the agency does not determine eligibility within that time.

(4) The eligibility agency shall complete a determination of eligibility or ineligibility for each application unless:

(a) the applicant voluntarily withdraws the application and the eligibility agency sends a notice to the applicant to confirm the withdrawal;

(b) the applicant died; or

(c) the applicant cannot be located or does not respond to requests for information within the 30-day application period.

(5) The eligibility agency shall redetermine eligibility at least every 12 months.

(6) At application and review, the eligibility agency shall determine if any child applying for CHIP enrollment is eligible for coverage under Medicaid.

(a) The enrollee must provide any additional verification needed to determine if a child is eligible for Medicaid or the eligibility agency shall deny the application or review.

(b) A child who is eligible for Medicaid coverage is not eligible for CHIP.

(c) An eligible child who must meet a spenddown to receive Medicaid and chooses not to meet the spenddown may enroll in CHIP.

(d) If the use of the adjusted gross income (AGI) at a review causes the household to appear eligible for Medicaid, the eligibility agency shall request verification of current income and other factors needed to determine Medicaid eligibility. The eligibility agency cannot renew CHIP coverage if the household fails to provide requested verification.

(e) If the AGI causes the household to qualify for a more expensive CHIP plan, the household may choose to verify current income. If current income verification shows the family is eligible for a lower cost plan, the eligibility agency shall change the household's eligibility to the lower cost plan effective the month after verification is provided.

(7) If an enrollee asks for a new income determination during the CHIP certification period and the eligibility agency finds the child is eligible for Medicaid, the agency shall end CHIP coverage and enroll the child in Medicaid.

#### **R382-10-18. Effective Date of Enrollment and Renewal.**

(1) Subject to the limitations in Sections R414-306-6 and R382-10-10, the effective date of CHIP enrollment is the first day of the application month.

(2) The presumptive eligibility period begins on the first day of the month in which a child is determined presumptively eligible for CHIP. Coverage cannot begin in a month that the child is otherwise eligible for medical assistance.

(3) If the eligibility agency receives an application during the first four days of a month, the agency shall allow a grace enrollment period that begins no earlier than four days before the date that the agency receives a completed and signed application. During the grace enrollment period, the individual must receive medical services, meet eligibility criteria, and have an emergency situation that prevents the individual from applying. The Department may not pay for any services that the individual receives before the effective enrollment date.

(4) If a child determined eligible for a presumptive eligibility period files an application in accordance with the requirements of Section 1920A of the Social Security Act and is determined eligible for regular CHIP based on that application, the effective date of CHIP enrollment is the first day of the month of application or the first day of the month in which the presumptive eligibility period began, if later.

(a) The four-day grace period defined in Subsection R382-10-18(3) applies if the applicant meets that criteria and the child was not eligible for any medical assistance during such time period.

(b) Any applicable CHIP premiums apply beginning with the month regular CHIP coverage begins, even if such months are the same months as the CHIP presumptive eligibility period.

(5) 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 placement for adoption if the family requests the coverage within 30 days of the birth or adoption. If the family makes the request more than 30 days after the birth or adoption, enrollment in CHIP will be effective beginning the first day of the month in which the date of report occurs, subject to the limitations in Sections R414-306-6, R382-10-10 and the provisions of Subsection R382-10-18(3).

(6) The effective date of enrollment for a new certification period after the review month is the first day of the month after the review month, if the review process is completed by the end of the review month. If a due process month is approved, the effective date of enrollment for a renewal is the first day of the month after the due process month. The enrollee must complete the review process and continue to be eligible to be reenrolled in CHIP at review.

#### **R382-10-19. Enrollment Period.**

(1) Subject to the provisions in Subsection R382-10-19(2), a child eligible for CHIP enrollment receives 12 months of coverage that begins with the effective month of enrollment. If the eligibility agency allows a grace enrollment period that extends into the month before the application month, the days of the grace enrollment period do not count as a month in the 12-month enrollment period.

(2) CHIP coverage may end before the end of the 12-month certification period if the child:

(a) turns 19 years of age before the end of the 12-month enrollment period;

(b) moves out of the state;

(c) becomes eligible for Medicaid;

(d) begins to be covered under a group health plan or other health insurance coverage;

(e) enters a public institution or an institution for mental diseases; or

(f) does not pay the quarterly premium.

(3) The presumptive eligibility period ends on the earlier of:

(a) the day the eligibility agency makes an eligibility decision for medical assistance based on the child's application when that application is made in accordance with the requirements of Section 1920A of the Social Security Act; or

(b) the last day of the month following the month in which a presumptive eligibility period begins if an application for medical assistance is not filed on behalf of the child by the last day of such month.

(4) The month that a child turns 19 years of age is the last month that the child may be eligible for CHIP, including CHIP presumptive eligibility coverage.

(5) Certain changes affect an enrollee's eligibility during the 12-month certification period.

(a) If an enrollee gains access to health insurance under an employer-sponsored plan or COBRA coverage, the enrollee may switch to UPP. The enrollee must report the health insurance within ten calendar days of enrolling, or within ten calendar days of when coverage begins, whichever is later. The employer-sponsored plan must meet UPP criteria.

(b) If income decreases, the enrollee may report the income and request a redetermination. If the change makes the enrollee eligible for Medicaid, the eligibility agency shall end CHIP eligibility and enroll the child in Medicaid.

(c) If the decrease in income causes the child to be eligible for a lower premium, the change in eligibility becomes effective the month after the eligibility agency receives verification of the change.

(d) If income increases during the certification period, eligibility remains unchanged through the end of the certification period.

(6) Failure to make a timely report of a reportable change may result in an overpayment of benefits.

**R382-10-20. 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 or Alaska Native 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 \$75.

(2) The eligibility agency shall end CHIP coverage and assess a \$15 late fee to a family who does not pay its quarterly premium by the premium due date. The agency may reinstate coverage when any of the following events occur:

(a) The family pays the premium and the late fee 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 whose CHIP coverage ends and who reapplies within one year for coverage must pay any outstanding premiums and late fees before the children can be re-enrolled.

(4) The eligibility agency may not charge the household a premium during a due process month associated with the periodic eligibility review.

(5) The eligibility agency shall assess premiums that are payable each quarter for each month of eligibility.

**KEY: children's health benefits****April 1, 2012****Notice of Continuation May 9, 2013****26-1-5****26-40****R382-10-21. Termination and Notice.**

(1) The eligibility agency shall notify an applicant or enrollee in writing of the eligibility decision made on the application or periodic eligibility review.

(2) The eligibility agency shall notify an enrollee in writing ten calendar days before taking a proposed action that adversely affects the enrollee's eligibility.

(3) Notices under Section R382-10-21 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 when the action is a denial, closure or an adverse change to eligibility;

(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, use legal counsel, a friend, relative, or other spokesperson.

(4) The eligibility agency need not give ten-day notice of termination if:

(a) the child is deceased;

(b) the child moves out-of-state and is not expected to return;

(c) the child enters a public institution or an institution for mental diseases; or

(d) the child's whereabouts are unknown and the post office has returned mail to indicate that there is no forwarding address.

**R382-10-22. Case Closure or Withdrawal.**

The eligibility agency shall end 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 before the eligibility agency makes a decision on the application.

**R386. Health, Disease Control and Prevention, Epidemiology.**

**R386-702. Communicable Disease Rule.**

**R386-702-1. Purpose Statement.**

(1) The Communicable Disease Rule is adopted under authority of Sections 26-1-30, 26-6-3, and 26-23b.

(2) This rule outlines a multidisciplinary approach to communicable and infectious disease control and emphasizes reporting, surveillance, isolation, treatment and epidemiological investigation to identify and control preventable causes of infectious diseases. Reporting requirements and authorizations are specified for communicable and infectious diseases, outbreaks, and unusual occurrence of any disease. Each section has been adopted with the intent of reducing disease morbidity and mortality through the rapid implementation of established practices and procedures.

(3) The successes of medicine and public health dramatically reduced the risk of epidemics and early loss of life due to infectious agents during the twentieth century. However, the recent emergence of new diseases, such as Human Immunodeficiency Virus, Hantavirus, and Severe Acute Respiratory Syndrome, and the rapid spread of diseases to the United States from other parts of the world, such as West Nile virus, made possible by advances in transportation, trade, food production, and other factors highlight the continuing threat to health from infectious diseases. Continual attention to these threats and cooperation among all health care providers, government agencies and other entities that are partners in protecting the public's health are crucial to maintain and improve the health of the citizens of Utah.

**R386-702-2. Definitions.**

(1) Terms in this rule are defined in Section 26-6-2 and 26-23b-102, except that for purposes of this rule, "Department" means the Utah Department of Health.

(2) In addition:

(a) "Outbreak" means an epidemic limited to a localized increase in incidence of disease.

(b) "Case" means a person identified as having a disease, health disorder, or condition that is reportable under this rule or that is otherwise under public health investigation.

(c) "Suspect" case means a person who a reporting entity, local health department, or Department believes might be a case, but for whom it has not been established that the criteria necessary to become a case have been met.

**R386-702-3. Reportable Diseases, Emergency Illnesses, and Health Conditions.**

(1) The Utah Department of Health declares the following conditions to be of concern to the public health and reportable as required or authorized by Section 26-6-6 and Title 26, Chapter 23b of the Utah Health Code.

(a) Acinetobacter species with resistance or intermediate resistance to carbapenem (meropenem and imipenem) from any site

(b) Acquired Immunodeficiency Syndrome

(c) Adverse event resulting after smallpox vaccination

(d) Amebiasis

(e) Anthrax

(f) Arbovirus infection, including Saint Louis encephalitis and West Nile virus infection

(g) Babesiosis

(h) Botulism

(i) Brucellosis

(j) Campylobacteriosis

(k) Chancroid

(l) Chickenpox

(m) Chlamydia trachomatis infection

(n) Cholera

(o) Coccidioidomycosis

(p) Colorado tick fever

(q) Creutzfeldt-Jakob disease and other transmissible human spongiform encephalopathies

(r) Cryptosporidiosis

(s) Cyclospora infection

(t) Dengue fever

(u) Diphtheria

(v) Echinococcosis

(w) Ehrlichiosis, human granulocytic, human monocytic, or unspecified

(x) Encephalitis

(y)(1) Escherichia coli with resistance or intermediate resistance to carbapenem (meropenem, ertapenem, and imipenem) from any site

(y)(2) Shiga toxin-producing Escherichia coli (STEC) infection

(z) Giardiasis

(aa) Gonorrhea: sexually transmitted and ophthalmia neonatorum

(bb) Haemophilus influenzae, invasive disease

(cc) Hansen Disease (Leprosy)

(dd) Hantavirus pulmonary syndrome

(ee) Hemolytic Uremic Syndrome, postdiarrheal

(ff) Hepatitis A

(gg) Hepatitis B, cases and carriers

(hh) Hepatitis C, acute and chronic infection

(ii) Hepatitis, other viral

(jj)(1) Human Immunodeficiency Virus Infection.

Reporting requirements are listed in R388-803.

(jj)(2) Pregnancy in a HIV case

(kk) Influenza-associated hospitalization

(ll) Influenza-associated death, in a person less than 18 years of age

(mm) Klebsiella species with resistance or intermediate resistance to carbapenem (meropenem, ertapenem, and imipenem) from any site

(nn) Legionellosis

(oo) Listeriosis

(pp) Lyme Disease

(qq) Malaria

(rr) Measles

(ss) Meningitis (aseptic, bacterial, fungal, parasitic, protozoan, and viral)

(tt) Meningococcal Disease

(uu) Mumps

(vv) Norovirus, formerly called Norwalk-like virus, infection

(ww) Pertussis

(xx) Plague

(yy) Poliomyelitis, paralytic

(zz) Poliovirus infection, nonparalytic

(aaa) Psittacosis

(bbb) Q Fever

(ccc) Rabies, human and animal

(ddd) Relapsing fever, tick-borne and louse-borne

(eee) Rubella

(fff) Rubella, congenital syndrome

(ggg) Salmonellosis

(hhh) Severe Acute Respiratory Syndrome (SARS)

(iii) Shigellosis

(jjj) Smallpox

(kkk) Spotted fever rickettsioses (including Rocky Mountain Spotted Fever)

(lll) Staphylococcus aureus with resistance or intermediate resistance to vancomycin isolated from any site

(mmm) Streptococcal disease, invasive, including Streptococcus pneumoniae and Groups A, B, C, and G streptococci isolated from a normally sterile site

(nnn) Syphilis, all stages and congenital  
 (ooo) Tetanus  
 (ppp) Toxic-Shock Syndrome, staphylococcal or streptococcal  
 (qqq) Trichinosis  
 (rrr) Tuberculosis. Special Measures for the Control of Tuberculosis are listed in R388-804.  
 (sss) Tularemia  
 (ttt) Typhoid, cases and carriers  
 (uuu) Vibriosis  
 (vvv) Viral hemorrhagic fever  
 (www) Yellow fever  
 (xxx) Any unusual occurrence of infectious or communicable disease or any unusual or increased occurrence of any illness that may indicate a Bioterrorism event or public health hazard, including any single case or multiple cases of a newly recognized, emergent or re-emergent disease or disease-producing agent, including newly identified multi-drug resistant bacteria or a novel influenza strain such as a pandemic influenza strain.

(yyy) Any outbreak, epidemic, or unusual or increased occurrence of any illness that may indicate an outbreak or epidemic. This includes suspected or confirmed outbreaks of foodborne disease, waterborne disease, disease caused by antimicrobial resistant organisms, any infection that may indicate a bioterrorism event, or of any infection that may indicate a public health hazard.

(2) In addition to the reportable conditions set forth in R386-702-3(1) the Department declares the following reportable emergency illnesses or health conditions to be of concern to the public health and reporting is authorized by Title 26, Chapter 23b, Utah Code, unless made mandatory by the declaration of a public health emergency:

(a) respiratory illness (including upper or lower respiratory tract infections, difficulty breathing and Adult Respiratory Distress Syndrome);

(b) gastrointestinal illness (including vomiting, diarrhea, abdominal pain, or any other gastrointestinal distress);

(c) influenza-like constitutional symptoms and signs;

(d) neurologic symptoms or signs indicating the possibility of meningitis, encephalitis, or unexplained acute encephalopathy or delirium;

(e) rash illness;

(f) hemorrhagic illness;

(g) botulism-like syndrome;

(h) lymphadenitis;

(i) sepsis or unexplained shock;

(j) febrile illness (illness with fever, chills or rigors);

(k) nontraumatic coma or sudden death; and

(l) other criteria specified by the Department as indicative of disease outbreaks or injurious exposures of uncertain origin.

#### **R386-702-4. Reporting.**

(1) Each reporting entity shall report each confirmed case and any case who the reporting entity believes in its professional judgment is likely to harbor an illness, infection, or condition reportable under R386-702-3(1), and each outbreak, epidemic, or unusual occurrence described in R386-702-3(1)(xxx) or (yyy) to the local health department or to the Bureau of Epidemiology, Utah Department of Health. Unless otherwise specified, the report of these diseases to the local health department or to the Bureau of Epidemiology, Utah Department of Health shall provide the following information: name, age, sex, address, date of onset, and all other information as prescribed by the Department. A standard report form has been adopted and is supplied to physicians and other reporting entities by the Department. Upon receipt of a report, the local health department shall promptly forward a written or electronic copy of the report to the Bureau of Epidemiology, Utah Department

of Health.

(2) Where immediate reporting is required, the reporting entity shall report as soon as possible, but not later than 24 hours after identification. Immediate reporting shall be made by telephone to the local health department or to the Bureau of Epidemiology, Utah Department of Health at 801-538-6191 or 888-EPI-UTAH (888-374-8824). All diseases not required to be reported immediately or by number of cases shall be reported within three working days from the time of identification. Reporting entities shall send reports to the local health department by phone, secured fax, secured email, or mail; or the Bureau of Epidemiology by phone (801-538-6191), secured fax (801-538-9923), secured email (please contact the Bureau of Epidemiology at 801-538-6191 for information on this option), or by mail (288 North 1460 West, P. O. Box 142104, Salt Lake City, Utah 84114-2104). Laboratories may report case information electronically in a manner approved of by the Department if the laboratory has capacity to do so (please contact the Bureau of Epidemiology at 801-538-6191 for information on this option).

(3) Entities Required to Report Communicable Diseases: Title 26, Chapter 6, Section 6 Utah Code lists those individuals and facilities required to report diseases known or suspected of being communicable.

(a) Physicians, hospitals, health care facilities, home health agencies, health maintenance organizations, and other health care providers shall report details regarding each case.

(b) Schools, child care centers, and citizens shall provide any relevant information.

(c) Laboratories and other testing sites shall report laboratory evidence confirming any of the reportable diseases. Laboratories and other testing sites shall also report any test results that provide presumptive evidence of infection such as positive tests for HIV, syphilis, measles, and viral hepatitis.

(d) Pharmacists shall report unusual prescriptions or patterns of prescribing as specified in section 26-23b-105.

(4) Immediately Reportable Conditions: Cases and suspect cases of anthrax, botulism (except for infant botulism), cholera, diphtheria, Haemophilus influenzae (invasive disease), hepatitis A, measles, meningococcal disease, plague, poliomyelitis, rabies, rubella, Severe Acute Respiratory Syndrome (SARS), smallpox, Staphylococcus aureus with resistance (VRSA) or intermediate resistance (VISA) to vancomycin isolated from any site, tuberculosis, tularemia, typhoid, viral hemorrhagic fever, yellow fever, and any condition described in R386-702-3(1)(xxx) or (yyy) are to be made immediately as provided in R386-702-4(2).

(5) Full reporting of all relevant patient information related to laboratory-confirmed influenza is authorized and may be required by local or state health department personnel for purposes of public health investigation of a documented threat to public health.

(6) Reports of emergency illnesses or health conditions under R386-702-3(2) shall be made as soon as practicable using a process and schedule approved by the Department. Full reporting of all relevant patient information is authorized. The report shall include at least, if known:

(a) name of the facility;

(b) a patient identifier;

(c) date of visit;

(d) time of visit;

(e) patient's age;

(f) patient's sex;

(g) zip code of patient's residence;

(h) the reportable condition suspected; and

(i) whether the patient was admitted to the hospital.

(7) An entity reporting emergency illnesses or health conditions under R386-702-3(2) is authorized to report on other encounters during the same time period that do not meet

definition for a reportable emergency illness or health condition. Submission of an isolate does not replace the requirement to report the case also to the local health department or Bureau of Epidemiology, Utah Department of Health. The report shall include the following information for each such encounter:

- (a) facility name;
- (b) date of visit;
- (c) time of visit;
- (d) patient's age;
- (e) patient's sex; and
- (f) patient's zip code for patient's residence.

(8) **Mandatory Submission of Isolates:** Laboratories shall submit all isolates of the following organisms to the Utah Department of Health, public health laboratory. Laboratories should alert the Unified State Laboratories: Public Health (USLPH), via telephone during business hours (801) 965-2560 or after hours (888) EPI-UTAH, on all bioterrorism (BT) agents that are being submitted. BT agents are marked below (as (BT)) with other organisms mandated for submission:

- (a) *Bacillus anthracis* (BT);
- (b) *Brucella* species (BT);
- (c) *Campylobacter* species;
- (d) *Clostridium botulinum* (BT);
- (e) *Corynebacterium diphtheriae*;
- (f) Shiga toxin-producing *Escherichia coli* (STEC)

(including enrichment and/or MacConkey broths that tested positive by enzyme immunoassay for Shiga toxin);

- (g) *Francisella tularensis* (BT);
- (h) *Haemophilus influenzae*, from normally sterile sites;
- (i) Influenza (hospitalized cases only), types A and B;
- (j) *Legionella* species;
- (k) *Listeria monocytogenes*;
- (l) *Mycobacterium tuberculosis* complex;
- (m) *Neisseria gonorrhoeae*;
- (n) *Neisseria meningitidis*, from normally sterile sites;
- (o) *Salmonella* species;
- (p) *Shigella* species;
- (q) *Staphylococcus aureus* with resistance or intermediate resistance to vancomycin isolated from any site;
- (r) *Vibrio* species;
- (s) *Yersinia* species (*Yersinia pestis*, BT); and
- (t) any organism implicated in an outbreak when instructed by authorized local or state health department personnel.

(9) **Epidemiological Review:** The Department or local health department may conduct an investigation, including review of the hospital and health care facility medical records and contacting the individual patient to protect the public's health.

(10) **Confidentiality of Reports:** All reports required by this rule are confidential and are not open to public inspection. Nothing in this rule, however, precludes the discussion of case information with the attending physician or public health workers. All information collected pursuant to this rule may not be released or made public, except as provided by Section 26-6-27. Penalties for violation of confidentiality are prescribed in Section 26-6-29.

(11) If public health conducts a retrospective surveillance project, such as to assess completeness of case finding or assess another measure of data quality, the department may, at its discretion, waive any penalties for participating facilities, medical providers, laboratories, or other reporters if cases are found that were not originally reported for whatever reason.

### **R386-702-5. General Measures for the Control of Communicable Diseases.**

(1) The local health department shall maintain all reportable disease records as needed to enforce Chapter 6 of the Health Code and this rule, or as requested by the Utah Department of Health.

(2) **General Control Measures for Reportable Diseases.**

(a) The local health department shall, when an unusual or rare disease occurs in any part of the state or when any disease becomes so prevalent as to endanger the state as a whole, contact the Bureau of Epidemiology, Utah Department of Health for assistance, and shall cooperate with the representatives of the Utah Department of Health.

(b) The local health department shall investigate and control the causes of epidemic, infectious, communicable, and other disease affecting the public health. The local health department shall also provide for the detection, reporting, prevention, and control of communicable, infectious, and acute diseases that are dangerous or important or that may affect the public health. The local health department may require physical examination and measures to be performed as necessary to protect the health of others.

(c) If, in the opinion of the local health officer it is necessary or advisable to protect the public's health that any person shall be kept from contact with the public, the local health officer shall establish, maintain and enforce involuntary treatment, isolation and quarantine as provided by Section 26-6-4. Control measures shall be specific to the known or suspected disease agent. Guidance is available from the Bureau of Epidemiology, Utah Department of Health or official reference listed in R386-702-12.

(3) **Prevention of the Spread of Disease From a Case.**

The local health department shall take action and measures as may be necessary within the provisions of Section 26-6-4; Title 26, Chapter 6b; and this rule, to prevent the spread of any communicable disease, infectious agent, or any other condition which poses a public health hazard. Action shall be initiated upon discovery of a case or upon receipt of notification or report of any disease.

(4) **Prevention of the Spread of Disease or Other Public Health Hazard.**

A case, suspected case, carrier, contact, other person, or entity (e.g. facility, hotel, organization) shall, upon request of a public health authority, promptly cooperate during:

(a) An investigation of the circumstances or cause of a case, suspected case, outbreak, or suspected outbreak.

(b) The carrying out of measures for prevention, suppression, and control of a public health hazard, including, but not limited to, procedures of restriction, isolation, and quarantine.

(5) **Public Food Handlers.**

A person known to be infected with a communicable disease that can be transmitted by food or drink products, or who is suspected of being infected with such a disease, may not engage in the commercial handling of food or drink products, or be employed on any premises handling those types of products, unless those products are packaged off-site and remain in a closed container until purchased for consumption, until the person is determined by the local health department to be free of communicable disease, or incapable of transmitting the infection.

(6) **Communicable Diseases in Places Where Food or Drink Products are Handled or Processed.**

If a case, carrier, or suspected case of a disease that can be conveyed by food or drink products is found at any place where food or drink products are handled or offered for sale, or if a disease is found or suspected to have been transmitted by these food or drink products, the local health department may immediately prohibit the sale, or removal of drink and all other food products from the premises. Sale or distribution of food or drink products from the premises may be resumed when measures have been taken to eliminate the threat to health from the product and its processing as prescribed by R392-100.

(7) **Request for State Assistance.**

If a local health department finds it is not able to

completely comply with this rule, the local health officer or his representative shall request the assistance of the Utah Department of Health. In such circumstances, the local health department shall provide all required information to the Bureau of Epidemiology. If the local health officer fails to comply with the provisions of this rule, the Utah Department of Health shall take action necessary to enforce this rule.

(8) Approved Laboratories.

Laboratory analyses that are necessary to identify the causative agents of reportable diseases or to determine adequacy of treatment of patients with a disease shall be ordered by the physician or other health care provider to be performed in or referred to a laboratory holding a valid certificate under the Clinical Laboratory Improvement Amendments of 1988.

**R386-702-6. Special Measures for Control of Rabies.**

(1) Rationale of Treatment.

A physician must evaluate individually each exposure to possible rabies infection. The physician shall also consult with local or state public health officials if questions arise about the need for rabies prophylaxis.

(2) Management of Biting Animals.

(a) A healthy dog, cat, or ferret that bites a person shall be confined and observed at least daily for ten days from the date of bite as specified by local animal control ordinances. It is recommended that rabies vaccine not be administered during the observation period. Such animals shall be evaluated by a veterinarian at the first sign of illness during confinement. A veterinarian or animal control officer shall immediately report any illness in the animal to the local health department. If signs suggestive of rabies develop, a veterinarian or animal control officer shall direct that the animal be euthanized, its head removed, and the head shipped under refrigeration, not frozen, for examination of the brain by a laboratory approved by the Utah Department of Health.

(b) If the dog, cat, or ferret shows no signs of rabies or illness during the ten day period, the veterinarian or animal control officer shall direct that the unvaccinated animal be vaccinated against rabies at the owner's expense before release to the owner. If a veterinarian is not available, the animal may be released, but the owner shall have the animal vaccinated within 72 hours of release. If the dog, cat, or ferret was appropriately vaccinated against rabies before the incident, the animal may be released from confinement after the 10-day observation period with no further restrictions.

(c) Any stray or unwanted dog, cat, or ferret that bites a person may be euthanized immediately by a veterinarian or animal control officer, if permitted by local ordinance, and the head submitted, as described in R386-702-6(2)(a), for rabies examination. If the brain is negative by fluorescent-antibody examination for rabies, one can assume that the saliva contained no virus, and the person bitten need not be treated.

(d) Wild animals include raccoons, skunks, coyotes, foxes, bats, the offspring of wild animals crossbred to domestic dogs and cats, and any carnivorous animal other than a domestic dog, cat, or ferret.

(e) Signs of rabies in wild animals cannot be interpreted reliably. If a wild animal bites or scratches a person, the person or attending medical personnel shall notify an animal control or law enforcement officer. A veterinarian, animal control officer or representative of the Division of Wildlife Resources shall kill the animal at once, without unnecessary damage to the head, and submit the brain, as described in R386-702-6(2)(a), for examination for evidence of rabies. If the brain is negative by fluorescent-antibody examination for rabies, one can assume that the saliva contained no virus, and the person bitten need not be treated.

(f) Rabbits, opossums, squirrels, chipmunks, rats, and mice are rarely infected and their bites rarely, if ever, call for rabies

prophylaxis or testing. Unusual exposures to any animal should be reported to the local health department or the Bureau of Epidemiology, Utah Department of Health.

(g) When rare, valuable, captive wild animals maintained in zoological parks approved by the United States Department of Agriculture or research institutions, as defined by Section 26-26-1, bite or scratch a human, the Bureau of Epidemiology, Utah Department of Health shall be notified. The provisions of subsection R386-702-6(2)(e) may be waived by the Bureau of Epidemiology, Utah Department of Health if zoological park operators or research institution managers can demonstrate that the following rabies control measures are established:

(i) Employees who work with the animal have received preexposure rabies immunization.

(ii) The person bitten by the animal voluntarily agrees to accept postexposure rabies immunization provided by the zoological park or research facility.

(iii) The director of the zoological park or research facility shall direct that the biting animal be held in complete quarantine for a minimum of 180 days. Quarantine requires that the animal be prohibited from direct contact with other animals or humans.

(h) Any animal bitten or scratched by a wild, carnivorous animal or a bat that is not available for testing shall be regarded as having been exposed to rabies.

(i) For maximum protection of the public health, unvaccinated dogs, cats, and ferrets bitten or scratched by a confirmed or suspected rabid animal shall be euthanized immediately by a veterinarian or animal control officer. If the owner is unwilling to have the animal euthanized, the local health officer shall order that the animal be held in strict isolation in a municipal or county animal shelter or a veterinary medical facility approved by the local health department, at the owner's expense, for at least six months and vaccinated one month before being released. If any illness suggestive of rabies develops in the animal, the veterinarian or animal control officer shall immediately report the illness to the local health department and the veterinarian or animal control officer shall direct that the animal be euthanized and the head shall be handled as described in subsection R386-702-6(2)(a).

(j) Dogs, cats, and ferrets that are currently vaccinated and are bitten by rabid animals, shall be revaccinated immediately by a veterinarian and confined and observed by the animal's owner for 45 days. If any illness suggestive of rabies develops in the animal, the owner shall report immediately to the local health department and the animal shall be euthanized by a veterinarian or animal control officer and the head shall be handled as described in subsection R386-702-6(2)(a).

(k) Livestock exposed to a rabid animal and currently vaccinated with a vaccine approved by the United States Department of Agriculture for that species shall be revaccinated immediately by a veterinarian and observed by the owner for 45 days. Unvaccinated livestock shall be slaughtered immediately. If the owner is unwilling to have the animal slaughtered, the animal shall be kept under close observation by the owner for six months.

(l) Unvaccinated animals other than dogs, cats, ferrets, and livestock bitten by a confirmed or suspected rabid animal shall be euthanized immediately by a veterinarian or animal control officer.

(3) Measures for Standardized Rabies Control Practices.

(a) Humans requiring either pre- or post-exposure rabies prophylaxis shall be treated in accordance with the recommendations of the U.S. Public Health Service Immunization Practices Advisory Committee, as adopted and incorporated by reference in R386-702-12(2). A copy of the recommendations shall be made available to licensed medical personnel, upon request to the Bureau of Epidemiology, Utah Department of Health.

(b) A physician or other health care provider that

administers rabies vaccine shall immediately report all serious systemic neuromuscular or anaphylactic reactions to rabies vaccine to the Bureau of Epidemiology, Utah Department of Health, using the process described in R386-702-4.

(c) The Compendium of Animal Rabies Prevention and Control, as adopted and incorporated by reference in R386-702-12(3), is the reference document for animal vaccine use.

(d) A county, city, town, or other political subdivision that requires licensure of animals shall also require rabies vaccination as a prerequisite to obtaining a license.

(e) Animal rabies vaccinations are valid only if performed by or under the direction of a licensed veterinarian in accordance with the Compendium of Animal Rabies Prevention and Control.

(f) All agencies and veterinarians administering vaccine shall document each vaccination on the National Association of State Public Health Veterinarians (NASPHV) form number 51, Rabies Vaccination Certificate, which can be obtained from vaccine manufacturers. The agency or veterinarian shall provide a copy of the report to the animal's owner. Computer-generated forms containing the same information are also acceptable.

(g) Animal rabies vaccines may be sold or otherwise provided only to licensed veterinarians or veterinary biologic supply firms. Animal rabies vaccine may be purchased by the Utah Department of Health and the Utah Department of Agriculture.

(4) Measures to Prevent or Control Rabies Outbreaks.

(a) The most important single factor in preventing human rabies is the maintenance of high levels of immunity in the pet dog, cat, and ferret populations through vaccination.

(i) All dogs, cats, and ferrets in Utah should be immunized against rabies by a licensed veterinarian; and

(ii) Local governments should establish effective programs to ensure vaccination of all dogs, cats, and ferrets and to remove strays and unwanted animals.

(b) If the Utah Department of Health determines that a rabies outbreak is present in an area of the state, the Utah Department of Health may require that:

(i) all dogs, cats, and ferrets in that area and adjacent areas be vaccinated or revaccinated against rabies as appropriate for each animal's age;

(ii) any such animal be kept under the control of its owner at all times until the Utah Department of Health declares the outbreak to be resolved;

(iii) an owner who does not have an animal vaccinated or revaccinated surrender the animal for confinement and possible destruction; and

(iv) such animals found at-large be confined and possibly destroyed.

**R386-702-7. Special Measures for Control of Typhoid.**

(1) Because typhoid control measures depend largely on sanitary precautions and other health measures designed to protect the public, the local health department shall investigate each case of typhoid and strictly manage the infected individual according to the following outline:

(2) Cases: Standard precautions are required during hospitalization. Use contact precautions for diapered or incontinent children under 6 years of age for the duration of illness. Hospital care is desirable during acute illness. Release of the patient from supervision by the local health department shall be based on three or more negative cultures of feces (and of urine in patients with schistosomiasis) taken at least 24 hours apart. Cultures must have been taken at least 48 hours after antibiotic therapy has ended and not earlier than one month after onset of illness as specified in R386-702-7(6). If any of these cultures is positive, repeat cultures at intervals of one month during the 12-month period following onset until at least three consecutive negative cultures are obtained as specified in R386-

702-7(6). The patient shall be restricted from food handling, child care, and from providing patient care during the period of supervision by the local health department.

(3) Contacts: Administration of typhoid vaccine is recommended for all household members of known typhoid carriers. Household and close contacts of a carrier shall be restricted from food handling, child care, and patient care until two consecutive negative stool specimens, taken at least 24 hours apart, are submitted, or when approval is granted by the local health officer according to local jurisdiction.

(4) Carriers: If a laboratory or physician identifies a carrier of typhoid, the attending physician shall immediately report the details of the case by telephone to the local health department or the Bureau of Epidemiology, Utah Department of Health using the process described in R386-702-4. Each infected individual shall submit to the supervision of the local health department. Carriers are prohibited from food handling, child care, and patient care until released in accordance with R386-702-7(4)(a) or R386-702-7(4)(b). All reports and orders of supervision shall be kept confidential and may be released only as allowed by Subsection 26-6-27(2)(c).

(a) Convalescent Carriers: Any person who harbors typhoid bacilli for three but less than 12 months after onset is defined as a convalescent carrier. Release from occupational and food handling restrictions may be granted at any time from three to 12 months after onset, as specified in R386-702-7(6).

(b) Chronic Carriers: Any person who continues to excrete typhoid bacilli for more than 12 months after onset of typhoid is a chronic carrier. Any person who gives no history of having had typhoid or who had the disease more than one year previously, and whose feces or urine are found to contain typhoid bacilli is also a chronic carrier.

(c) Other Carriers: If typhoid bacilli are isolated from surgically removed tissues, organs, including the gallbladder or kidney, or from draining lesions such as osteomyelitis, the attending physician shall report the case to the local health department or the Bureau of Epidemiology, Utah Department of Health. If the person continues to excrete typhoid bacilli for more than 12 months, he is a chronic carrier and may be released after satisfying the criteria for chronic carriers in R386-702-7(6).

(5) Carrier Restrictions and Supervision: The local health department shall report all typhoid carriers to the Bureau of Epidemiology, and shall:

(a) Require the necessary laboratory tests for release;

(b) Issue written instructions to the carrier;

(c) Supervise the carrier.

(6) Requirements for Release of Convalescent and Chronic Carriers: The local health officer or his representative may release a convalescent or chronic carrier from occupational and food handling restrictions only if at least one of the following conditions is satisfied:

(a) For carriers without schistosomiasis, three consecutive negative cultures obtained from fecal specimens authenticated by the attending physician, hospital personnel, laboratory personnel, or local health department staff taken at least one month apart and at least 48 hours after antibiotic therapy has stopped;

(b) for carriers with schistosomiasis, three consecutive negative cultures obtained from both fecal and urine specimens authenticated by the attending physician, hospital personnel, laboratory personnel, or local health department staff taken at least one month apart and at least 48 hours after antibiotic therapy has stopped;

(c) the local health officer or his representative determine that additional treatment such as cholecystectomy or nephrectomy has terminated the carrier state; or

(d) the local health officer or his representative determines the carrier no longer presents a risk to public health according



to the evaluation of other factors.

**R386-702-8. Special Measures for the Control of Ophthalmia Neonatorum.**

Every physician or midwife practicing obstetrics or midwifery shall, within three hours of the birth of a child, instill or cause to be instilled in each eye of such newborn one percent silver nitrate solution contained in wax ampules, or tetracycline ophthalmic preparations or erythromycin ophthalmic preparations, as these are the only antibiotics of currently proven efficacy in preventing development of ophthalmia neonatorum. The value of irrigation of the eyes with normal saline or distilled water is unknown and not recommended.

**R386-702-9. Special Measures to Prevent Perinatal and Person-to-Person Transmission of Hepatitis B Infection.**

(1) A licensed healthcare provider who provides prenatal care shall routinely test each pregnant woman for hepatitis B surface antigen (HBsAg) at an early prenatal care visit. The provisions of this section do not apply if the pregnant woman, after being informed of the possible consequences, objects to the test on the basis of religious or personal beliefs.

(2) The licensed healthcare provider who provides prenatal care should repeat the HBsAg test during late pregnancy for those women who tested negative for HBsAg during early pregnancy, but who are at high risk based on:

- (a) evidence of clinical hepatitis during pregnancy;
- (b) injection drug use;
- (c) occurrence during pregnancy or a history of a sexually transmitted disease;
- (d) occurrence of hepatitis B in a household or close family contact; or
- (e) the judgement of the healthcare provider.

(3) In addition to other reporting required by this rule, each positive HBsAg result detected in a pregnant woman shall be reported to the local health department or the Utah Department of Health, as specified in Section 26-6-6. That report shall indicate that the woman was pregnant at time of testing if that information is available to the reporting entity.

(4) A licensed healthcare provider who provides prenatal care shall document a woman's HBsAg test results, or the basis of the objection to the test, in the medical record for that patient.

(5) Every hospital and birthing facility shall develop a policy to assure that:

(a) when a pregnant woman is admitted for delivery, or for monitoring of pregnancy status, the result from a test for HBsAg performed on that woman during that pregnancy is available for review and documented in the hospital record ;

(b) when a pregnant woman is admitted for delivery if the woman's test result is not available to the hospital or birthing facility, the mother is tested for HBsAg as soon as possible, but before discharge from the hospital or birthing facility;

(c) if a pregnant woman who has not had prenatal care during that pregnancy is admitted for monitoring of pregnancy status only, if the woman's test result is not available to the hospital or birthing facility, the mother is tested for HBsAg status before discharge from the hospital or birthing facility;

(d) positive HBsAg results identified by testing performed or documented during the hospital stay are reported as specified in this rule;

(e) infants born to HBsAg positive mothers receive hepatitis B immune globulin (HBIG) and hepatitis B vaccine, administered at separate injection sites, within 12 hours of birth;

(f) infants born to mothers whose HBsAg status is unknown receive hepatitis B vaccine within 12 hours of birth, and if the infant is born preterm with birth weight less than 2,000 grams, that infant also receives HBIG within 12 hours; and

(g) if at the time of birth the mother's HbsAg status is

unknown and the HBsAg test result is later determined to be positive, that infant receives HBIG as soon as possible but within 7 days of birth.

(6) Local health departments shall perform the following activities or assure that they are performed:

(a) Infants born to HBsAg positive mothers complete the hepatitis B vaccine series as specified in Table 3.18, page 328 and Table 3.21, page 333 of the reference listed in subsection (9).

(b) Children born to HBsAg positive mothers are tested for HBsAg and antibody against hepatitis B surface antigen (anti-HBs) at 9 to 15 months of age (3-9 months after the third dose of hepatitis B vaccine) to monitor the success of therapy and identify cases of perinatal hepatitis B infection.

(i) Children who test negative for HBsAg and do not demonstrate serological evidence of immunity against hepatitis B when tested as described in (b) receive additional vaccine doses and are retested as specified on page 332 of the reference listed in subsection (9).

(c) HBsAg positive mothers are advised regarding how to reduce their risk of transmitting hepatitis B to others.

(d) Household members and sex partners of HBsAg positive mothers are evaluated to determine susceptibility to hepatitis B infection and if determined to be susceptible, are offered or advised to obtain vaccination against hepatitis B.

(7) The provisions of subsections (5) and (6) do not apply if the pregnant woman or the child's guardian, after being informed of the possible consequences, objects to any of the required procedures on the basis of religious or moral beliefs. The hospital or birthing facility shall document the basis of the objection.

(8) Prevention of transmission by individuals with chronic hepatitis B infection.

(a) An individual with chronic hepatitis B infection is defined as an individual who is:

(i) HBsAg positive, and total antibody against hepatitis B core antigen (anti-HBc) positive (if done) and IgM anti-HBc negative; or

(ii) HBsAg positive on two tests performed on serum samples obtained at least 6 months apart.

(b) An individual with chronic hepatitis B infection should be advised regarding how to reduce the risk that the individual will transmit hepatitis B to others.

(c) Household members and sex partners of individuals with chronic hepatitis B infection should be evaluated to determine susceptibility to hepatitis B infection and if determined to be susceptible, should be offered or advised to obtain vaccination against Hepatitis B.

(9) The Red Book Plus: 2009 Report of the Committee on Infectious Diseases, as referenced in R386-702-12(4) is the reference source for details regarding implementation of the requirements of this section.

**R386-702-10. Public Health Emergency.**

(1) Declaration of Emergency: With the Governor's and Executive Director's or in the absence of the Executive Director, his designee's, concurrence, the Department or a local health department may declare a public health emergency by issuing an order mandating reporting emergency illnesses or health conditions specified in sections R386-702-3 for a reasonable time.

(2) For purposes of an order issued under this section and for the duration of the public health emergency, the following definitions apply.

(a) "emergency center" means:

(i) a health care facility licensed under the provisions of Title 26, Chapter 21, Utah Code, that operates an emergency department; or

(ii) a clinic that provides emergency or urgent health care

to an average of 20 or more persons daily.

(b) "encounter" means an instance of an individual presenting at the emergency center who satisfies the criteria in section R386-702-3(2); and

(c) "diagnostic information" means an emergency center's records of individuals who present for emergency or urgent treatment, including the reason for the visit, chief complaint, results of diagnostic tests, presenting diagnosis, and final diagnosis, including diagnostic codes.

(3) Reporting Encounters: The Department shall designate the fewest number of emergency centers as is practicable to obtain the necessary data to respond to the emergency.

(a) Designated emergency centers shall report using the process described in R386-702-4.

(b) An emergency center designated by the Department shall report the encounters to the Department by:

(i) allowing Department representatives or agents, including local health department representatives, to review its diagnostic information to identify encounters during the previous day; or

(ii) reviewing its diagnostic information on encounters during the previous day and reporting all encounters by 9:00 a.m. the following day, or

(iii) identifying encounters and submitting that information electronically to the Department, using a computerized analysis method, and reporting mechanism and schedule approved by the Department; or

(iv) by other arrangement approved by the Department.

(4) For purposes of epidemiological and statistical analysis, the emergency center shall report on encounters during the public health emergency that do not meet the definition for a reportable emergency illness or health condition. The report shall be made using the process described in R386-702-4(6) and shall include the following information for each such encounter:

- (a) facility name;
- (b) date of visit;
- (c) time of visit;
- (d) patient's age;
- (e) patient's sex;
- (f) patient's zip code for patient's residence.

(5) If either the Department or a local health department collects identifying health information on an individual who is the subject of a report made mandatory under this section, it shall destroy that identifying information upon the earlier of its determination that the information is no longer necessary to carry out an investigation under this section or 180 days after the information was collected. However, the Department and local health departments shall retain identifiable information gathered under other sections of this rule or other legal authority.

(6) Reporting on encounters during the public health emergency does not relieve a reporting entity of its responsibility to report under other sections of this rule or other legal authority.

#### **R386-702-11. Penalties.**

Any person who violates any provision of R386-702 may be assessed a penalty as provided in Section 26-23-6.

#### **R386-702-12. Official References.**

All treatment and management of individuals and animals who have or are suspected of having a communicable or infectious disease that must be reported pursuant to this rule shall comply with the following documents, which are adopted and incorporated by reference:

(1) American Public Health Association. "Control of Communicable Diseases Manual". 19th ed., Heymann, David L., editor, 2008.

(2) Centers for Disease Control and Prevention. Human

Rabies Prevention---United States, 2008: Recommendations of the Advisory Committee on Immunization Practices. "Morbidity and Mortality Weekly Report." 2008; 57 (RR03): 1-26, 28.

(3) The National Association of State Public Health Veterinarians, Inc., "Compendium of Animal Rabies Prevention and Control, 2011."

(4) American Academy of Pediatrics. "Red Book: 2012 Report of the Committee on Infectious Diseases" 29th Edition. Elk Grove Village, IL, American Academy of Pediatrics; 2012.

#### **KEY: communicable diseases, quarantine, rabies, rules and procedures**

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**26-1-30**

**26-6-3**

**26-23b**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**

**R414-1. Utah Medicaid Program.**

**R414-1-1. Introduction and Authority.**

(1) This rule generally characterizes the scope of the Medicaid Program in Utah, and defines all of the provisions necessary to administer the program.

(2) The rule is authorized by Title XIX of the Social Security Act, and Sections 26-1-5, 26-18-2.1, 26-18-2.3, UCA.

**R414-1-2. Definitions.**

The following definitions are used throughout the rules of the Division:

- (1) "Act" means the federal Social Security Act.
- (2) "Applicant" means any person who requests assistance under the medical programs available through the Division.
- (3) "Categorically needy" means aged, blind or disabled individuals or families and children:
  - (a) who are otherwise eligible for Medicaid; and
  - (i) who meet the financial eligibility requirements for AFDC as in effect in the Utah State Plan on July 16, 1996; or
  - (ii) who meet the financial eligibility requirements for SSI or an optional State supplement, or are considered under section 1619(b) of the federal Social Security Act to be SSI recipients; or
  - (iii) who is a pregnant woman whose household income does not exceed 133% of the federal poverty guideline; or
  - (iv) is under age six and whose household income does not exceed 133% of the federal poverty guideline; or
  - (v) who is a child under age one born to a woman who was receiving Medicaid on the date of the child's birth and the child remains with the mother; or
  - (vi) who is least age six but not yet age 18, or is at least age six but not yet age 19 and was born after September 30, 1983, and whose household income does not exceed 100% of the federal poverty guideline; or
  - (vii) who is aged or disabled and whose household income does not exceed 100% of the federal poverty guideline; or
  - (viii) who is a child for whom an adoption assistance agreement with the state is in effect.
- (b) whose categorical eligibility is protected by statute.
- (4) "Code of Federal Regulations" (CFR) means the publication by the Office of the Federal Register, specifically Title 42, used to govern the administration of the Medicaid Program.
- (5) "Client" means a person the Division or its duly constituted agent has determined to be eligible for assistance under the Medicaid program.
- (6) "CMS" means The Centers for Medicare and Medicaid Services, a Federal agency within the U.S. Department of Health and Human Services. Programs for which CMS is responsible include Medicare, Medicaid, and the State Children's Health Insurance Program.
- (7) "Department" means the Department of Health.
- (8) "Director" means the director of the Division.
- (9) "Division" means the Division of Health Care Financing within the Department.
- (10) "Emergency medical condition" means a medical condition showing acute symptoms of sufficient severity that the absence of immediate medical attention could reasonably be expected to result in:
  - (a) placing the patient's health in serious jeopardy;
  - (b) serious impairment to bodily functions;
  - (c) serious dysfunction of any bodily organ or part; or
  - (d) death.
- (11) "Emergency service" means immediate medical attention and service performed to treat an emergency medical condition. Immediate medical attention is treatment rendered within 24 hours of the onset of symptoms or within 24 hours of

diagnosis.

(12) "Emergency Services Only Program" means a health program designed to cover a specific range of emergency services.

(13) "Executive Director" means the executive director of the Department.

(14) "InterQual" means the McKesson Criteria for Inpatient Reviews, a comprehensive, clinically based, patient focused medical review criteria and system developed by McKesson Corporation.

(15) "Medicaid agency" means the Department of Health.

(16) "Medical assistance program" or "Medicaid program" means the state program for medical assistance for persons who are eligible under the state plan adopted pursuant to Title XIX of the federal Social Security Act; as implemented by Title 26, Chapter 18.

(17) "Medical or hospital assistance" means services furnished or payments made to or on behalf of recipients under medical programs available through the Division.

(18) "Medically necessary service" means that:

(a) it is reasonably calculated to prevent, diagnose, or cure conditions in the recipient that endanger life, cause suffering or pain, cause physical deformity or malfunction, or threaten to cause a handicap; and

(b) there is no other equally effective course of treatment available or suitable for the recipient requesting the service that is more conservative or substantially less costly.

(19) "Medically needy" means aged, blind, or disabled individuals or families and children who are otherwise eligible for Medicaid, who are not categorically needy, and whose income and resources are within limits set under the Medicaid State Plan.

(20) "Medical standards," as applied in this rule, means that an individual may receive reasonable and necessary medical services up until the time a physician makes an official determination of death.

(21) "Prior authorization" means the required approval for provision of a service that the provider must obtain from the Department before providing the service. Details for obtaining prior authorization are found in Section I of the Utah Medicaid Provider Manual.

(22) "Provider" means any person, individual or corporation, institution or organization that provides medical, behavioral or dental care services under the Medicaid program and who has entered into a written contract with the Medicaid program.

(23) "Recipient" means a person who has received medical or hospital assistance under the Medicaid program, or has had a premium paid to a managed care entity.

(24) "Undocumented alien" means an alien who is not recognized by Immigration and Naturalization Services as being lawfully present in the United States.

(25) "Utilization review" means the Department provides for review and evaluation of the utilization of inpatient Medicaid services provided in acute care general hospitals to patients entitled to benefits under the Medicaid plan.

(26) "Utilization Control" means the Department has implemented a statewide program of surveillance and utilization control that safeguards against unnecessary or inappropriate use of Medicaid services, safeguards against excess payments, and assesses the quality of services available under the plan. The program meets the requirements of 42 CFR, Part 456.

**R414-1-3. Single State Agency.**

The Utah Department of Health is the Single State Agency designated to administer or supervise the administration of the Medicaid program under Title XIX of the federal Social Security Act.

**R414-1-4. Medical Assistance Unit.**

Within the Utah Department of Health, the Division of Health Care Financing has been designated as the medical assistance unit.

**R414-1-5. Incorporations by Reference.**

The Department incorporates the April 1, 2013 versions of the following by reference:

(1) Utah State Plan, including any approved amendments, under Title XIX of the Social Security Act Medical Assistance Program;

(2) Medical Supplies Manual described in the Utah Medicaid Provider Manual, Section 2, Medical Supplies, as applied in Rule R414-70;

(3) Hospital Services Utah Medicaid Provider Manual with its attachments;

(4) Definitions found in the Home Health Agencies Utah Medicaid Provider Manual, and the manual's attachment for the Private Duty Nursing Acuity Grid;

(5) Speech-Language Services Utah Medicaid Provider Manual;

(6) Audiology Services Utah Medicaid Provider Manual;

(7) Hospice Care Utah Medicaid Provider Manual;

(8) Long Term Care Services in Nursing Facilities Utah Medicaid Provider Manual with its attachments;

(9) Personal Care Utah Medicaid Provider Manual with its attachments;

(10) Utah Home and Community-Based Waiver Services for Individuals 65 or Older Utah Medicaid Provider Manual;

(11) Utah Home and Community-Based Waiver Services for Individuals with Acquired Brain Injury Age 18 and Older Utah Medicaid Provider Manual;

(12) Utah Home and Community-Based Waiver for Individuals with Intellectual Disabilities or Other Related Conditions Utah Medicaid Provider Manual;

(13) Utah Home and Community-Based Waiver Services for Individuals with Physical Disabilities Utah Medicaid Provider Manual;

(14) Utah Home and Community-Based Waiver Services New Choices Waiver Utah Medicaid Provider Manual;

(15) Utah Home and Community-Based Waiver Services for Technology Dependent, Medically Fragile Individuals Utah Medicaid Provider Manual;

(16) Utah Home and Community-Based Waiver Services Autism Waiver Utah Medicaid Provider Manual;

(17) Office of Inspector General Administrative Hearings Procedures Manual;

(18) Pharmacy Services Utah Medicaid Provider Manual with its attachments; and

(19) Coverage and Reimbursement Code Look-up Tool  
f o u n d a t  
<http://health.utah.gov/medicaid/stplan/lookup/CoverageLookup.php>.

**R414-1-6. Services Available.**

(1) Medical or hospital services available under the Medical Assistance Program are generally limited by federal guidelines as set forth under Title XIX of the federal Social Security Act and Title 42 of the Code of Federal Regulations (CFR).

(2) The following services provided in the State Plan are available to both the categorically needy and medically needy:

(a) inpatient hospital services, with the exception of those services provided in an institution for mental diseases;

(b) outpatient hospital services and rural health clinic services;

(c) other laboratory and x-ray services;

(d) skilled nursing facility services, other than services in an institution for mental diseases, for individuals 21 years of age

or older;

(e) early and periodic screening and diagnoses of individuals under 21 years of age, and treatment of conditions found, are provided in accordance with federal requirements;

(f) family planning services and supplies for individuals of child-bearing age;

(g) physician's services, whether furnished in the office, the patient's home, a hospital, a skilled nursing facility, or elsewhere;

(h) podiatrist's services;

(i) optometrist's services;

(j) psychologist's services;

(k) interpreter's services;

(l) home health services;

(i) intermittent or part-time nursing services provided by a home health agency;

(ii) home health aide services by a home health agency; and

(iii) medical supplies, equipment, and appliances suitable for use in the home;

(m) private duty nursing services for children under age

21;

(n) clinic services;

(o) dental services;

(p) physical therapy and related services;

(q) services for individuals with speech, hearing, and language disorders furnished by or under the supervision of a speech pathologist or audiologist;

(r) prescribed drugs, dentures, and prosthetic devices and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist;

(s) other diagnostic, screening, preventive, and rehabilitative services other than those provided elsewhere in the State Plan;

(t) services for individuals age 65 or older in institutions for mental diseases:

(i) inpatient hospital services for individuals age 65 or older in institutions for mental diseases;

(ii) skilled nursing services for individuals age 65 or older in institutions for mental diseases; and

(iii) intermediate care facility services for individuals age 65 or older in institutions for mental diseases;

(u) intermediate care facility services, other than services in an institution for mental diseases. These services are for individuals determined, in accordance with section 1902(a)(31)(A) of the Social Security Act, to be in need of this care, including those services furnished in a public institution for the mentally retarded or for individuals with related conditions;

(v) inpatient psychiatric facility services for individuals under 22 years of age;

(w) nurse-midwife services;

(x) family or pediatric nurse practitioner services;

(y) hospice care in accordance with section 1905(o) of the Social Security Act;

(z) case management services in accordance with section 1905(a)(19) or section 1915(g) of the Social Security Act;

(aa) extended services to pregnant women, pregnancy-related services, postpartum services for 60 days, and additional services for any other medical conditions that may complicate pregnancy;

(bb) ambulatory prenatal care for pregnant women furnished during a presumptive eligibility period by a qualified provider in accordance with section 1920 of the Social Security Act; and

(cc) other medical care and other types of remedial care recognized under state law, specified by the Secretary of the United States Department of Health and Human Services, pursuant to 42 CFR 440.60 and 440.170, including:

(i) medical or remedial services provided by licensed practitioners, other than physician's services, within the scope of practice as defined by state law;

(ii) transportation services;

(iii) skilled nursing facility services for patients under 21 years of age;

(iv) emergency hospital services; and

(v) personal care services in the recipient's home, prescribed in a plan of treatment and provided by a qualified person, under the supervision of a registered nurse.

(dd) other medical care, medical supplies, and medical equipment not otherwise a Medicaid service if the Division determines that it meets both of the following criteria:

(i) it is medically necessary and more appropriate than any Medicaid covered service; and

(ii) it is more cost effective than any Medicaid covered service.

#### **R414-1-7. Aliens.**

(1) Certain qualified aliens described in Title IV of Pub. L. No. 104 193, 110 Stat. 2105, may be eligible for the Medicaid program. All other aliens are prohibited from receiving non-emergency services as described in Section 1903(v) of the Social Security Act.

(2) An alien who is prohibited from receiving non-emergency services will have "Emergency Services Only Program" printed on his Medical Identification Card, as noted in Rule R414-3A.

#### **R414-1-8. Statewide Basis.**

The medical assistance program is state-administered and operates on a statewide basis in accordance with 42 CFR 431.50.

#### **R414-1-9. Medical Care Advisory Committee.**

There is a Medical Care Advisory Committee that advises the Medicaid agency director on health and medical care services. The committee is established in accordance with 42 CFR 431.12.

#### **R414-1-10. Discrimination Prohibited.**

In accordance with Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 70b), and the regulations at 45 CFR Parts 80 and 84, the Medicaid agency assures that no individual shall be subjected to discrimination under the plan on the grounds of race, color, gender, national origin, or handicap.

#### **R414-1-11. Administrative Hearings.**

The Department has a system of administrative hearings for medical providers and dissatisfied applicants, clients, and recipients that meets all the requirements of 42 CFR, Part 431, Subpart E.

#### **R414-1-12. Utilization Review.**

(1) The Department conducts hospital utilization review as outlined in the Superior System Waiver in effect at the time service was rendered.

(2) The Department shall determine medical necessity and appropriateness of inpatient admissions during utilization review by use of InterQual Criteria, published by McKesson Corporation.

(3) The standards in the InterQual Criteria shall not apply to services in which a determination has been made to utilize criteria customized by the Department or that are:

(a) excluded as a Medicaid benefit by rule or contract;

(b) provided in an intensive physical rehabilitation center as described in Rule R414-2B; or

(c) organ transplant services as described in Rule R414-

10A.

In these exceptions, or where InterQual is silent, the Department shall approve or deny services based upon appropriate administrative rules or its own criteria as incorporated in the Medicaid provider manuals.

#### **R414-1-13. Provider and Client Agreements.**

(1) To meet the requirements of 42 CFR 431.107, the Department contracts with each provider who furnishes services under the Utah Medicaid Program.

(2) By signing a provider agreement with the Department, the provider agrees to follow the terms incorporated into the provider agreements, including policies and procedures, provider manuals, Medicaid Information Bulletins, and provider letters.

(3) By signing an application for Medicaid coverage, the client agrees that the Department's obligation to reimburse for services is governed by contract between the Department and the provider.

#### **R414-1-14. Utilization Control.**

(1) In order to control utilization, and in accordance with 42 CFR 440, Subpart B, services, equipment, or supplies not specifically identified by the Department as covered services under the Medicaid program are not a covered benefit. In addition, the Department will also use prior authorization for utilization control. All necessary and appropriate medical record documentation for prior approvals must be submitted with the request. If the provider has not obtained prior authorization for a service as outlined in the Medicaid provider manual, the Department shall deny coverage of the service.

(2) The Department may request records that support provider claims for payment under programs funded through the Department. These requests must be in writing and identify the records to be reviewed. Responses to requests must be returned within 30 days of the date of the request. Responses must include the complete record of all services for which reimbursement is claimed and all supporting services. If there is no response within the 30 day period, the Department will close the record and will evaluate the payment based on the records available.

(3)(a) If the Department pays for a service which is later determined not to be a benefit of the Utah Medicaid program or does not comply with state or federal policies and regulations, the provider shall refund the payment upon written request from the Department.

(b) If services cannot be properly verified or when a provider refuses to provide or grant access to records, the provider shall refund to the Department all funds for services rendered. Otherwise, the Department may deduct an equal amount from future reimbursements.

(c) Unless appealed, the refund must be made to Medicaid within 30 days of written notification. An appeal of this determination must be filed within 30 days of written notification as specified in Rule R410-14.

(d) A provider shall reimburse the Department for all overpayments regardless of the reason for the overpayment.

(e) Provider appeals of action for recovery or withholding of money initiated by the Office of Inspector General of Medicaid Services (OIG) shall be governed by the OIG Administrative Hearings Procedures Manual incorporated by reference in Section R414-1-5.

#### **R414-1-15. Medicaid Fraud.**

The Department has established and will maintain methods, criteria, and procedures that meet all requirements of 42 CFR 455.13 through 455.21 for prevention and control of program fraud and abuse.

**R414-1-16. Confidentiality.**

State statute, Title 63G, Chapter 2, and Section 26-1-17.5, impose legal sanctions and provide safeguards that restrict the use or disclosure of information concerning applicants, clients, and recipients to purposes directly connected with the administration of the plan.

All other requirements of 42 CFR Part 431, Subpart F are met.

**R414-1-17. Eligibility Determinations.**

Determinations of eligibility for Medicaid under the plan are made by the Division of Health Care Financing, the Utah Department of Workforce Services, and the Utah Department of Human Services. There is a written agreement among the Utah Department of Health, the Utah Department of Workforce Services, and the Utah Department of Human Services. The agreement defines the relationships and respective responsibilities of the agencies.

**R414-1-18. Professional Standards Review Organization.**

All other provisions of the State Plan shall be administered by the Medicaid agency or its agents according to written contract, except for those functions for which final authority has been granted to a Professional Standards Review Organization under Title XI of the Act.

**R414-1-19. Timeliness in Eligibility Determinations.**

The Medicaid agency shall adhere to all timeliness requirements of 42 CFR 435.911, for processing applications, determining eligibility, and approving Medicaid requests. If these requirements are not completed within the defined time limits, clients may notify the Division of Health Care Financing at 288 North, 1460 West, Salt Lake City, UT 84114-2906.

**R414-1-20. Residency.**

Medicaid is furnished to eligible individuals who are residents of the State under 42 CFR 435.403.

**R414-1-21. Out-of-state Services.**

Medicaid services shall be made available to eligible residents of the state who are temporarily in another state. Reimbursement for out-of-state services shall be provided in accordance with 42 CFR 431.52.

**R414-1-22. Retroactive Coverage.**

Individuals are entitled to Medicaid services under the plan during the 90 days preceding the month of application if they were, or would have been, eligible at that time.

**R414-1-23. Freedom of Choice of Provider.**

Unless an exception under 42 CFR 431.55 applies, any individual eligible under the plan may obtain Medicaid services from any institution, pharmacy, person, or organization that is qualified to perform the services and has entered into a Medicaid provider contract, including an organization that provides these services or arranges for their availability on a prepayment basis.

**R414-1-24. Availability of Program Manuals and Policy Issuances.**

In accordance with 42 CFR 431.18, the state office, local offices, and all district offices of the Department maintain program manuals and other policy issuances that affect recipients, providers, and the public. These offices also maintain the Medicaid agency's rules governing eligibility, need, amount of assistance, recipient rights and responsibilities, and services. These manuals, policy issuances, and rules are available for examination and, upon request, are available to individuals for review, study, or reproduction.

**R414-1-25. Billing Codes.**

In submitting claims to the Department, every provider shall use billing codes compliant with Health Insurance Portability and Accountability Act of 1996 (HIPAA) requirements as found in 45 CFR Part 162.

**R414-1-26. General Rule Format.**

The following format is used generally throughout the rules of the Division. Section headings as indicated and the following general definitions are for guidance only. The section headings are not part of the rule content itself. In certain instances, this format may not be appropriate and will not be implemented due to the nature of the subject matter of a specific rule.

(1) Introduction and Authority. A concise statement as to what Medicaid service is covered by the rule, and a listing of specific federal statutes and regulations and state statutes that authorize or require the rule.

(2) Definitions. Definitions that have special meaning to the particular rule.

(3) Client Eligibility. Categories of Medicaid clients eligible for the service covered by the rule: Categorically Needy or Medically Needy or both. Conditions precedent to the client's obtaining coverage such as age limitations or otherwise.

(4) Program Access Requirements. Conditions precedent external to the client's obtaining service, such as type of certification needed from attending physician, whether available only in an inpatient setting or otherwise.

(5) Service Coverage. Detail of specific services available under the rule, including limitations, such as number of procedures in a given period of time or otherwise.

(6) Prior Authorization. As necessary, a description of the procedures for obtaining prior authorization for services available under the particular rule. However, prior authorization must not be used as a substitute for regulatory practice that should be in rule.

(7) Other Sections. As necessary under the particular rule, additional sections may be indicated. Other sections include regulatory language that does not fit into sections (1) through (5).

**R414-1-27. Determination of Death.**

(1) In accordance with the provisions of Section 26-34-2, the fiduciary responsibility for medically necessary care on behalf of the client ceases upon the determination of death.

(2) Reimbursement for the determination of death by acceptable medical standards must be in accordance with Medicaid coverage and billing policies that are in place on the date the physician renders services.

**R414-1-28. Cost Sharing.**

(1) An enrollee is responsible to pay the:

- hospital a \$220 coinsurance per year;
- hospital a \$6 copayment for each non-emergency use of hospital emergency services;

- provider a \$3 copayment for outpatient office visits for physician and physician-related mental health services except that no copayment is due for preventive services, immunizations, health education, family planning, and related pharmacy costs; and

- pharmacy a \$3 copayment per prescription up to a maximum of \$15 per month;

(2) The out-of-pocket maximum payment for copayments for physician and outpatient services is \$100 per year.

(3) The provider shall collect the copayment amount from the Medicaid client. Medicaid shall deduct that amount from the reimbursement it pays to the provider.

(4) Medicaid clients in the following categories are exempt from copayment and coinsurance requirements;

- children;

(b) pregnant women;  
 (c) institutionalized individuals;  
 (d) American Indians; and  
 (e) individuals whose total gross income, before exclusions and deductions, is below the temporary assistance to needy families (TANF) standard payment allowance. These individuals must indicate their income status to their eligibility caseworker on a monthly basis to maintain their exemption from the copayment requirements.

**R414-1-29. Provider-Preventable Conditions.**

(1) In accordance with 42 CFR 447.26, October 1, 2011 ed., which is incorporated by reference, Medicaid will not reimburse providers or contractors for provider-preventable conditions as noted therein. Please see Utah Medicaid State Plan Attachments 4.19-A and 4.19-B for detail.

(2) Medicaid providers who treat Medicaid eligible patients must report all provider-preventable conditions whether or not reimbursement for the services is sought. Medicaid providers shall meet this requirement by complying with existing state reporting requirements (rules and legislation) of these events that include:

- (a) Rule R380-200;
- (b) Rule R380-210;
- (c) Rule R386-705;
- (d) Rule R428-10; and
- (e) Section 26-6-31.

(3) Utilizing the reporting mechanism from one of the rules noted above shall not impact confidentiality and privacy protections for reporting entities as noted in Title 26, Chapter 25, Confidential Information Release.

**R414-1-30. Governing Hierarchy.**

(1) The Utah Medicaid State Plan under Title XIX of the Social Security Act Medical Assistance Program and any Waivers to that State Plan ("State Plan") shall be the governing authority for implementing the Medicaid program to the extent incorporated by rule. If a conflict exists between a Waiver and the Utah Medicaid State Plan, the Waiver shall govern.

(2) If an administrative rule addresses an issue that is not fully addressed by the State Plan, the administrative rule adopted by the Department shall govern the implementation of the Medicaid program, after giving full effect to the State Plan.

(3) Statements or actions by department employees shall not constitute exceptions or waivers to the governing authority of Subsection R414-1-30 (1) or (2).

**KEY: Medicaid**

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**26-18-3**

**26-34-2**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-29. Client Review/Education and Restriction Policy.****R414-29-1. Introduction and Authority.**

(1) The Client Restriction Program promotes the appropriate use of quality medical services by identifying and correcting overutilization of services.

(2) This rule is required by 42 CFR 431.54(e) and 456.3.

**R414-29-2. Definitions.**

In addition to the definitions in R414-1, the following definitions apply to this rule:

(1) "Overutilize" means use of medical services at a frequency or amount that is above what is medically necessary.

(2) "Restriction Case Manager" means a Medical Doctor or Doctor of Osteopathy who agrees to become the primary medical care provider for all of a restricted client's non-emergency medical needs.

(3) "Restriction Pharmacy" means the only pharmacy that can receive Medicaid reimbursement for dispensing non-emergency pharmacy items to a restricted client.

**R414-29-3. Notifying Clients of Overutilization of Services.**

(1) The Department may require a client to participate in the Restriction Program based on the client's overutilization of services. The Department shall notify the client in writing of its determination. This notice shall:

(a) state the factors, or combination of factors, justifying Restriction Program participation;

(b) cite the regulation authorizing Restriction Program participation;

(c) invite the client to provide additional information justifying the use of services, within ten calendar days after the date the notice is issued;

(d) notify the client that, if he fails to submit additional written justification within ten calendar days after the date the notice is issued, the Department shall require his participation in the Restriction Program.

(e) invite the client to select a Restriction Case Manager and a Restriction Pharmacy;

(f) inform the client that if he fails to contact the Department with a choice within ten calendar days after the date the notice is issued, the Department shall assign a Restriction Case Manager and a Restriction Pharmacy without further notice.

(2) If the client submits additional information within ten calendar days after the notice is issued, the Department shall evaluate this information along with the original data, and notify the client in writing of the Department's determination.

(3) If the client disagrees with the determination, he may request a hearing. The Department shall provide the client with instructions on how to request a hearing, including a hearing request form.

**R414-29-4. Restriction Case Manager.**

The client may select a physician as a Restriction Case Manager if the physician agrees to serve in that capacity and if the Department accepts the physician as a Restriction Case Manager. The Restriction Case Manager must develop a written treatment plan the client understands and accepts.

**R414-29-5. Restriction Pharmacy.**

The client may select a pharmacy as a Restriction Pharmacy if the pharmacy agrees to serve in that capacity and if the Department accepts the pharmacy as a Restriction Pharmacy.

**R414-29-6. Changes in Restriction Case Manager or Restriction Pharmacy.**

(1) When a client requests a change in the Restriction Case

Manager or the Restriction Pharmacy, the request may be verbal or written. Before placing the new Restriction Case Manager on the client's case record, the Department must verify that the proposed Restriction Case Manager agrees to the responsibilities of the Restriction Case Manager.

(2) The Department must approve all changes in the Restriction Case Manager or the Restriction Pharmacy before the client may use a different Restriction Case Manager or Restriction Pharmacy. Circumstances under which the Department may approve such a change are:

(a) client, Restriction Case Manager, or Restriction Pharmacy moves location;

(b) Restriction Case Manager or Restriction Pharmacy discontinues or limits practice;

(c) Restriction Case Manager, or Restriction Pharmacy requests a change;

(d) Department Staff Physician recommends a change, when a periodic assessment of the use of services reveals indications of possible overutilization by the restricted client, the Restriction Case Manager, or both.

(3) The Department may mandate a change in the Restriction Case Manager or Restriction Pharmacy whenever it determines that the client:

(a) continues to overutilize services despite being under restriction; or

(b) is not receiving appropriate care while being managed by the Restriction provider.

**R414-29-7. Length of Restriction.**

(1) A client shall continue participation in the Restriction Program until the client has demonstrated he is not overutilizing services. Once a client is placed in the Restriction Program, a client may request a review for discharge from the Restriction Program after one year. If utilization data supports discharge from the Restriction Program, the client will no longer be enrolled in the program.

(2) If a client loses Medicaid eligibility, and subsequently re-establishes Medicaid eligibility, the Department shall automatically require the client's participation in the Restriction Program if the loss of eligibility is for less than one year.

(3) The Department shall assess the client's utilization of services when requested after Restriction has been maintained for at least one year and shall use information such as:

(a) medical care obtained from multiple practitioners;

(b) prescriptions obtained from multiple practitioners;

(c) emergency rooms used for non-emergency services as defined in the Utah Medicaid Table of Authorized Emergency Diagnosis;

(d) use of multiple emergency rooms;

(e) concurrent use of medications in the same therapeutic class, when prescribed by different practitioners;

(f) indications of forged or altered prescriptions;

(g) use of medical services inconsistent with diagnosis;

(h) other patterns indicating overutilization.

**KEY: Medicaid****May 16, 2013****Notice of Continuation October 5, 2012****26-1-5**



**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-53. Eyeglasses Services.****R414-53-1. Introduction and Authority.**

The Eyeglasses Program provides eyeglasses services to meet the basic vision care needs of Medicaid recipients. This rule is authorized under Utah Code 26-18-3 and governs the services allowed under 42 CFR 440.120(d).

**R414-53-2. Definitions.**

"Eyeglasses" means lenses, including frames, contact lenses, and other aids to vision that are prescribed by a physician skilled in diseases of the eye or by an optometrist.

**R414-53-3. Client Eligibility Requirements.**

Eyeglasses are available only to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment Program.

**R414-53-4. Service Coverage.**

(1) Corrective lenses and frames may be provided based on medical need. Medical need includes a change in prescription or replacement as a result of normal lens or frame wear. Frames must be those in which lenses can be replaced readily without having to provide a new frame. Corrective lenses must be suitable for indoor and outdoor use and for day and night use.

(2) Single vision, bifocal, or trifocal lenses, with or without slab-off prism, in clear glass or plastic, may be provided.

(3) Only the least expensive frame practicable for use, either plastic or metal, may be provided.

(4) Replacements for existing lenses or frames may be provided if the prescribing physician or optometrist documents that they are medically necessary. Eyeglasses may not be replaced more often than every two years unless the prescribing physician or optometrist documents that an earlier replacement is medically necessary. Circumstances that warrant providing new eyeglasses or contact lenses are a diopter change of .75 or more, or disease or damage to the eye. Eyeglasses or contact lenses may not be replaced if they are damaged through client negligence or abuse.

(5) The audiologist or hearing aid provider may provide frames that have hearing aids placed in the earpieces. The prescribing physician or optometrist must dispense the lenses for these frames.

(6) The following services may be provided if the prescribing physician or optometrist documents that they are medically necessary:

- (a) Contact lenses;
- (b) Soft contact lenses;
- (c) Gas permeable contact lenses;
- (d) Tints for eyeglasses or contact lenses where diseases or conditions are present that render the client unusually light-sensitive;
- (e) Low vision aids.

(7) The following services are not provided:

- (a) Additional eyeglasses such as reading glasses, distance glasses, or a "spare";
- (b) Extended wear contact lenses or disposable contact lenses.

**R414-53-5. Reimbursement.**

(1) The Department pays for lenses and standard frames on a fee-for-service basis, based on CPT codes as described in the State Plan, Attachment 4.19-B.

(2) The Department pays the lower of the amount billed or the rate on the schedule. A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private-pay patients.

(3) Fee schedules were initially established after consultation with provider representatives. Adjustments to the schedule are made in accordance with appropriations and to produce efficient and effective services.

**KEY: Medicaid, eyeglasses  
February 24, 2009  
Notice of Continuation May 3, 2013**

**26-1-5  
26-18-3**

**R414. Health, Health Care Financing, Coverage and Reimbursement Policy.****R414-508. Requirements for Transfer of Bed Licenses.****R414-508-1. Introduction and Authority.**

(1) This rule implements requirements that a Medicaid certified nursing care facility program must meet to transfer licensed bed capacity for Medicaid certified beds to another entity.

(2) Sections 26-18-3 and 26-18-505 authorize this rule.

**R414-508-2. Definitions.**

As used in this rule:

(1) "Bureau of Health Facility Licensing, Certification and Resident Assessment" (BHFLCRA) within the Department of Health is the entity that evaluates nursing care facilities to comply with state and federal regulations.

(2) "Bed License" is the state authorization given by BHFLCRA to provide nursing care facility services to an individual resident. BHFLCRA only issues licenses to a nursing care facility program to provide services for several individuals. The number of individuals for which a nursing care facility program can provide service equals the total licensed beds held by the licensee.

(3) "Current Owner" is any one of or combination of the following: owner of a building from which a nursing care facility program operates, owner of land on which a nursing care facility program operates, owner of a nursing care facility program licensed by the BHFLCRA, owner of Medicaid certification, lessor of the building, lessor of the land, mortgagor of the building, mortgagor of the land, the management team responsible for executing the operations of a nursing care facility program, a holder of a lien security interest in the land, a holder of a lien security interest in the building, and a holder of a lien security interest in the business operation.

(4) "Medicaid Certification" is the authorization to provide services outlined in the Medicaid State Plan in accordance with Section R414-27-1;

(5) "Transfer" is a change of ownership due to sale, lease, or mortgage.

(6) "Transfer Agreement" is a contract for a transfer of bed licenses.

**R414-508-3. Bed License Transfer Requirements.**

(1) A nursing care facility program must meet the requirements of Section R414-27 to fulfill the transfer requirements found in Subsection 26-18-505(2).

(2) Pursuant to Subsection 26-18-505(2), a nursing care facility program must demonstrate its intent to transfer bed licenses by providing written notice to the Division of Health Care Financing 30 calendar days before the effective date of the transfer under the agreement. The notice must include the following:

(a) the number of bed licenses that the nursing care facility program intends to transfer;

(b) the effective date of the transfer;

(c) the identity and physical location of the entity receiving the transferred bed licenses;

(d) a notarized statement from all current owners acknowledging and consenting to the transfer of the bed licenses; and

(e) a request to de-license and de-certify the number of transferred licensed beds from the transferring nursing care facility as of the effective transfer date in the transfer agreement.

**R414-508-4. Bed License Receiving Requirements.**

Pursuant to Subsection 26-18-505(3), an entity that receives bed licenses from a nursing care facility program must provide written notice to the Division of Health Care Financing within 14 calendar days of seeking Medicaid certification. The

notice must include the following:

(1) the total number of bed licenses for which it will seek Medicaid certification, which may not exceed the total number of bed licenses received multiplied by a conversion factor of 0.7 and rounded down to the lowest integer as provided in Subsection 26-18-505(3)(c); and

(2) the identity of the nursing care facility program from which the bed licenses were transferred.

**R414-508-5. Expiration and Forfeiture of Bed Licenses.**

Pursuant to Subsection 26-18-505(2), if the receiving entity does not obtain Medicaid certification within three years of the effective date of the transfer, the transferred bed licenses expire and the receiving entity forfeits the bed licenses available through the transfer. The transferring nursing care facility program does not regain any right to the transferred beds that have expired.

**KEY: Medicaid**

**July 1, 2008**

**Notice of Continuation May 30, 2013**

**26-1-3  
26-18-505**

**R426. Health, Family Health and Preparedness, Emergency Medical Services.****R426-2. Air Medical Service Rules.****R426-2-1. Authority and Purpose.**

(1) This Rule is established under Chapter 8, Title 26a.

(2) The purpose of this Rule is to set forth air ambulance policies and rules and standards adopted by the Utah Emergency Medical Services Committee which promote and protect the health and safety of the people of this state.

**R426-2-2. Requirements for Licensure.**

(1) The Department may issue licenses and vehicle permits to air medical services conforming to R426-2 for Advanced Life Support Air Medical Service and for Specialized Life Support Air Medical Service. A Specialized Life Support Air Medical Service license must list, on the license, the specialties for which the Specialized Life Support Air Medical Service is licensed.

(2) A person may not furnish, operate, conduct, maintain, advertise, or provide air medical transport services to patients within the state or from within the state to out of state unless licensed by the Department.

(3) An air medical service shall comply with all state and federal requirements governing the specific vehicles utilized for air medical transport services.

(4) An air medical service must provide air medical services 24 hours a day, every day of the year as allowed by weather conditions except when the service is committed to another medical emergency or is unavailable due to maintenance requirements.

(5) To become licensed as an air medical service, an applicant must submit to the Department an application and appropriate fees for an original license which shall include the following:

(a) Certified Articles of Incorporation, if incorporated.

(b) The name, address, and business type of the owner of the air medical service or proposed air medical service.

(c) The name and address of the air ambulance operator(s) providing air ambulance(s) to the service.

(d) The name under which the applicant is doing business or proposes to do business.

(e) A statement summarizing the training and experience of the applicant in the air transportation and care of patients.

(f) A description and location of each dedicated and back-up air ambulance(s) procured for use in the air medical service, including the make, model, year of manufacture, FAA-N number, insignia, name or monogram, or other distinguishing characteristics.

(g) A copy of current Federal Aviation Administration (FAA) Air Carrier Operating Certificate authorizing FAR, Part 135, operations.

(h) A copy of the current certificate of insurance for the air ambulance.

(i) A copy of the current certificate of insurance demonstrating coverage for medical malpractice.

(j) The geographical service area, location and description of the place or places from which the air ambulance will operate.

(k) Name of the training officer responsible for the air medical personnel continuing education.

(l) The name of the air medical service medical director.

(m) A proposed roster of medical personnel which includes level of certification or licensure.

(n) A statement detailing the level of care for which the air medical service wishes to be licensed, either advanced or specialized.

(6) Upon receipt of an appropriately completed application for an air medical service license and submission of license fees, the Department shall collect supporting documentation and review each application. After review and before issuing a license to a new air medical service, the Department shall

directly inspect the vehicle(s), the air medical equipment, and required documentation.

(7) The Department shall issue an air medical service license and air ambulance permit for a period of four years from the date of issue and which shall remain valid for the period unless revoked or suspended by the Department. The department may conduct inspections to assure compliance.

(8) Upon change of ownership, an air medical service license and air ambulance permit terminates and the new owner or operator must file within ten business days of acquisition an application for renewal of the air medical service license and air ambulance permit.

(9) Air medical services must have an agreement to allow hospital emergency department physicians, nurses, and other personnel who participate in emergency medical services to fly on air ambulances.

(10) Air medical services must provide reports to the Department, for each mission made, on forms or a data format specified by the Department.

(11) Effective July 1, 1998, successful completion of the CAMTS certification process is required for licensure and relicensure by the Department as an air medical service.

(a) Air medical services licensed under R426-2 as of July 1, 1997 must achieve CAMTS certification as of July 1, 1998, and meet requirements of R426-2 for relicensure.

(b) Air medical services licensed under R426-2 after July 1, 1997 must submit an application for CAMTS certification within one year of receiving a license under this rule.

**R426-2-3. Personnel Requirements.**

(1) Emergency Medical Technicians and Paramedics, when responding to a medical emergency, shall display their certification patch or identification card on outer clothing to identify competency level at the scene.

(2) Air medical service providing basic life support must have at least one medical attendant who is an Emergency Medical Technician-Intermediate (EMT-I), EMT-Paramedic, Physician's Assistant, Registered Nurse, or MD.

(3) Air medical services providing advanced life support must have at least one medical attendant who is an EMT-P, PA, RN, or MD. This attendant shall be the primary medical attendant. The second medical attendant may be an EMT-P, PA, Respiratory Therapist, RN, or MD.

(4) Air medical services providing specialized life support must have at least one medical attendant who is a RN or MD. This attendant shall be the primary medical attendant. The second medical attendant may be an EMT-P, PA, RT, RN, or MD.

(5) All Basic, Advanced, and Specialized Life Support Medical Attendants must:

(a) Have a current CPR card or certificate meeting standards approved by the Department.

(b) Have verification in the air medical service file of initial and annual training in altitude physiology, safety, stress management, infection control, hazardous materials, survival training, disaster training, triage, and Utah emergency medical system communications.

(c) Be knowledgeable in the application, operation, care, and removal of all medical equipment used in the care of the patient. The air medical personnel shall have a knowledge of potential in-flight complications, which may arise from the use of the medical equipment and its in-flight capabilities and limitations.

(d) Have available during transport, a current copy of all written protocols authorized for use by the air medical service medical director. Patient care shall be governed by these authorized written protocols.

(6) Air medical services licensed for specialized life support shall meet the following requirements:

(a) Maintain clinical competency by keeping a current completion card in specialty education programs required by the air medical service job description (e.g., American Heart Association/American Academy of Pediatrics Neonatal Association or Pediatric Advanced Life Support pertinent to appropriate specialty).

(b) Attend continuing education for specialty care providers that is specific and appropriate to the mission statement and scope of care for air medical services.

(c) Annually demonstrate to the air medical service medical director a knowledge and competency of specialized care and treatment of patients.

(7) All air medical services shall have an air medical service medical director who is a physician licensed in the state in which the ground base is located for the air ambulance, knowledgeable and responsible for the air medical care of patients.

(8) The air medical service applicant shall provide in writing to the Department the name of the air medical service medical director. If the air medical service medical director is replaced or removed, the air medical service shall notify the Department within thirty days after the action.

(a) The air medical service medical director:

(i) Shall have initial and annual training in altitude physiology, air ambulance safety, stress management, infection control, hazardous materials, survival training, disaster training, triage, and Utah emergency medical system communications. The air medical service shall document this training and make it available for inspection by the Department.

(ii) Shall have a current completion card in Advanced Cardiac Life Support according to the current standards of the American Heart Association.

(iii) Shall have a current completion card in Advanced Trauma Life Support according to the current standards of the American College of Surgeons.

(iv) Shall have a current specialty education completion card in Neonatal Resuscitation Program, Pediatric Advanced Life Support, and other similar courses or equivalent education in these areas.

(v) Shall have access to all specialty physicians as consultants.

(b) It is the responsibility of the air medical director to:

(i) Authorize written protocols for use by air medical attendants and review policies and procedures of the air medical service.

(ii) Develop and review treatment protocols, assess field performance, and critique at least 10% of the air medical service runs.

#### **R426-2-4. Air Ambulance Vehicle Requirements.**

(1) An air ambulance must have a permit from the Department to operate in Utah. Each air ambulance shall carry a decal showing the permit expiration date and permit number issued by the Department as evidence of compliance with R426-2. The permit holder shall meet all Federal Aviation Regulations specific to the operation of the air medical service.

(2) All air medical services shall notify the Department whenever the ground base location of a permitted vehicle is permanently changed.

(3) Air ambulances shall be maintained in good mechanical repair and sanitary condition on premises, properly equipped, maintained, and operated to provide quality service.

(4) Air ambulance requirements are as follows:

(a) The air ambulance must have sufficient space to accommodate at least one patient on a stretcher.

(b) The air ambulance must have sufficient space to accommodate at least two medical attendant seats.

(c) The patient stretcher shall be FAA-approved. It must be installed using the FAA 337 form or a "Supplemental Type

Certificate." The stretcher shall be of sufficient length and width to support a patient in full supine position who is ranked as a 95th percentile American male that is 6 feet tall and weighing 212 pounds. The head of the stretcher shall be capable of being elevated at least 30 degrees.

(d) The air ambulance doors shall be large enough to allow a stretcher to be loaded without rotating it more than 30 degrees about the longitudinal roll axis, or 45 degrees about the lateral pitch axis.

(e) The stretcher shall be positioned so as to allow the medical attendants a clear view and access to any part of the patient's body that may require medical attention. Seat-belted medical attendants must have access to the patient's head and upper body.

(f) The patient, stretcher, attendants, seats, and equipment shall be so arranged as to not block the pilot, medical attendants, or patients from easily exiting the air ambulance.

(g) The air ambulance shall have FAA-approved two point safety belts and security restraints adequate to stabilize and secure any patient, patient stretcher, medical attendants, pilots, or other individuals.

(h) The air ambulance shall have a temperature and ventilation system for the patient treatment area.

(i) The patient area shall have overhead or dome lighting of at least 40-foot candle at the patient level, to allow adequate patient care. During night operations the pilot's cockpit shall be protected from light originating from the patient care area.

(j) The air ambulance shall have a self contained interior lighting system powered by a battery pack or portable light with a battery source.

(k) The pilots, flight controls, power levers, and radios shall be physically protected from any intended or accidental interference by patient, air medical personnel or equipment and supplies.

(l) The patient must be sufficiently isolated from the cockpit to minimize in-flight distractions and interference which would affect flight safety.

(m) The interior surfaces shall be of material easily cleaned, sanitized, and designed for patient safety. Protruding sharp edges and corners shall be padded.

(n) Patients whose medical problems may be adversely affected by changes in altitude may only be transported in a pressurized air ambulance.

(o) The air medical service shall provide all medical attendants with sound ear protectors sufficient to reduce excessive noise pollution arising from the air ambulance during flight.

(p) There shall be sufficient medical oxygen to assure adequate delivery of oxygen necessary to meet the patient medical needs and anticipated in-flight complications. The medical oxygen must:

(i) be installed according to FAA regulation;

(ii) have an oxygen flow rate determined by in-line pressure gauges mounted in the patient care area with each outlet clearly identified and within reach of a seat-belted medical attendant;

(iii) allow the oxygen flow to be stopped at or near the oxygen source from inside the air ambulance;

(iv) have gauges that easily identify the quantity of medical oxygen available;

(v) be capable of delivering fifteen liters/minute at fifty psi;

(vi) have a portable oxygen bottle available for use during patient transfer to and from the air ambulance;

(vii) have a fixed back-up source of medical oxygen in the event of an oxygen system failure;

(viii) the oxygen flow meters shall be recessed, padded, or by other means mounted to prevent injury to patients or medical attendants; and

(ix) "No smoking" signs shall be prominently displayed inside the air ambulance.

(q) The air ambulance electric power must be provided through a power source capable to operate the medical equipment and a back-up source of electric power capable of operating all electrically powered medical equipment for one hour.

(r) The air ambulance must have at least two positive locking devices for intravenous containers padded, recessed, or mounted to prevent injury to air ambulance occupants. The containers shall be within reach of a seat-belted medical attendant.

(s) The air ambulance must be fitted with a metal hard lock container, fastened by hard point restraints to the air ambulance, or must have a locking cargo bay for all controlled substances left in an unattended.

(t) An air ambulance shall have properly maintained survival gear appropriate to the service area and number of occupants.

(u) An air ambulance shall have an equipment configuration that is installed according to FAA criteria and in such a way that the air medical personnel can provide patient care.

(v) The air ambulance shall be configured in such a way that the air medical personnel have access to the patient in order to begin and maintain basic and advanced life support care.

(w) The air ambulance shall have space necessary to allow patient airway maintenance and to provide adequate ventilatory support from the secured, seat-belted position of the medical personnel.

#### **R426-2-5. Equipment Standards.**

(1) Air ambulances must maintain minimum quantities of supplies and equipment for each air medical transport as listed in the document R426 Appendix in accordance with the air medical service's licensure level. Due to weight and safety concerns on specialized air transports, the air medical service medical director shall insure that the appropriate equipment is carried according to the needs of the patient to be transported. All medications shall be stored according to manufacturer recommendations.

(2) All medical equipment except disposable items, shall be designed, constructed, and made of materials that under normal conditions and operations, are durable and capable of withstanding repeated cleaning.

(3) The equipment and medical supplies shall be maintained in working condition and within legal specifications.

(4) All non-disposable equipment shall be cleaned or sanitized after each air medical transport.

(5) Medical equipment shall be stored and readily accessible by air medical personnel.

(6) Before departing, the air medical personnel shall notify the pilot of any add-on equipment for weight and balance considerations.

(7) Physical or chemical restraints must be available and used for combative patients who could possibly hurt themselves or any other person in the air ambulance.

#### **R426-2-6. Operational Standards.**

(1) The pilot may refuse transport to any individual who the pilot considers to be a safety hazard to the air ambulance or any of its passengers.

(2) Records made for each trip on forms or data format specified by the Department, and a copy shall remain at the receiving facility for continuity of care.

(3) The air medical service must maintain a personnel file for personnel which shall include their qualifications and training.

(4) All air medical services must have an operational

manual or policy and procedures manual available for all air medical personnel.

(5) All air medical service records shall be available for inspection by representatives of the Department.

(6)(a) All air ambulances shall be equipped to allow air medical service personnel to be able to:

(i) Communicate with hospital emergency medical departments, flight operations centers, air traffic control, emergency medical services, and law enforcement agencies.

(ii) Communicate with other air ambulances while in flight.

(b) The pilot must be able to override any radio or telephonic transmission in the event of an emergency.

(7) The management of the air medical service shall be familiar with the federal regulations related to air medical services.

(8) Each air medical service must have a safety committee, with a designated safety officer. The committee shall meet at least quarterly to review safety issues and submit a written report to the air medical service management and maintain a copy on file at the air medical service office.

(9) All air medical service shall have a quality management team and a program implemented by this team to assess and improve the quality and appropriateness of patient care provided by the air medical service.

#### **R426-2-7. Statutory Penalties.**

A person who violates this rule is subject to the provisions of Title 26, Chapter 23.

**KEY: emergency medical services, air medical services**  
**May 30, 2013**

**26-8**

**R426. Health, Family Health and Preparedness, Emergency Medical Services.****R426-6. Emergency Medical Services Competitive Grants Program Rules.****R426-6-1. Authority and Purpose.**

- (1) This rule is established under Title 26, Chapter 8a.
- (2) The purpose of this rule is to provide guidelines for the equitable distribution of competitive grant funds specified under the Emergency Medical Services Grants Program.

**R426-6-2. Definitions.**

- (1) County EMS Council or Committee means a group of persons recognized by the county commission as the legitimate entity within the county to formulate policy regarding the provision of EMS.
- (2) Multi-county EMS council or committee means a group of persons recognized by an association of counties as the legitimate entity within the association to formulate policy regarding the provision of EMS.

**R426-6-3. Eligibility.**

- (1) Competitive grants are available for use specifically related to the provision of emergency medical services.
- (2) Grantees must be in compliance with the EMS Systems Act and all EMS rules during the grant period.
- (3) An applicant that is six months or more in arrears in payments owed to the Department is ineligible for competitive grant consideration.

**R426-6-4. Grant Implementation.**

- In accordance with Title 26, Chapter 8a, awards shall be implemented by grants between the Department and the grantee.
- (1) Grant awards are effective on July 1 and must be used by June 30 of the following year.
  - (2) Grant funding is on a reimbursable basis after presentation of documentation of expenditures which are in accordance with the approved grant awards budget.

**R426-6-5. Competitive Grant Process.**

- (1) The Grant Program Guidelines, outlining the review schedule, funding amounts, eligible expenditures, and awards schedule shall be established annually by the EMS Committee.
- (2) The department may accept only complete applications which are submitted by the deadlines established by the EMS Committee.
- (3) It is the intent of the EMS Committee that there be local EMS council or committee review of EMS grant applications. Therefore, copies of grant applications should be provided by grant applicants to their respective county EMS councils or committees and the multi-county EMS councils or committees, where organized, for review and recommendation to the State Grants subcommittee.
- (4) Agencies that are licensed or designated, whose EMS service area includes multiple local EMS Committee jurisdictions will be reviewed separately by the State Grants Subcommittee.
- (5) The Grants Subcommittee shall review the competitive grant applications and forward its recommendations to the EMS Committee. The EMS Committee shall review and comment on the Grants Subcommittee recommendations and forward to the Department.
- (6) Grant recipients shall provide matching funds in the amount specified in the Grant Program Guidelines.
- (7) The Grants Subcommittee may recommend reducing or waiving the matching fund requirements where appropriate in order to respond to special or pressing local or state EMS issues.
- (8) The Grants Subcommittee shall make recommendations based upon the following criteria:

- (a) the impact on patient care;
- (b) a description of the size and significant impediments of the geographic service area;
- (c) the population demographics of the service area;
- (d) the urgency of the need;
- (e) call volume;
- (f) the per capita grant allocated to each agency, and its relative benefit on the agency to provide EMS service;
- (g) local county recommendation;
- (h) a description of the agency; and
- (i) percent of responses to non-residents of the service area.

**R426-6-6. Interim or Emergency Grant Awards.**

- (1) The Grants Subcommittee may recommend interim or emergency grants if all the following are met:
  - (a) Grant funds are available;
  - (b) The applicant clearly demonstrates the need;
  - (c) the application was not rejected by the Grants Subcommittee during the current grant cycle; and
  - (d) Delay of funding to the next scheduled grant cycle would impair the agency's ability to provide EMS care.
- (2) Applicants for interim or emergency grants shall:
  - (a) submit an interim/emergency grant application, following the same format as annual grant applications; and
  - (b) submit the interim/emergency grant application to the Department at least 30 days prior to the EMS Committee meeting at which the grant application will be reviewed.
- (3) The Grants Subcommittee shall review the interim/emergency grant application and forward recommendations to the EMS Committee. The EMS Committee shall review and comment on the Grants Subcommittee recommendations and forward to the Department.

**KEY: emergency medical services, EMS competitive grants  
May 30, 2013 26-8a**

**R430. Health, Family Health and Preparedness, Child Care Licensing.****R430-50. Residential Certificate Child Care.****R430-50-1. Legal Authority and Purpose.**

This rule is promulgated pursuant to Title 26, Chapter 39. This rule establishes standards for the operation and maintenance of residentially certified child care providers who care for one to eight children in their home. It establishes minimum requirements for the health and safety of children in the care of residentially certified providers.

**R430-50-2. Definitions.**

(1) "Body fluid" means blood, urine, feces, vomit, mucus, and saliva.

(2) "Certificate holder" means the person holding a Department of Health child care certificate.

(3) "Department" means the Utah Department of Health.

(4) "Emotional abuse" means behavior that could impair a child's emotional development, such as threatening, intimidating, humiliating, or demeaning a child, constant criticism, rejection, profane language, and inappropriate physical restraint.

(5) "Health care provider" means a licensed professional with prescriptive authority, such as a physician, nurse practitioner, or physician's assistant.

(6) "Inaccessible to children" means:

(a) locked, such as in a locked room, cupboard or drawer;

(b) secured with a child safety device, such as a child safety cupboard lock or doorknob device;

(c) behind a properly secured child safety gate;

(d) located in a cupboard or on a shelf more than 36 inches above the floor; or

(e) not in any location in a bathroom where a child could reach, including by climbing on a toilet, bathtub, or counter.

(7) "Infant" means a child aged birth through 11 months of age.

(8) "Infectious disease" means an illness that is capable of being spread from one person to another.

(9) "Over-the-counter medication" means medication that can be purchased without a written prescription. This includes herbal remedies and vitamin and mineral supplements.

(10) "Parent" means the parent or legal guardian of a child in care.

(11) "Physical abuse" means causing nonaccidental physical harm to a child.

(12) "Preschooler" means a child aged 2 through 4, and 5 year olds who have not yet started kindergarten.

(13) "Provider" means the certificate holder or a substitute.

(14) "Related children" means children for whom a provider is the parent, legal guardian, step-parent, grandparent, step-grandparent, great-grandparent, sibling, step-sibling, aunt, step-aunt, great-aunt, uncle, step-uncle, or great-uncle.

(15) "Sanitize" means to reduce the number of germs on a surface to such a level that disease transmission by that surface is unlikely.

(16) "School age" means kindergarten and older age children.

(17) "Sexual abuse" means abuse as provided in Utah Code, Section 76-5-404.1.

(18) "Sexually explicit material" means any depiction of sexually explicit conduct, as defined in Utah Code, Section 76-5a-2(8).

(19) "Sleeping equipment" means a cot, mat, crib, bassinet, porta-crib, play pen, or bed.

(20) "Stationary play equipment" means equipment such as a climber, a slide, a swing, a merry-go-round, or a spring rocker that is meant to stay in one location when a child uses it. Stationary play equipment does not include:

(a) a sandbox;

(b) a stationary circular tricycle;

(c) a sensory table; or

(d) a playhouse, if the playhouse has no play equipment, such as a slide, swing, ladder, or climber attached to it.

(21) "Strangulation hazard" means something on a component of playground equipment on which a child's clothes or something around a child's neck could become caught. For example, bolt ends that extend more than two threads beyond the face of the nut, hardware configurations that form a hook or leave a gap or space between components, and open "S" type hooks.

(22) "Supervision" means the function of observing, overseeing, and guiding a child or group of children.

(23) "Substitute" means a person who assumes the certificate holder's duties under this rule when the certificate holder is not present. This includes emergency substitutes.

(24) "Toddler" means a child aged 12 months but less than 24 months.

(25) "Unrelated children" means children who are not related children.

(26) "Use zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

(27) "Volunteer" means a person who provides direct care to a child but does not receive direct or indirect compensation for doing so. A volunteer is not included in the provider to child ratio.

**R430-50-3. Certificate Required.**

(1) A person must either be certified under this rule or licensed under R430-90, if he or she:

(a) provides care in lieu of care ordinarily provided by a parent;

(b) provides care for five or more unrelated children;

(c) provides care for four or more hours per day;

(d) has a regularly scheduled, ongoing enrollment; and

(e) provides care for direct or indirect compensation.

(2) The Department does not issue certificates, nor is a certificate required for:

(a) a person who cares for related children only; or

(b) a person who provides care on a sporadic basis only.

**R430-50-4. Indoor Environment.**

(1) The certificate holder shall ensure that any building or playground structure on the premises constructed prior to 1978 which has peeling, flaking, chalking, or failing paint is tested for lead based paint. If lead based paint is found, the certificate holder shall contact the local health department and follow all required procedures for the remediation of the lead based paint hazard.

(2) There shall be a working toilet and a working handwashing sink accessible to each non-diapered child in care.

(3) Each school age child shall have privacy when using the bathroom.

(4) The home shall be ventilated by mechanical ventilation, or by windows that open and have screens.

(4) The certificate holder shall maintain adequate light intensity for the safety of children and the type of activity being conducted and shall keep the lighting equipment in good working condition.

(5) For certificate holders who receive an initial certificate after 1 September 2008 there shall be at least 35 square feet of indoor play space for each child, including the providers' related children who are ages four through twelve and not counted in the provider to child ratios.

(6) Indoor space per child may include floor space used for furniture, fixtures, or equipment if the furniture, fixture, or

equipment is used:

- (a) by children;
- (b) for the care of children; or
- (c) to store children's materials.

(7) Bathrooms, closets, hallways, and entryways are not included when calculating indoor space for children's use.

#### **R430-50-5. Cleaning and Maintenance.**

(1) The certificate holder shall ensure that a clean and sanitary environment is maintained.

(2) The certificate holder shall take safe and effective measures to prevent and eliminate the presence of insects, rodents, and other vermin.

(3) The certificate holder shall maintain ceilings, walls, floor coverings, draperies, blinds, furniture, fixtures, and equipment in good repair to prevent injury to children.

(4) The certificate holder shall ensure that entrances, exits, steps and outside walkways are maintained in a safe condition, and free of ice, snow, and other hazards.

#### **R430-50-6. Outdoor Environment.**

If there is an outdoor play area used by children in care, the following rules apply:

(1) The outdoor play area shall be safely accessible to children.

(2) For certificate holders who received an initial certificate after 1 September 2008, the outdoor play area shall have at least 40 square feet of space for each child using the space at one time.

(3) The outdoor play area shall be enclosed within a 4 foot high fence or wall, or within a solid natural barrier that is at least 4 feet high if:

(a) the certificate holder's home is located on a street with a speed limit higher than 25 miles per hour, or within half a mile of a street with a speed limit higher than 25 miles per hour; or

(b) the certificate holder's home is located on a street with more than two lanes of traffic, or within half a mile of a street with more than two lanes of traffic.

(4) If any of the following hazards exist, they must be located behind a 4 foot high fence, wall, or solid barrier that separates the hazard from the children's outdoor play area:

(a) livestock on the certificate holder's property or within 50 yards of the certificate holder's property line;

(b) a water hazard, such as a swimming pool, pond, ditch, lake, reservoir, river, stream, creek, or animal watering trough, on the certificate holder's property or within 100 yards of the certificate holder's property line;

(c) dangerous machinery, such as farm equipment, on the certificate holder's property or within 50 yards of the certificate holder's property line;

(d) a drop-off of more than 5 feet on the certificate holder's property or within 50 yards of the certificate holder's property line; or

(e) barbed wire within 30 feet of the children's play area.

(5) The outdoor play area shall be free of poisonous plants, harmful objects, toxic or hazardous substances, and standing water.

(6) When in use by children, the outdoor play area shall be free of animal excrement.

(7) If a fence or barrier is required in Subsections (3) or (4) above, or in Subsections 12(9)(c)(i) or 12(10)(b) below, there shall be no gap greater than five inches in the fence or barrier, nor shall any gap between the bottom of the fence or barrier and the ground be greater than five inches.

(8) The outdoor play area shall have a shaded area to protect each child from excessive sun and heat.

(9) An outdoor source of drinking water, such as individually labeled water bottles, or a pitcher of water and individual cups that are taken outside, shall be available to each

child whenever the outside temperature is 75 degrees or higher.

(10) Stationary play equipment used by any child in care shall not be located over hard surfaces such as cement, asphalt, or packed dirt.

(11) The certificate holder shall ensure that children using outdoor play equipment use it safely and in the manner intended by the manufacturer.

(12) There shall be no openings of a size greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter on any piece of stationary play equipment where the feet of any child in care whose head is entrapped in the opening cannot touch the ground.

(13) There shall be no strangulation hazard on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.

(14) There shall be no crush, shearing, or sharp edge hazards on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.

(15) The certificate holder shall ensure that outdoor play areas and outdoor play equipment are maintained to protect each child's safety.

#### **R430-50-7. Personnel.**

(1) The certificate holder and all substitutes must:

(a) be at least 18 years of age; and

(b) have knowledge of and comply with all applicable laws and rules.

(2) The certificate holder may make arrangements for a substitute who is at least 18 years old and who is capable of providing care, supervising children, and handling emergencies in the absence of the certificate holder.

(3) Substitutes who care for children an average of 10 hours per week or more shall meet the first aid and CPR requirements of this rule.

(4) In an unforeseeable emergency, such as a medical emergency requiring immediate care at a hospital or at an urgent care center or a lost child, the certificate holder may assign an emergency substitute who has not had a criminal background screening to care for the children. The certificate holder may use an emergency substitute for up to 24 hours for each emergency event.

(a) The emergency substitute shall be at least 18 years of age.

(b) The emergency substitute is not required to meet the training, first aid and CPR, and TB screening requirements of this rule.

(c) The emergency substitute cannot be a person who has been convicted of a felony or misdemeanor or has been investigated for abuse or neglect by any federal, state, or local government agency. The emergency substitute must provide a signed, written declaration to the certificate holder that he or she is not disqualified under this subsection.

(d) During the term of the emergency, the emergency substitute may be counted as a provider for the purpose of maintaining the required provider to child ratios.

(e) The certificate holder shall make reasonable efforts to minimize the time that the emergency substitute has unsupervised contact with the children in care.

(5) Any new non-emergency substitute or volunteer shall receive orientation training prior to assuming caregiving duties. Orientation training shall be documented in the individual's file and shall include the following topics:

(a) the certificate holder's emergency and disaster plan;

(b) the current child care certificate rules found in Sections R430-50-11 through 24;

(c) a review of the information in the health assessment for each child in care;

(d) procedure for releasing children to authorized individuals only;



- (e) proper clean up of body fluids;
  - (f) signs and symptoms of child abuse and neglect, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;
  - (g) obtaining assistance in emergencies; and
  - (h) if the certificate holder accepts infants or toddlers for care, orientation training topics shall also include:
    - (i) preventing shaken baby syndrome and coping with crying babies; and
    - (ii) preventing sudden infant death syndrome.
- (6) The certificate holder shall complete a minimum of 10 hours of child care training each year, based on the certificate date. A minimum of 5 hours of the required annual training shall be face-to-face instruction.
- (a) Documentation of annual training shall be kept on file, and shall include the name of the training organization, the date, the training topic, and the total hours or minutes of training.
- (b) Annual training hours shall include the following topics at least once every two years:
- (i) a review of all of the current child care certificate rules found in Sections R430-50-11 through 24;
  - (ii) signs and symptoms of child abuse and neglect, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;
  - (iii) principles of child growth and development, including development of the brain; and
  - (iv) positive guidance; and
- (c) if the certificate holder accepts infants or toddlers for care, required training topics shall also include:
- (i) preventing shaken baby syndrome and coping with crying babies; and
  - (ii) preventing sudden infant death syndrome.

#### **R430-50-8. Administration.**

- (1) The certificate holder is responsible for all aspects of the operation and management of the child care program.
- (2) The certificate holder shall comply with all federal, state, and local laws and rules pertaining to the operation of a child care program.
- (3) The certificate holder shall not engage in or allow conduct that is adverse to the public health, morals, welfare, and safety of the children in care.
- (4) The certificate holder shall take all reasonable measures to protect the safety of each child in care. The certificate holder shall not engage in activity or allow conduct that unreasonably endangers any child in care.
- (5) Either the certificate holder or a substitute with authority to act on behalf of the certificate holder shall be present whenever there is a child in care.
- (6) Each week, the certificate holder shall be present at the home at least 50% of the time that one or more children are in care.
- (7) There shall be a working telephone in the home. The certificate holder shall inform the parents of each child in care and the Department of any changes to the certificate holder's telephone number within 48 hours of the change.
- (8) The certificate holder shall call the Department within 24 hours to report any fatality, hospitalization, emergency medical response, or injury that requires attention from a health care provider, unless an emergency medical transport was part of a child's individualized medical treatment plan identified by the parent. The certificate holder shall also mail or fax a written report to the Department within five days of the incident.
- (9) The certificate holder shall train and supervise all substitutes to:
- (a) ensure their compliance with this rule;
  - (b) ensure they meet the needs of the children in care as specified in this rule; and
  - (c) ensure that children are not subjected to emotional,

physical, or sexual abuse while in care.

#### **R430-50-9. Records.**

- (1) The certificate holder shall maintain on-site for review by the Department during any inspection the following general records:
- (a) current animal vaccination records as required in R430-50-22(1)(b);
  - (b) a six week record of child attendance, as required in R430-50-13(3);
  - (c) a current local health department kitchen inspection;
  - (d) an initial local fire department clearance for all areas of the home being used for care;
  - (e) approved initial "CBS/LIS Consent and Release of Liability for Child Care" form for all providers, volunteers, and each person age 12 and older who resides in the certificate holder's home;
  - (f) if the certificate holder has been certified for more than a year, the most recent criminal background "Disclosure Statement" which includes all providers, volunteers, and each person age 12 and older who resided in the home of the certificate holder at any time since the last certificate renewal; and
  - (g) if the certificate holder has been certified for more than a year, the most recent "Request for Annual Renewal of CBS/LIS Criminal History Information for Child Care" which includes all providers, volunteers, and each person age 12 and older who resided in the home of the certificate holder at any time since the last certificate renewal.
- (2) The certificate holder shall maintain on-site for review by the Department during any inspection the following records for each enrolled child:
- (a) an admission form containing the following information for each child:
    - (i) name;
    - (ii) date of birth;
    - (iii) the parent's name, address, and phone number, including a daytime phone number;
    - (iv) the names of people authorized by the parent to pick up the child;
    - (v) the name, address and phone number of a person to be contacted in the event of an emergency if a provider is unable to contact the parent;
    - (vi) child health information, as required in R430-50-14(7); and
    - (vii) current emergency medical treatment and emergency medical transportation releases with the parent's signature;
  - (b) current immunization records or documentation of a legally valid exemption, as specified in R430-50-14(5) and (6);
  - (c) a completed transportation permission form, if transportation services are offered to any child in care; and
  - (d) a six week record of medication permission forms, and a six week record of medications actually administered, as specified in R430-50-17(3) and R430-50-17(5)(f), if medications are administered to any child in care.
- (3) The certificate holder shall maintain on-site for review by the Department during any inspection the following records for the certificate holder and each non-emergency substitute:
- (a) orientation training documentation for all non-emergency substitutes as required in R430-50-7(5);
  - (b) annual training documentation for the past two years as required in R430-50-7(6)(a); and
  - (c) current first aid and CPR certification, as required in R430-50-10(2) and R430-50-20(3)(d).
- (4) The certificate holder shall maintain on-site for review by the Department during any inspection orientation training documentation for each volunteer as required in R430-50-7(5).
- (5) The certificate holder shall ensure that information in any child's file is not released without written parental

permission.

**R430-50-10. Emergency Preparedness.**

(1) The certificate holder shall post the home's street address and emergency numbers, including ambulance, fire, police, and poison control, near the telephone.

(2) The certificate holder and all substitutes who care for children an average of 10 hours per week or more shall maintain a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification. Equivalent CPR certification must include hands-on testing.

(3) The certificate holder shall have an emergency and disaster plan which shall include at least the following:

(a) procedures for responding to medical emergencies and serious injuries that require treatment by a health care provider;

(b) procedures for responding to fire, earthquake, flood, power failure, and water failure;

(c) the location of and procedure for emergency shut off of gas, electricity, and water;

(d) procedures to be followed if a child is missing;

(e) the name and phone number of a substitute to be called in the event the certificate holder must leave the home for any reason; and

(4) The certificate holder shall ensure that the emergency and disaster plan is followed in the event of an emergency.

(5) The certificate holder shall conduct fire evacuation drills semi-annually. Drills shall include complete exit of all children and staff from the home.

(6) The certificate holder shall conduct drills for disasters other than fires at least once every 12 months.

(7) The certificate holder shall vary the days and times on which fire and other disaster drills are held.

**R430-50-11. Supervision and Ratios.**

(1) The certificate holder or a substitute shall be physically present on-site and provide care and direct supervision of each child at all times, both indoors and outdoors. Direct care and supervision of each child includes:

(a) awareness of and responsibility for each child in care, including being near enough to intervene if needed;

(b) ensuring that there is a provider present inside the home when a child in care is inside the home, and a provider present in the outdoor play area when a child in care is outdoors, except as allowed in subsection (2) below for school age children; and

(c) monitoring of each sleeping infant in one of the following ways:

(i) by placing each infant for sleep in a location where the infant is within sight and hearing of a provider;

(ii) by in person observation of each sleeping infant at least once every 15 minutes; or

(iii) by using a Department-approved infant sleep monitoring device.

(2) A provider shall actively supervise each child during outdoor play to minimize the risk of injury to a child. A provider may allow only school age children to play outdoors while the provider is indoors, if:

(a) a provider can hear the children playing outdoors; and

(b) the children playing outdoors are in an area completely enclosed within a 4 foot high fence or wall, or a solid natural barrier that is at least 4 feet high.

(3) The certificate holder may permit a child to participate in supervised out of the home activities without the certificate holder if:

(a) the certificate holder has prior written permission from the child's parent for the child's participation; and

(b) the certificate holder has clearly assigned the responsibility for the child's whereabouts and supervision to a responsible adult who accepts responsibility for the care and

supervision of the child throughout the period of the out of home activity.

(4) The maximum allowed number of children in care at any one time is eight children, including no more than two children under the age of two. The number of children in care includes the providers' own children under the age of four.

(5) The total number of children in care may be further limited based on square footage, as found in Subsection R430-50-4(5) through (7).

**R430-50-12. Injury Prevention.**

(1) The certificate holder shall ensure that the home, outdoor play area, toys, and equipment are maintained and used in a safe manner to prevent injury to children.

(2) The certificate holder shall ensure that the indoor environment is free of tripping hazards such as unsecured flooring or cords in walkways.

(3) Areas accessible to children shall be free of unstable heavy equipment, furniture, or other items that a child could pull down on himself or herself.

(4) The following items shall be inaccessible to each child in care:

(a) firearms, ammunition, and other weapons on the premises. Firearms shall be stored separately from ammunition, in a cabinet or area that is locked with a key or combination lock, unless the use is in accordance with the Utah Concealed Weapons Act, or as otherwise allowed by law;

(b) tobacco, open containers of alcohol, illegal substances, and sexually explicit material;

(c) when in use: portable space heaters, fireplaces, and wood burning stoves;

(d) toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials;

(e) poisonous plants;

(f) matches or cigarette lighters;

(g) open flames;

(h) sharp objects, edges, corners, or points which could cut or puncture skin;

(i) for children age 4 and under, ropes, cords, chains, and wires long enough to encircle a child's neck, such as those found on window blinds or drapery cords;

(j) for children age 4 and under, empty plastic bags large enough for a child's head to fit inside, latex gloves, and balloons; and

(k) for children age 2 and under, toys or other items with a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches, or objects with removable parts that have a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches.

(5) The certificate holder shall ensure that all toxic or hazardous chemicals are stored in a container labeled with its contents.

(6) Electrical outlets and surge protectors accessible to children age four and younger shall have protective caps or safety devices when not in use.

(7) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(8) High chairs shall have T-shaped safety straps or devices that are used whenever a child is in the chair.

(9) If a wading pool is used:

(a) a provider must be at the pool supervising each child whenever there is water in the pool;

(b) diapered children must wear swim diapers and rubber pants whenever they are in the pool;

(c) the pool shall be emptied and sanitized after each use; and

(d) before each child in care uses the pool, the certificate holder shall obtain parental permission for the child to use the pool.

(10) If there is a swimming pool on the premises that is

not emptied after each use:

(a) a provider must be at the pool supervising each child whenever a child in care is using the pool or has access to the pool;

(b) diapered children must wear swim diapers and rubber pants whenever they are in the pool;

(c) the certificate holder shall ensure that children are protected from unintended access to the pool in one of the following ways:

(i) the pool is enclosed within a fence or other solid barrier at least four feet high that is kept locked whenever the pool is not in use by any child in care; or

(ii) the pool has a properly working safety cover that meets ASTM Standard F1346, and the safety cover is in place whenever the pool is not in use by any child in care;

(d) the certificate holder shall maintain the pool in a safe manner;

(e) the certificate holder shall meet all applicable state and local laws and ordinances related to the operation of a swimming pool;

(f) if the pool is over six feet deep, there shall be a Red Cross certified life guard on duty, or a lifeguard certified by another agency that the certificate holder can demonstrate to the Department to be equivalent to Red Cross certification, any time any child in care has access to the pool; and

(g) before each child in care uses the pool, the certificate holder shall obtain parental permission for the child to use the pool.

(11) If there is a hot tub on the premises with water in it, the certificate holder shall ensure that children in care are protected from unintended access to the hot tub in one of the following ways:

(a) it shall have a properly working locking cover that is kept locked whenever there is any child in care on the premises; or

(b) it shall be surrounded by a four foot fence.

(12) If there is a trampoline on the premises that is accessible to any child in care, the certificate holder shall ensure compliance with the following requirements:

(a) A provider must be at the trampoline supervising its use whenever any child in care is on the trampoline.

(b) Only one person at a time may use a trampoline.

(c) No child in care shall be allowed to do somersaults or flips on the trampoline.

(d) The trampoline must have shock absorbing pads that completely cover its springs, hooks, and frame.

(e) The trampoline must be placed at least 6' away from any structure or object onto which a child could fall, including playground equipment, trees, and fences. If the trampoline is completely enclosed within properly installed netting that is in good repair and is at least 6' tall, and that is used as specified by the manufacturer, the trampoline must be placed at least 3' away from any structure or object onto which a child could fall, including playground equipment, trees, and fences.

(f) There shall be no ladders near the trampoline.

(g) No child in care shall be allowed to play under the trampoline when it is in use.

(h) A parent of each child in care who uses the trampoline shall sign a Department-approved permission form before his or her child uses the trampoline.

(i) The trampoline shall be placed over grass or six inches of protective cushioning, which shall extend six feet from the perimeter of the trampoline frame, or three feet from the perimeter of the trampoline frame if a net is used as specified above in subsection (e).

#### **R430-50-13. Parent Notification and Child Security.**

(1) The certificate holder shall either post or, upon enrollment, give each parent a copy of the Department's child

care guide.

(2) At all times when their child is in care, parents shall have access to those areas of the certificate holder's home and outdoor area that are used for child care.

(3) The certificate holder shall ensure that a daily attendance record is maintained to document each enrolled child's attendance.

(4) Only parents or persons with written authorization from the parent may pick up any child. In an emergency, a provider may accept verbal authorization if the provider can confirm the identity of the person giving the verbal authorization and the identity of the person picking up the child.

(5) The certificate holder shall ensure that parents are informed of every incident, accident, or injury involving their child within 24 hours of occurrence.

(6) In the case of a life threatening incident or injury to a child, or an incident or injury that poses a threat of the loss of vision, hearing, or a limb, a provider shall contact emergency personnel immediately, before contacting the parent. If the parent cannot be reached after emergency personnel have been contacted, a provider shall attempt to contact the child's emergency contact person.

(7) If a child is injured and the injury appears serious but not life threatening, a provider shall contact the parent immediately.

#### **R430-50-14. Child Health.**

(1) The certificate holder shall ensure that no child is subjected to physical, emotional, or sexual abuse while in care.

(2) All providers shall follow the reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation found in Utah Code, Section 62A-4a-403 and 62A-4a-411.

(3) The use of alcohol, illegal substances, or sexually explicit material on the premises or in vehicles used to transport children is prohibited any time that a child is in care.

(4) At any time when a child is in care, the provider shall ensure that tobacco is not used:

(a) in the home, garage, or any other building used by a child in care;

(b) in any vehicle that is being used to transport a child in care;

(c) within 25 feet of any entrance to the home, garage, or any other building occupied by a child in care; or

(d) in any outdoor area where a child in care plays, or within 25 feet of any outdoor area where a child in care plays.

(5) The certificate holder shall not enroll any child for care without documentation of:

(a) proof of current immunizations, as required by Utah law;

(b) proof of receiving at least one dose of each required vaccine prior to enrollment, and a written schedule to receive all subsequent required vaccinations; or

(c) written documentation of an immunization exemption due to personal, medical or religious reasons.

(6) The certificate holder shall not provide ongoing care to a child without documentation of:

(a) proof of current immunizations as required by Utah law; or

(b) written documentation of an immunization exemption due to personal, medical or religious reasons.

(7) The certificate holder shall not admit any child for care without the following written health information from the parent:

(a) known allergies;

(b) acute and chronic medical conditions;

(c) instructions for special or non-routine daily health care;

(d) current medications; and,

(e) any other special health instructions for the certificate holder.

(8) If the parent of a child in care has informed the provider that his or her child has a food allergy, that child shall not be given the food or beverage they are allergic to.

(9) The certificate holder shall ensure that each child's parent reviews, updates, and signs or initials the child's health information at least annually.

#### **R430-50-15. Child Nutrition.**

(1) If food service is provided:

(a) The certificate holder shall ensure that his or her meal service complies with local health department food service regulations.

(b) The current week's menu shall be available for parent review.

(2) The certificate holder shall ensure that each child in care is offered a meal or a snack at least once every three hours.

(3) Providers shall serve each child's food on dishes, napkins, or sanitary high chair trays, except for individual serving size items, such as crackers, if they are placed directly in the child's hands. The provider shall not place food on a bare table.

(4) The certificate holder shall ensure that food and drink brought in by parents for an individual child's use is labeled with the child's name or another unique identifier, and refrigerated if needed. Children in care shall not be served food or beverages that were brought in for another child.

#### **R430-50-16. Infection Control.**

(1) All providers and volunteers shall wash their hands with soap and running water at the following times:

(a) before handling or preparing food or bottles;

(b) before and after eating meals and snacks or feeding a child;

(c) after diapering each child;

(d) after using the toilet or helping a child use the toilet;

(e) after coming into contact with any body fluid;

(f) after playing with or handling animals;

(g) when coming in from outdoors; and

(h) before administering medication.

(2) The certificate holder shall ensure that each child washes his or her hands with soap and running water at the following times:

(a) before and after eating meals and snacks;

(b) after using the toilet;

(c) after coming into contact with any body fluid; and

(d) when coming in from outdoors.

(3) During outdoor play time, the requirements of Subsections (1) and (2) may be met by having each provider, volunteer, and child clean his or her hands with individual disposable wet wipes and hand sanitizer.

(4) The certificate holder shall ensure that toilet paper is accessible to each child, and that it is kept in a dispenser.

(5) The certificate holder shall ensure that children are taught proper hand washing techniques, and shall oversee hand washing whenever possible.

(6) Personal hygiene items such as toothbrushes, or combs and hair accessories that are not sanitized between each use, shall not be shared by children or used by a provider on more than one child. Each child's items shall be stored so that they do not touch another child's items.

(7) The certificate holder shall ensure that all washable toys and materials are cleaned and sanitized as needed.

(8) Stuffed animals, cloth dolls, and dress-up clothes must be machine washable. Pillows must be machine washable, or have removable covers that are machine washable. The certificate holder shall ensure that all stuffed animals, cloth dolls, dress-up clothes, and pillows or covers are washed after each 5 days of use, or more often if needed.

(9) If a water play table or tub is used, the certificate

holder shall ensure that the table or tub is washed and sanitized daily, and that each child washes his or her hands prior to engaging in the activity.

(10) Persons with contagious TB shall not work with, assist with, or be present with any child in care.

(11) A provider shall promptly change a child's clothing if the child has a toileting accident.

(12) If a child uses a potty chair, the certificate holder shall ensure that it is cleaned and sanitized after each use.

(13) Except for diaper changes, which are covered in Section R430-50-23, the certificate holder shall ensure that the following precautions are taken when cleaning up blood, urine, feces, and vomit.

(a) The person cleaning up the substance shall wear waterproof gloves;

(b) the surface shall be cleaned using a detergent solution;

(c) the surface shall be rinsed with clean water;

(d) the surface shall be sanitized;

(e) if disposable materials such as paper towels or other absorbent materials are used to clean up the body fluid, they shall be disposed of in a leakproof plastic bag;

(f) if non-disposable materials, such as a cleaning cloth, mop, or re-usable rubber gloves are used to clean up the body fluid, they shall be washed and sanitized before reuse; and

(g) the person cleaning up the fluid shall wash his or her hands after cleaning up the body fluid.

(14) The certificate holder shall ensure that any child who is ill with an infectious disease is separated from any other children in care in a safe, supervised location.

(15) The certificate holder shall ensure that a parent of any child who becomes ill after arrival is contacted as soon as the illness is observed or suspected.

(16) The certificate holder shall ensure that the parents of every child in care are informed when any person in the home or child in care has an infectious disease or parasite. Parents shall be notified the day the infectious disease or parasite is discovered.

#### **R430-50-17. Medications.**

(1) All over-the-counter and prescription medications shall:

(a) be labeled with the child's name;

(b) be kept in the original or pharmacy container;

(c) have the original label; and,

(d) have child-safety caps.

(2) The certificate holder shall ensure that all non-refrigerated over-the-counter and prescription medication is inaccessible to children. The certificate holder shall ensure that all refrigerated over-the-counter and prescription medication is placed in a waterproof container to avoid contamination between food and medication.

(3) The certificate holder shall have a written medication permission form completed and signed by the parent prior to the administering of any over-the-counter or prescription medication brought in by a parent for his or her child. The permission form must include:

(a) the name of the child;

(b) the name of the medication;

(c) written instructions for administration; including:

(i) the dosage;

(ii) the method of administration;

(iii) the times and dates to be administered; and

(iv) the disease or condition being treated; and

(d) the parent signature and the date signed.

(4) If the certificate holder keeps over-the-counter medication that is not brought in by a parent for his or her child's use, the medication shall not be administered to any child without prior parental consent for each instance it is given. The consent must be either:

(a) prior written consent; or  
 (b) oral consent for which a provider documents in writing the date and time of the consent, and which the parent signs upon picking up the child.

(5) When administering medication, the person administering the medication shall:

(a) wash his or her hands;  
 (b) if the parent supplies the medication, check the medication label to confirm the child's name;

(c) if the parent supplies the medication, compare the instructions on the parent release form with the directions on the prescription label or product package to ensure that a child is not given a dosage larger than that recommended by the health care provider or the manufacturer;

(d) if the certificate holder supplies the medication, check the product package to ensure that a child is not given a dosage larger than that recommended by the manufacturer;

(e) administer the medication; and

(f) immediately record the following information:

(i) the date, time, and dosage of the medication given;

(ii) the signature or initials of the provider who administered the medication; and,

(iii) any errors in administration or adverse reactions.

(6) The certificate holder shall ensure that any adverse reaction to a medication or any error in administration is reported to the parent immediately upon recognizing the error or reaction, or after notifying emergency personnel if the reaction is life threatening.

#### **R430-50-18. Napping.**

(1) Sleeping equipment may not block exits at any time.

#### **R430-50-19. Child Discipline.**

(1) The certificate holder shall inform non-emergency substitutes, parents, and children of the certificate holder's behavioral expectations for children.

(2) A provider may use gentle, passive restraint with a child only when it is needed to stop the child from injuring himself or herself or others or from destroying property.

(3) Disciplinary measures shall not include any of the following:

(a) any form of corporal punishment such as hitting, spanking, shaking, biting, pinching, or any other measure that produces physical pain or discomfort;

(b) restraining a child's movement by binding, tying, or any other form of restraint that exceeds that specified in Subsection (2) above;

(c) shouting at any child;

(d) any form of emotional abuse;

(e) forcing or withholding of food, rest, or toileting; and,  
 (f) confining a child in a closet, locked room, or other enclosure such as a box, cupboard, or cage.

#### **R430-50-20. Activities.**

(1) The certificate holder shall offer daily activities to support each child's healthy physical, social-emotional, and cognitive-language development.

(2) The certificate holder shall ensure that the toys and equipment necessary to carry out the activities are accessible to children.

(3) If off-site activities are offered:

(a) the certificate holder shall obtain parental consent for off-site activities in advance;

(b) the certificate holder shall accompany the children and shall take a copy of each child's emergency contact information.

(c) the certificate holder shall maintain required provider to child ratios and direct supervision during the activity;

(d) at least one provider present shall have a current Red Cross, American Heart Association, or equivalent first aid and

infant and child CPR certification. Equivalent CPR certification must include hands-on testing. And

(e) the certificate holder shall ensure that there is a way for each provider, volunteer, and child to wash his or her hands as specified in R430-50-16(1) and (2). If there is no source of running water, providers, volunteers, and children may clean their hands with individual disposable wet wipes and hand sanitizer.

(4) If off-site swimming activities are offered, providers shall remain with the children during the activity, and lifeguards and pool personnel shall not count toward the provider to child ratio.

#### **R430-50-21. Transportation.**

(1) Any vehicle used for transporting any child in care shall:

(a) be enclosed;

(b) be equipped with individual, size appropriate safety restraints, properly installed and in working order, for each child being transported;

(c) be maintained in a safe condition and have a current vehicle registration and safety inspection;

(d) be maintained in a clean condition; and

(e) maintain temperatures between 60-90 degrees Fahrenheit when in use;

(2) The adult transporting any child in care shall:

(a) have and carry with him or her a current valid Utah driver's license, for the type of vehicle being driven, whenever he or she is transporting any child in care;

(b) have with him or her a copy of each child's emergency contact information;

(c) ensure that each child in care being transported is wearing an appropriate individual safety restraint;

(d) ensure that each child is always attended by an adult while in the vehicle;

(e) ensure that all children remain seated while the vehicle is in motion;

(f) ensure that keys are never left in the ignition when the driver is not in the driver's seat; and

(g) ensure that the vehicle is locked during transport.

#### **R430-50-22. Animals.**

(1) The certificate holder shall inform parents of the types of animals permitted on the premises.

(2) The certificate holder shall ensure that all animals on the premises and accessible to any child in care :

(a) are clean and free of obvious disease or health problems that could adversely affect any child in care; and

(b) have current vaccinations for all vaccine preventable diseases that are transmissible to humans. The certificate holder shall have documentation of the vaccinations.

(3) The certificate holder shall ensure that there is no animal on the premises that has a history of dangerous, attacking, or aggressive behavior, or a history of biting even one person.

(4) The certificate holder shall ensure that no child in care assists with the cleaning of animals or animal cages, pens, or equipment.

(5) The certificate holder shall ensure that there is no animal or animal equipment in food preparation or eating areas during food preparation or eating times.

(6) The certificate holder shall ensure that no child in care handles reptiles or amphibians while in care.

#### **R430-50-23. Diapering.**

If children in care are diapered on the premises, the following applies:

(1) The diapering area shall not be located in a food preparation or eating area.

(2) Children shall not be diapered directly on the floor, or on any surface used for another purpose.

(3) The diapering surface shall be smooth, waterproof, and in good repair.

(4) A provider shall clean and sanitize the diapering surface after each diaper change, or use a disposable non-permeable diapering surface that is thrown away after each diaper change.

(5) The provider shall wash his or her hands after each diaper change.

(6) The provider shall place soiled disposable diapers in a container that has a plastic lining and a tightly fitting lid, or place soiled diapers directly in an outdoor garbage container that has a tightly fitting lid or is inaccessible to children.

(7) The certificate holder shall ensure that each child's diaper is checked at least once every two hours, and that each child's diaper is changed promptly if it is wet or soiled. If a child is napping at the end of a two-hour period, the child's diaper must be checked when the child awakes.

#### **R430-50-24. Infant and Toddler Care.**

If the certificate holder cares for infants or toddlers, the following applies:

(1) If an infant is not able to sit upright and hold his or her own bottle, a provider shall hold the infant during bottle feeding. Bottles shall not be propped.

(2) A provider shall clean and sanitize high chair trays prior to each use.

(3) A provider shall cut solid foods for infants into pieces no larger than 1/4 inch in diameter. A provider shall cut solid foods for toddlers into pieces no larger than 1/2 inch in diameter.

(4) If there is more than one infant or toddler in care, baby food, formula, and breast milk for each child that is brought from home must be labeled with the child's name or another unique identifier.

(5) Baby food, formula, and breast milk that is brought from home for an individual child's use must be:

(a) kept refrigerated if needed; and

(b) discarded within 24 hours of preparation or opening, except that powdered formula or dry foods which are opened, but are not mixed, are not considered prepared.

(6) The certificate holder shall ensure that formula and milk, including breast milk, is discarded after each feeding, or within two hours of initiating a feeding.

(7) To prevent burns, a provider shall shake each heated bottle and test it for temperature before the bottle is fed to a child.

(8) If there is more than one infant or toddler in care, pacifiers and bottles shall be:

(a) labeled with each child's name or another unique identifier; or

(b) washed and sanitized after each individual use, before use by another child.

(9) The certificate holder shall ensure that only one infant or toddler occupies any one piece of equipment, such as a crib, playpen, stroller, or swing, at any time, unless the equipment has individual seats for more than one child.

(10) The certificate holder shall ensure that infants sleep in equipment designed for sleep, such as a crib, bassinet, porta-crib or play pen. The certificate holder shall ensure that infants are not placed to sleep on mats or cots, or in bouncers, swings, car seats, or other similar pieces of equipment, unless the certificate holder has written permission from the infant's parent.

(11) The certificate holder shall ensure that each crib used by a child in care:

(a) has a tight fitting mattress;

(b) has slats spaced no more than 2-3/8 inches apart;

(c) has at least 20 inches from the top of the mattress to the

top of the crib rail, or at least 12 inches from the top of the mattress to the top of the crib rail if the child using the crib cannot sit up without assistance; and

(d) does not have strings, cords, ropes, or other entanglement hazards strung upon the crib rails or within reach of the child.

(12) The certificate holder shall ensure that infants are not placed on their stomachs for sleeping, unless there is documentation from a health care provider for treatment of a medical condition.

(13) The certificate holder shall ensure that each infant and toddler is allowed to follow his or her own pattern of sleeping and eating.

(14) Infant walkers with wheels are prohibited.

(15) The certificate holder shall ensure that infants and toddlers do not have access to objects made of styrofoam.

(16) The certificate holder shall ensure that a provider responds as promptly as possible to infants and toddlers who are in emotional distress due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness.

(17) The certificate holder shall ensure that awake infants and toddlers receive positive physical stimulation and positive verbal interaction with a provider at least once every 20 minutes.

(18) The certificate holder shall ensure that awake infants and toddlers are not confined for more than 30 minutes in one piece of equipment, such as swings, high chairs, cribs, play pens, or other similar pieces of equipment.

(19) The certificate holder shall ensure that mobile infants and toddlers have freedom of movement in a safe area.

(20) To stimulate their healthy development, there shall be safe toys accessible to infants and toddlers. The certificate holder shall ensure that there are enough toys for each child in the group to be engaged in play with toys.

(21) The certificate holder shall ensure that all toys used by infants and toddlers are cleaned and sanitized:

(a) weekly;

(b) after being put in a child's mouth before another child uses it; and

(c) after being contaminated by any body fluid.

#### **KEY: child care facilities, residential certification**

**January 1, 2013**

**Notice of Continuation May 29, 2013**

**26-39**

**R430. Health, Family Health and Preparedness, Child Care Licensing.****R430-60. Hourly Child Care Centers.****R430-60-1. Authority and Purpose.**

This rule is promulgated pursuant to Title 26, Chapter 39. It establishes standards for the operation and maintenance of hourly child care centers and requirements to protect the health and safety of children in child care centers.

**R430-60-2. Definitions.**

(1) "Accredited College" means a college accredited by an agency recognized by the United States Department of Education as a valid accrediting agency.

(2) "ASTM" means American Society for Testing and Materials.

(3) "Body fluids" means blood, urine, feces, vomit, mucous, and saliva.

(4) "Caregiver" means an employee or volunteer who provides direct care to children.

(5) "CPSC" means the Consumer Product Safety Commission.

(6) "Department" means the Utah Department of Health.

(7) "Designated Play Surface" means a flat surface on a piece of stationary play equipment that a child could stand, walk, sit, or climb on, and is at least 2" by 2" in size.

(8) "Direct Supervision" for infants, toddlers, and preschoolers means the caregiver can see and hear all of the children in his or her assigned group, and is near enough to intervene when necessary. "Direct Supervision" for school age children means the caregiver must be able to hear school age children and must be near enough to intervene when necessary.

(9) "Emotional Abuse" means behavior that could impair a child's emotional development, such as threatening, intimidating, humiliating, or demeaning a child, constant criticism, rejection, profane language, and inappropriate physical restraint.

(10) "Group" means the children assigned to one or two caregivers, occupying an individual classroom or an area defined by furniture or another partition within a room.

(11) "Health Care Provider" means a licensed professional with prescriptive authority, such as a physician, nurse practitioner, or physician's assistant.

(12) "Inaccessible to Children" means either locked, such as in a locked room, cupboard or drawer, or with a child safety lock, or in a location that a child can not get to.

(13) "Infant" means a child aged birth through 11 months of age.

(14) "Infectious Disease" means an illness that is capable of being spread from one person to another.

(15) "Licensee" means the legally responsible person or persons holding a valid Department of Health child care license.

(16) "Over-the-Counter Medication" means medication that can be purchased without a written prescription from a health care provider. This includes herbal remedies and vitamin or mineral supplements.

(17) "Parent" means the parent or legal guardian of a child in care.

(18) "Person" means an individual or a business entity.

(19) "Physical Abuse" means causing nonaccidental physical harm to a child.

(20) "Preschooler" means a child aged 2 through 4, and 5 year olds who have not yet started kindergarten.

(21) "Protective cushioning" means cushioning material that has been tested to and meets American Society for Testing and Materials (ASTM) Specification F 1292, such as unitary surfaces, wood chips, engineered wood fiber, and shredded rubber mulch. Protective cushioning may also include pea gravel or sand as allowed by the Consumer Product Safety Commission (CPSC).

(22) "Provider" means the licensee or a staff member to whom the licensee has delegated a duty under this rule.

(23) "Sanitize" means to remove soil and small amounts of certain bacteria from a surface or object with a chemical agent.

(24) "School Age" means kindergarten and older age children.

(25) "Sexual Abuse" means abuse as defined in Utah Code, Section 76-5-404.1.(2).

(26) "Sexually Explicit Material" means any depiction of sexually explicit conduct, as defined in Utah Code, Section 76-5b-103(10).

(27) "Sleeping Equipment" means a cot, mat, crib, bassinet, porta-crib, or play pen.

(28) "Stationary Play Equipment" means equipment such as a climber, a slide, a swing, a merry-go-round, or a spring rocker that is meant to stay in one location when children use it. Stationary play equipment does not include:

(a) a sandbox;

(b) a stationary circular tricycle;

(c) a sensory table; or

(d) a playhouse, if the playhouse has no play equipment, such as a slide, swing, ladder, or climber attached to it.

(29) "Toddler" means a child aged 12 months but less than 24 months.

(30) "Use Zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

(31) "Volunteer" means a person who provides care to a child but does not receive direct or indirect compensation for doing so.

**R430-60-3. License Required.**

(1) A person must be licensed as an hourly child care center if he or she:

(a) provides care in the absence of the child's parent;

(b) provides care in a place other than the provider's home or the child's home;

(c) provides care for five or more children for four or more hours per day, but not on a regular schedule;

(d) provides care for each individual child for less than 24 hours per day;

(e) provides care that is open to children on an ongoing basis for four or more weeks in a year; and

(f) provides care for direct or indirect compensation.

(2) If five or more children attend the center for four or more hours a day on a regularly scheduled ongoing basis, the center must be licensed under R430-100.

**R430-60-4. Facility.**

(1) The licensee shall ensure that any building or playground structure constructed prior to 1978 which has peeling, flaking, chalking, or failing paint is tested for lead based paint. If lead based paint is found, the licensee shall contact the local health department and follow all required procedures for the removal of the lead based paint.

(2) For preschool and younger children, there shall be one working toilet and one working sink for every fifteen children in the center, excluding diapered children. For school age children, there shall be one working toilet and one working sink for every 25 children in the center.

(3) School age children shall have privacy when using the bathroom.

(4) All rooms and occupied areas in the building shall be ventilated by windows that open and have screens or by mechanical ventilation.

(5) The provider shall maintain the indoor temperature

between 65 and 82 degrees Fahrenheit.

(6) The provider shall maintain adequate light intensity for the safety of children and the type of activity being conducted by keeping lighting equipment in good working condition.

(7) There shall be at least 35 square feet of indoor space for each child, including the licensee's and employees' children who are not counted in the caregiver to child ratios.

(8) Indoor space per child may include floor space used for furniture, fixtures, or equipment if the furniture, fixture, or equipment is used:

- (a) by children;
- (b) for the care of children; or
- (c) to store classroom materials.

(9) Bathrooms, closets, staff lockers, hallways, corridors, lobbies, kitchens, or staff offices are not included when calculating indoor space for children's use.

**R430-60-5. Cleaning and Maintenance.**

(1) The provider shall maintain a clean and sanitary environment.

(2) The provider shall clean and sanitize bathroom surfaces daily, including toilets, sinks, faucets, and counters.

(3) The provider shall take safe and effective measures to prevent and eliminate the presence of insects, rodents, and other vermin.

(4) The provider shall maintain ceilings, walls, floor coverings, draperies, blinds, furniture, fixtures, and equipment in good repair to prevent injury to children.

(5) The provider shall maintain entrances, exits, steps and outside walkways in a safe condition, and free of ice, snow, and other hazards.

**R430-60-6. Outdoor Environment.**

If the center has an outdoor play area used by children in care, the following rules apply:

(1) The outdoor play area shall be safely accessible to children.

(2) The outdoor play area shall have at least 40 square feet of space for each child using the playground at the same time as other children.

(3) The outdoor play area shall be enclosed within a 4 foot high fence or wall, or a solid natural barrier that is at least 4 feet high. When children play outdoors, they must play in the enclosed play area except during off-site activities described in Section R430-60-20(2).

(4) There shall be no gaps in fences greater than 5 inches at any point, nor shall gaps between the bottom of the fence and the ground be more than 5 inches.

(5) There shall be no openings greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter anywhere in the outdoor play area where children's feet cannot touch the ground.

(6) When in use, the outdoor play area shall be free of animal excrement, harmful plants, objects, or substances, and standing water.

(7) The outdoor play area shall have a shaded area to protect children from excessive sun and heat.

(8) An outdoor source of drinking water, such as a drinking fountain, individually labeled water bottles, or a pitcher of water and individual cups that are taken outside, shall be available to children whenever the outside temperature is 75 degrees or higher.

(9) All outdoor play equipment and areas shall comply with the following safety standards:

(a) All stationary play equipment used by infants and toddlers shall meet the following requirements:

(i) There shall be no designated play surface that exceeds 3 feet in height.

(ii) If the height of a designated play surface or climbing bar on a piece of equipment is greater than 18 inches, it shall

have use zones that extend a minimum of 3 feet in all directions from the perimeter of each piece of equipment.

(b) All stationary play equipment used by preschoolers or school age children shall meet the following requirements for use zones:

(i) If the height of a designated play surface or climbing bar on a piece of equipment is greater than 20 inches, it shall have use zones that extend a minimum of 6 feet in all directions from the perimeter of each piece of equipment.

(c) Two-year-olds may play on infant and toddler play equipment.

(d) Protective cushioning is required in all use zones.

(e) If loose material is used as protective cushioning, the depth of the material shall be at least 9 inches. The provider shall ensure that the material is periodically checked for compaction, and if compacted, shall loosen the material. If the material cannot be loosened due to extreme weather conditions, the provider shall not allow children to play on the equipment until the material can be loosened to the required depth.

(f) If a unitary cushioning material, such as rubber mats or poured rubber-like material is used as protective cushioning:

(i) the licensee shall ensure that the material meets the standard established in ASTM Specification F 1292. The provider shall maintain documentation from the manufacturer that the material meets these specifications.

(ii) the licensee shall ensure that the cushioning material is securely installed, so that it cannot become displaced when children jump, run, walk, land, or move on it, or be moved by children picking it up.

(g) Stationary play equipment that has a designated play surface less than the height specified in Table 1, and that does not have moving parts children sit or stand on, may be placed on grass, but shall not be placed on concrete, asphalt, dirt, or any other hard surface.

TABLE 1

Heights of Designated Play Surfaces That May Be Placed on Grass

Infants and Toddlers Less than 18"	Preschoolers Less than 20"	School Age Less than 30"
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(10) There shall be no openings greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter on any piece of stationary play equipment, or within or adjacent to the use zone of any piece of stationary play equipment.

(11) There shall be no strangulation hazards on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.

(12) There shall be no crush, shearing, or sharp edge hazards on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.

(13) There shall be no tripping hazards, such as concrete footings, tree stumps, tree roots, or rocks within the use zone of any piece of stationary play equipment.

(14) The provider shall maintain playgrounds and playground equipment to protect children's safety.

**R430-60-7. Personnel.**

(1) The center must have a director who is at least 21 years of age and who has one of the following:

(a) an associates, bachelors, or graduate degree in child development, early childhood education, elementary education, or recreation from an accredited college;

(b) a college degree in a related field with documented four courses of higher education completed in child development;

(c) valid proof of a level 8, 9, or 10 Utah Early Childhood Career Ladder certification issued by the Utah Office of Child Care or the Utah Child Care Professional Development



Institute;

(d) a currently valid national certification such as a Certified Childcare Professional (CCP) issued by the National Child Care Association, a Child Development Associate (CDA) issued by the Council for Early Childhood Professional Recognition, or other credential that the licensee demonstrates as equivalent to the Department; or

(e) a currently valid National Administrator Credential (NAC) issued by the National Child Care Association, plus one of the following:

(i) valid proof of successful completion of 12 semester credit hours of early childhood development courses from an accredited college; or

(ii) valid proof of completion of the following six Utah Early Childhood Career Ladder courses offered through Child Care Resource and Referral: Child Development Ages and Stages, Learning in the Early Years, A Great Place for Kids, Strong and Smart, Learning to Get Along, and Advanced Child Development.

(f) two years experience in child care, elementary education, or a related field.

(2) All caregivers included in the required caregiver to child ratios shall be at least 18 years of age.

(3) A volunteer may be included in the provider to child ratio only if the volunteer meets all of the caregiver requirements of this rule.

(4) Each new director, assistant director, caregiver, and volunteer shall receive orientation training prior to assuming caregiving duties. Orientation training shall be documented in the caregiver's file and shall include the following topics:

(a) specific job responsibilities;

(b) the center's emergency and disaster plan;

(c) the current child care licensing rules found in Sections R430-60-11 through 24;

(d) procedure for releasing children to authorized individuals only;

(e) proper clean up of body fluids;

(f) signs and symptoms of child abuse and neglect, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;

(g) obtaining assistance in emergencies, as specified in the center's emergency and disaster plan.

(h) If the center provides infant or toddler care, new caregiver orientation training topics shall also include:

(i) preventing shaken baby syndrome and coping with crying babies; and

(ii) preventing sudden infant death syndrome.

(5) The following individuals shall complete a minimum of 10 hours of child care training each year, based on the center's license date:

(a) the director;

(b) all caregivers;

(c) all substitutes who work an average of 10 hours a week or more, as averaged over any three month period; and

(d) all volunteers that the provider includes in the provider to child ratio.

(6) Documentation of annual training shall be kept in each caregiver's file, and shall include the name of the training organization, the date, the training topic, and the total hours or minutes of training.

(7) Caregivers who begin employment partway through the license year shall complete a proportionate number of training hours based on the number of months worked prior to the center's relicensure date.

(8) Annual training hours shall include the following topics:

(a) the current child care licensing rules found in Sections R430-60-11 through 24;

(b) a review of the center's policies and procedures and

emergency and disaster plans, including any updates;

(c) signs and symptoms of child abuse and neglect, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;

(d) principles of child growth and development, including development of the brain; and

(e) positive guidance.

(9) If the center provides infant or toddler care, annual training topics for the center director and all infant and toddler caregivers shall also include:

(a) preventing shaken baby syndrome and coping with crying babies; and

(b) preventing sudden infant death syndrome.

(10) A minimum of 5 hours of the required annual in-service training shall be face-to-face instruction.

#### **R430-60-8. Administration.**

(1) The licensee is responsible for all aspects of the operation and management of the center.

(2) The licensee shall comply with all federal, state, and local laws and rules pertaining to the operation of a child care center.

(3) The provider shall not engage in or allow conduct that is adverse to the public health, morals, welfare, and safety of the children in care.

(4) The provider shall take all reasonable measures to protect the safety of children in care. The licensee shall not engage in activity or allow conduct that unreasonably endangers children in care.

(5) Either the center director or a designee with authority to act on behalf of the center director shall be present at the facility whenever the center is open for care.

(6) Director designees shall be at least 21 years of age, and shall have completed their orientation training.

(7) There shall be a working telephone at the facility, and the center director shall inform the Department of any changes to the center's telephone number within 48 hours of the change.

(8) The provider shall call the Department within 24 hours to report any fatality, hospitalization, emergency medical response, or injury that requires attention from a health care provider, unless an emergency medical transport was part of a child's medical treatment plan identified by the parent. The provider shall also mail or fax a written report to the Department within five days of the incident.

(9) The center director shall train and supervise all staff to:

(a) ensure their compliance with this rule;

(b) ensure that children are not subjected to emotional, physical, or sexual abuse while in care.

(10) The provider shall establish and follow written policies and procedures for the health and safety of the children in care. The written policies and procedures shall address at least the following areas:

(a) direct supervision and protection of children at all times, including when they are sleeping, using the bathroom, in a mixed group activity, on the playground, and during off-site activities;

(b) maintaining required caregiver to child ratios when the center has more than the expected number of children, or fewer than the scheduled number of caregivers;

(c) procedures to account for each child's attendance and whereabouts;

(d) procedures to ensure that the center releases children to authorized individuals only;

(e) confidentiality and release of information;

(f) the use of movies and video or computer games, including what industry ratings the center allows;

(g) recognizing early signs of illness and determining when there is a need for exclusion from the center;

(h) discipline of children, including behavioral

expectations of children and discipline methods used; and

(i) how long a child will cry before the parent is contacted.

(11) The provider shall ensure that the written policies and procedures are available for review by staff and the Department during business hours.

#### **R430-60-9. Records.**

(1) The provider shall maintain the following general records on-site for review by the Department:

(a) documentation of the previous 12 months of fire and disaster drills as specified in R430-60-10(9) and (11);

(b) current animal vaccination records as required in R430-60-22(2);

(c) a six week record of child attendance, including sign-in and sign-out records;

(d) a current local health department inspection;

(e) a current local fire department inspection;

(f) if the licensee has been licensed for one year or longer, the most recent "Request for Annual Renewal of CBS/LIS Criminal History Information for Child Care" listing the licensee and all current providers, caregivers, volunteers, directors, owners, and members of the governing body; and

(g) if the licensee has been licensed for one year or longer, the most recent criminal background "Disclosure and Consent Statement" listing the licensee and all current providers, caregivers, volunteers, directors, owners, and members of the governing body.

(2) The provider shall maintain the following records for each currently enrolled child on-site for review by the Department:

(a) an admission form containing the following information for each child:

(i) name;

(ii) date of birth;

(iii) the parent's name, address, and phone number, including a daytime phone number;

(iv) the names of people authorized by the parent to pick up the child;

(v) the name, address and phone number of a person to be contacted in the event of an emergency if the provider is unable to contact the parent; and

(vi) medical conditions, including a certification that all immunizations are current.

(b) a transportation permission form, if the center provides transportation services;

(c) a six week record of medication permission forms, and a six week record of medications actually administered; and

(d) a six week record of incident, accident, and injury reports.

(3) The provider shall ensure that information in children's files is not released without written parental permission.

(4) The provider shall maintain the following records for each staff member on-site for review by the Department:

(a) date of initial employment;

(b) approved initial CBS/LIS Consent and Release of Liability for Child Care" form;

(c) a six week record of days worked, and the times worked each day;

(d) orientation training documentation for caregivers, and for volunteers who work at the center at least once each month;

(e) annual training documentation for all providers and substitutes who work an average of 10 hours or more a week, as averaged over any three month period; and

(f) current first aid and CPR certification, if applicable as required in R430-60-10(2), R430-60-20(2)(d), and R430-60-21(2).

#### **R430-60-10. Emergency Preparedness.**

(1) The provider shall post the center's street address and

emergency numbers, including ambulance, fire, police, and poison control, near each telephone in the center.

(2) At least one person at the facility at all times when children are in care shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification. Equivalent CPR certification must include hands-on testing.

(3) The licensee shall maintain first-aid supplies in the center, including at least antiseptic, band-aids, and tweezers.

(4) The provider shall have a written emergency and disaster plan which shall include at least the following:

(a) procedures for responding to medical emergencies and serious injuries that require treatment by a health care provider;

(b) procedures for responding to fire, earthquake, flood, power failure, and water failure;

(c) the location of and procedure for emergency shut off of gas, electricity, and water;

(d) an emergency relocation site where children may be housed if the center is uninhabitable;

(e) a means of posting the relocation site address in a conspicuous location that can be seen even if the center is closed;

(f) the transportation route and means of getting staff and children to the emergency relocation site;

(g) a means of accounting for each child's presence in route to and at the relocation site;

(h) a means of accessing children's emergency contact information and emergency releases;

(i) provisions for emergency supplies, including at least food, water, a first aid kit, diapers if the center cares for diapered children, and a cell phone;

(j) procedures for ensuring adequate supervision of children during emergency situations, including while at the center's emergency relocation site; and

(k) staff assignments for specific tasks during an emergency.

(5) The provider shall ensure that the emergency and disaster plan is followed in the event of an emergency.

(6) The provider shall review the emergency and disaster plan annually, and update it as needed. The provider shall note the date of reviews and updates to the plan on the plan.

(7) The emergency and disaster plan shall be available for immediate review by staff and the Department during business hours.

(8) The provider shall conduct fire evacuation drills monthly. Drills shall include complete exit of all children and staff from the building.

(9) The provider shall document all fire drills, including:

(a) the date and time of the drill;

(b) the number of children participating;

(c) the name of the person supervising the drill;

(d) the total time to complete the evacuation; and

(e) any problems encountered.

(10) The provider shall conduct drills for disasters other than fires at least once every six months.

(11) The provider shall document all disaster drills, including:

(a) the type of disaster, such as earthquake, flood, prolonged power outage, tornado;

(b) the date and time of the drill;

(c) the number of children participating;

(d) the name of the person supervising the drill; and

(e) any problems encountered.

(12) The center shall vary the days and times on which fire and other disaster drills are held.

#### **R430-60-11. Supervision and Ratios.**

(1) The provider shall ensure that caregivers provide and maintain direct supervision of all children at all times.

(2) Caregivers shall actively supervise children on the playground to minimize the risk of injury to a child.

(3) The licensee must maintain minimum care giver to child ratios as provided in Table 2.

TABLE 2

Caregiver to Child Ratios

Caregivers	Children	Limits for Mixed Ages
1	12	No children under age 2
1	8	2 children under age 2
1	6	3 children under age 2

(4) Regardless of the number of other children and the minimum ratios in Table 2, if only two care givers are present, the facility may not care for more than four children under the age of two.

(5) For no more than 20 minutes, the minimum ratios in Table 2 may not exceed one care giver to 16 children if none of the children are younger than 24 months old, to allow for an additional care giver to arrive at the program.

(6) An hourly program that exceeds the ratio in Table 2, must be able to document having care givers, who, as a condition of their employment, are on call to come to the program as needed and arrive at the program within 20 minutes after receiving notification to report.

(7) Whenever the total number of children present to be cared for at a hourly program is more than 20, children younger than 24 months must be cared for in an area that is physically separated from older children. All children 24 months old and older may be cared for in the same group in the same area.

(8) The children of the licensee or any employee, age four or older, are not counted in the caregiver to child ratios when the parent of the child is working at the center.

**R430-60-12. Injury Prevention.**

(1) The provider shall ensure that the building, grounds, toys, and equipment are maintained and used in a safe manner to prevent injury to children.

(2) Areas accessible to children shall be free of unstable heavy equipment, furniture, or other items that children could pull down on themselves.

(3) The following items shall be inaccessible to children:  
 (a) firearms, ammunition, and other weapons on the premises. Firearms shall be stored separately from ammunition, in a cabinet or area that is locked with a key or combination lock, unless the use is in accordance with the Utah Concealed Weapons Act, or as otherwise allowed by law;

(b) tobacco, alcohol, illegal substances, and sexually explicit material;

(c) when in use, portable space heaters, fireplaces, and wood burning stoves;

(d) toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials;

(e) poisonous plants;

(f) matches or cigarette lighters;

(g) open flames;

(h) sharp objects, edges, corners, or points which could cut or puncture skin;

(i) for children age 4 and under, ropes, cords, and chains long enough to encircle a child's neck, such as those found on window blinds or drapery cords;

(j) for children age 4 and under, plastic bags large enough for a child's head to fit inside, latex gloves, and balloons; and

(k) for children age 2 and under, toys or other items with a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches, or objects with removable parts that have a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches.

(4) The provider shall store all toxic or hazardous chemicals in a container labeled with its contents.

(5) Electrical outlets and surge protectors accessible to children age four and younger shall have protective caps or safety devices when not in use.

(6) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.

(7) High chairs shall have T-shaped safety straps or devices that are used whenever a child is in the chair.

(8) Indoor stationary gross motor play equipment, such as slides and climbers, accessible to children under age 3 shall not have a designated play surface that exceeds 3 feet in height.

(a) If such equipment has an elevated designated play surface less than 18 inches in height, it shall not be placed on a hard surface, such as wood, tile, linoleum, or concrete, and shall have a three foot use zone.

(b) If such equipment has an elevated designated play surface that is 18 inches to 3 feet in height, it shall be surrounded by mats at least 2 inches thick, or cushioning that meets ASTM Standard F1292, in a three foot use zone.

(9) Indoor stationary gross motor play equipment, such as slides and climbers, accessible to children age 3 and older shall not have a designated play surface that exceeds 5-1/2 feet in height.

(a) If such equipment has an elevated designated play surface less than 3 feet in height, it shall be surrounded by protective cushioning material, such as mats at least 1 inch thick, in a six foot use zone.

(b) If such equipment has an elevated designated play surface that is 3 feet to 5-1/2 feet in height, it shall be surrounded by cushioning that meets ASTM Standard F1292, in a six foot use zone.

(10) There shall be no trampolines on the premises that are accessible to any child in care.

(11) If there is a swimming pool on the premises that is not emptied after each use:

(a) the provider shall ensure that the pool is enclosed within a fence or other solid barrier at least six feet high that is kept locked whenever the pool is not in use;

(b) the provider shall maintain the pool in a safe manner;

(c) the provider shall meet all applicable state and local laws and ordinances related to the operation of a swimming pool; and

(d) If the pool is over four feet deep, there shall be a Red Cross certified life guard on duty, or a lifeguard certified by another agency that the licensee can demonstrate to the Department to be equivalent to Red Cross certification, any time children have access to the pool.

(12) If wading pools are used:

(a) a caregiver must be at the pool supervising children whenever there is water in the pool;

(b) diapered children must wear swim diapers and rubber pants while in the pool; and

(c) the pool shall be emptied and sanitized after each use by a separate group of children.

**R430-60-13. Parent Notification and Child Security.**

(1) The provider shall post a copy of the Department's child care guide in the center for parents' review during business hours.

(2) Parents shall have access to the center and their child's classroom at all times their child is in care.

(3) The provider shall ensure the following procedures are followed when children arrive at the center or leave the center:

(a) Each child must be signed in and out of the center by the person dropping the child off and picking the child up, including the date and time the child arrives or leaves.

(b) Persons signing children into the center shall use identifiers, such as a signature, initials, or electronic code.

(c) Persons signing children out of the center shall use identifiers, such as a signature, initials, or electronic code, and

shall have photo identification if they are unknown to the provider.

(d) Only parents or persons with written authorization from the parent may take any child from the center. In an emergency, the provider may accept verbal authorization if the provider can confirm the identity of the person giving the verbal authorization and the identity of the person picking up the child.

(e) School age children may sign themselves in and out of the program with written permission from their parent.

(4) The provider shall give parents a written report of every incident, accident, or injury involving their child on the day of occurrence. The caregivers involved, the center director, and the person picking the child up shall sign the report on the day of occurrence. If a school age child signs him or herself out of the program, a copy of the report shall be mailed to the parent, or given to the parent the next day the child attends the program.

(5) If a child is injured and the injury appears serious but not life threatening, the provider shall contact the parent immediately, in addition to giving the parent a written report of the injury.

(6) In the case of a life threatening injury to a child, or an injury that poses a threat of the loss of vision, hearing, or a limb, the provider shall contact emergency personnel immediately, before contacting the parent. If the parent cannot be reached after emergency personnel have been contacted, the provider shall attempt to contact the child's emergency contact person.

#### **R430-60-14. Child Health.**

(1) The licensee shall ensure that no child is subjected to physical, emotional, or sexual abuse while in care.

(2) All staff shall follow the reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation found in Utah Code, Section 62A-4a-403 and 62A-4a-411.

(3) The use of tobacco, alcohol, illegal substances, or sexually explicit material on the premises or in center vehicles is prohibited any time that children are in care.

#### **R430-60-15. Child Nutrition.**

(1) If food service is provided:

(a) The provider shall ensure that the center's meal service complies with local health department food service regulations.

(b) The provider shall offer meals or snacks at least once every three hours that a child is in care.

(c) The provider shall serve children's food on dishes, napkins, or sanitary high chair trays, except for individual serving size items, such as crackers, if they are placed directly in the children's hands. The provider shall not place food on a bare table.

(2) If the parent of a child in care has informed the provider that his or her child has a food allergy or sensitivity, the provider shall ensure that the child is not given that food or drink.

(3) The provider shall ensure that food and drink brought in by parents for an individual child's use is labeled with the child's name, and refrigerated if needed. The provider shall ensure that a child in care does not consume a food or beverages that was brought in for another child.

#### **R430-60-16. Infection Control.**

(1) Staff shall wash their hands thoroughly with liquid soap and warm running water at the following times:

(a) before handling or preparing food or bottles;

(b) before and after eating meals and snacks or feeding children;

(c) before and after diapering a child;

(d) after using the toilet or helping a child use the toilet;

(e) before administering medication;

(f) after coming into contact with body fluids;

(g) after playing with or handling animals;

(h) when coming in from outdoors; and

(i) after cleaning or taking out garbage.

(2) The provider shall ensure that children wash their hands thoroughly with liquid soap and warm running water at the following times:

(a) before and after eating meals and snacks;

(b) after using the toilet;

(c) after coming into contact with body fluids;

(d) after playing with animals; and

(e) when coming in from outdoors.

(3) Only single use towels from a covered dispenser or an electric hand-drying device may be used to dry hands.

(4) The provider shall ensure that toilet paper is accessible to children, and that it is kept on a dispenser.

(5) The provider shall clean and sanitize all washable toys and materials weekly, or more often if necessary.

(6) Stuffed animals, cloth dolls, and dress-up clothes must be machine washable. Pillows must be machine washable, or have removable covers that are machine washable. The provider shall wash stuffed animals, cloth dolls, dress-up clothes, and pillows or covers weekly.

(7) If water play tables or tubs are used, they shall be washed and sanitized daily, and children shall wash their hands prior to engaging in the activity.

(8) Persons with contagious TB shall not work or volunteer in the center.

(9) Children's clothing which is wet or soiled from body fluids:

(a) shall not be rinsed or washed at the center; and

(b) shall be placed in a leakproof container, labeled with the child's name, and returned to the parent.

(10) If the center uses a potty chair, the provider shall clean and sanitize the chair after each use.

(11) The center shall have a portable body fluid clean up kit.

(a) All staff shall know the location of the kit and how to use it.

(b) The provider shall use the kit to clean up spills of body fluids.

(c) The provider shall restock the kit as needed.

(12) The provider shall notify the local health department, on the day of discovery, of any reportable infectious diseases among children or caregivers, or any sudden or extraordinary occurrence of a serious or unusual illness, as required by the local health department.

(13) The provider shall post a parent notice at the center when any staff or child has an infectious disease or parasite.

(a) The provider shall post the notice in a conspicuous location where it can be seen by all parents.

(b) The provider shall post and date the notice the same day the disease or parasite is discovered, and the notice shall remain posted for at least 5 days.

#### **R430-60-17. Medications.**

(1) If medications are given, they shall be administered to children only by a provider trained in the administration of medications as specified in subsections (7) and (8) below.

(2) All over-the-counter and prescription medications shall:

(a) be labeled with the child's full name;

(b) be kept in the original or pharmacy container;

(c) have the original label; and,

(d) have child-safety caps.

(3) All non-refrigerated medications shall be inaccessible to children and stored in a container or area that is locked, such as a locked room, cupboard, drawer, or a lockbox. The provider shall store all refrigerated medications in a leakproof container.

(4) The provider shall have a written medication

permission form completed and signed by the parent prior to administering any over-the-counter or prescription medication to a child. The permission form must include:

- (a) the child's name;
- (b) the name of the medication;
- (c) written instructions for administration; including:
  - (i) the dosage;
  - (ii) the method of administration;
  - (iii) the times and dates to be administered; and
  - (iv) the disease or condition being treated; and
- (d) the parent signature and the date signed.

(5) If the provider keeps over-the-counter medication at the center that is not brought in by a parent for their child's use, the medication shall not be administered to any child without prior parental consent for each instance it is given. The consent must be either:

- (a) prior written consent; or
- (b) oral consent for which a provider documents in writing the date and time of the consent, and which the parent or person picking up the child signs upon picking up the child.

(6) If the provider chooses not to administer medication as instructed by the parent, the provider shall notify the parent of their refusal to administer the medication prior to the time the medication needs to be given.

(7) When administering medication, the provider administering the medication shall:

- (a) wash their hands;
- (b) check the medication label to confirm the child's name;
- (c) compare the instructions on the parent release form with the directions on the prescription label or product package to ensure that a child is not given a dosage larger than that recommended by the health care provider or the manufacturer;
- (d) administer the medication; and
- (e) immediately record the following information:
  - (i) the date, time, and dosage of the medication given;
  - (ii) the signature or initials of the provider who administered the medication; and,
  - (iii) any errors in administration or adverse reactions.

(8) The provider shall report any adverse reaction to a medication or error in administration to the parent immediately upon recognizing the error or reaction, or after notifying emergency personnel if the reaction is life threatening.

#### **R430-60-18. Napping.**

If the center uses sleeping equipment for rest time, the following rules apply:

- (1) The provider shall maintain sleeping equipment in good repair.
- (2) A separate crib, cot, mat, or other sleeping equipment shall be used for each child during nap times.
- (3) If sleeping equipment is clearly assigned to and used by an individual child, the provider must clean and sanitize it as needed, but at least weekly.
- (4) If sleeping equipment is not clearly assigned to and used by an individual child, the provider must clean and sanitize it prior to each use.
- (5) The provider must either store sleeping equipment so that the surfaces children sleep on do not touch each other, or else clean and sanitize sleeping equipment prior to each use.
- (6) The provider shall space cribs, cots, and mats a minimum of 2 feet apart when in use, to allow for adequate ventilation, easy access, and ease of exiting.
- (7) Cots and mats may not block exits.

#### **R430-60-19. Child Discipline.**

(1) The provider shall inform caregivers and children of the center's behavioral expectations for children.

(2) The provider may discipline children using positive reinforcement, redirection, and by setting clear limits that

promote children's ability to become self-disciplined.

(3) Caregivers may use gentle, passive restraint with children only when it is needed to stop children from injuring themselves or others or from destroying property.

(4) Discipline measures shall not include any of the following:

- (a) any form of corporal punishment such as hitting, spanking, shaking, biting, pinching, or any other measure that produces physical pain or discomfort;
- (b) restraining a child's movement by binding, tying, or any other form of restraint that exceeds that specified in Subsection (3) above.
- (c) shouting at children;
- (d) any form of emotional abuse;
- (e) forcing or withholding of food, rest, or toileting; and,
- (f) confining a child in a closet, locked room, or other enclosure such as a box, cupboard, or cage.

#### **R430-60-20. Activities.**

(1) The provider shall offer a variety of activities and materials that are appropriate to the age and development of the children accepted for care.

(2) If off-site activities are offered:

- (a) the provider shall obtain written parental consent for each activity in advance;
- (b) caregivers shall take written emergency information and releases with them for each child in the group, which shall include:
  - (i) the child's name;
  - (ii) the parent's name and phone number;
  - (iii) the name and phone number of a person to notify in the event of an emergency if the parent cannot be contacted;
  - (iv) the names of people authorized by the parents to pick up the child; and

(c) the provider shall maintain required caregiver to child ratios and direct supervision during the activity;

(d) at least one caregiver present shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification;

(3) If swimming activities are offered, caregivers shall remain with the children during the activity, and lifeguards and pool personnel shall not count toward the caregiver to child ratio.

#### **R430-60-21. Transportation.**

(1) Any vehicle used for transporting children shall:

- (a) be enclosed;
- (b) be equipped with individual, size appropriate safety restraints, properly installed and in working order, for each child being transported;
- (c) have a current vehicle registration and safety inspection;
- (d) be maintained in a safe and clean condition;
- (e) maintain temperatures between 60-90 degrees Fahrenheit when in use;
- (f) contain a first aid kit; and
- (g) contain a body fluid clean up kit.

(2) At least one adult in each vehicle transporting children shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification.

(3) The adult transporting children shall:

- (a) have and carry with them a current valid Utah driver's license, for the type of vehicle being driven, whenever they are transporting children;
- (b) have with them written emergency contact information for all of the children being transported;
- (c) ensure that each child being transported is wearing an appropriate individual safety restraint;
- (d) ensure that no child is left unattended by an adult in

the vehicle;

(e) ensure that all children remain seated while the vehicle is in motion;

(f) ensure that keys are never left in the ignition when the driver is not in the driver's seat; and,

(g) ensure that the vehicle is locked during transport.

#### **R430-60-22. Animals.**

(1) All animals at the facility shall be clean and free of obvious disease or health problems that could adversely affect children.

(2) All animals at the facility shall have current immunizations for all vaccine preventable diseases that are transmissible to humans. The center shall have documentation of the vaccinations.

(3) There shall be no animal on the premises that has a history of dangerous, attacking, or aggressive behavior, or a history of biting even one person.

(4) Children younger than school age shall not assist with the cleaning of animals or animal cages, pens, or equipment.

(5) If a school age child assists in the cleaning of animals or animal cages, the child shall wash his or her hands immediately after handling the animal or animal equipment.

(6) There shall be no animals or animal equipment in food preparation or eating areas.

(7) Children shall not handle reptiles or amphibians.

#### **R430-60-23. Diapering.**

If the center diapers children, the following applies:

(1) Caregivers shall change children's diapers at a diaper changing station. Diapers shall not be changed on surfaces used for any other purpose.

(2) Each diapering station shall be equipped with railings to prevent a child from falling when being diapered.

(3) Caregivers shall not leave children unattended on the diapering surface.

(4) The diapering surface shall be smooth, waterproof, and in good repair.

(5) The provider shall post diapering procedures at each diapering station and ensure that they are followed.

(6) There shall be a handwashing sink used exclusively for diapering and handwashing after diapering.

(7) Caregivers shall clean and sanitize the diapering surface after each diaper change.

(8) Caregivers shall wash their hands before and after each diaper change.

(9) Caregivers shall place soiled disposable diapers in a container that has a plastic lining and a tightly fitting lid.

(10) The provider shall daily clean and sanitize containers where soiled diapers are placed.

(11) If cloth diapers are used:

(a) they shall not be rinsed at the center; and

(b) after a diaper change, the caregiver shall place the cloth diaper directly into a leakproof container that is inaccessible to children and labeled with the child's name, or a leakproof diaper service container.

(12) Caregivers shall change children's diapers promptly when they are wet or soiled, and shall check diapers at least once every two hours.

#### **R430-60-24. Infant and Toddler Care.**

If the center cares for infants or toddlers, the following applies:

(1) If an infant is not able to sit upright and hold their own bottle, a caregiver shall hold the infant during bottle feeding. Bottles shall not be propped.

(2) The provider shall clean and sanitize high chair trays prior to each use.

(3) The provider shall cut solid foods for infants into

pieces no larger than 1/4 inch in diameter. The provider shall cut solid foods for toddlers into pieces no larger than 1/2 inch in diameter.

(4) Baby food, formula, and breast milk for infants that is brought from home for an individual child's use must be:

(a) labeled with the child's name;

(b) labeled with the date and time of preparation or opening of the container, such as a jar of baby food;

(c) kept refrigerated if needed; and

(d) discarded within 24 hours of preparation or opening, except that powdered formula or dry foods which are opened, but are not mixed, are not considered prepared.

(5) Formula and milk, including breast milk, shall be discarded after feeding, or within two hours of initiating a feeding.

(6) To prevent burns, heated bottles shall be shaken and tested for temperature before being fed to children.

(7) Pacifiers, bottles, and non-disposable drinking cups shall be labeled with each child's name, and shall not be shared.

(8) Only one infant or toddler shall occupy any one piece of equipment at any time, unless the equipment has individual seats for more than one child.

(9) Infants shall sleep in equipment designed for sleep such as a crib, bassinet, porta-crib or play pen. Infants shall not be placed to sleep on mats or cots, or in bouncers, swings, car seats, or other similar pieces of equipment.

(10) Cribs used by a child in care must:

(a) have tight fitting mattresses;

(b) have slats spaced no more than 2-3/8 inches apart;

(c) have at least 20 inches from the top of the mattress to the top of the crib rail; and

(d) not have strings, cords, ropes, or other entanglement hazards strung across the crib rails.

(11) Infants shall not be placed on their stomachs for sleeping, unless there is documentation from a health care provider for treatment of a medical condition.

(12) Walkers with wheels are prohibited.

(13) Infants and toddlers shall not have access to objects made of styrofoam.

(14) Caregivers shall respond as promptly as possible to infants and toddlers who are in emotional distress due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness.

(15) Awake infants and toddlers shall receive positive physical stimulation and positive verbal interaction with a caregiver at least once every 20 minutes.

(16) Awake infants and toddlers shall not be confined for more than 30 minutes in one piece of equipment, such as swings, high chairs, cribs, play pens, or other similar pieces of equipment.

(17) Mobile infants and toddlers shall have freedom of movement in a safe area.

(18) All toys used by infants and toddlers shall be cleaned and sanitized:

(a) weekly;

(b) after being put in a child's mouth before another child plays with it; and

(c) after being contaminated by body fluids.

**KEY: child care facilities, hourly child care centers**

**January 1, 2013**

**Notice of Continuation May 29, 2013**

**26-39**

**R430. Health, Family Health and Preparedness, Child Care Licensing.****R430-90. Licensed Family Child Care.****R430-90-1. Legal Authority and Purpose.**

This rule is promulgated pursuant to Title 26, Chapter 39. This rule establishes standards for the operation and maintenance of licensed family child care providers who care for one to 16 children in their home. It establishes minimum requirements for the health and safety of children in the care of licensed family providers.

**R430-90-2. Definitions.**

(1) "Body fluid" means blood, urine, feces, vomit, mucus, or saliva.

(2) "Caregiver" means a person in addition to the licensee or substitute, including an assistant caregiver, who provides direct care to a child in care.

(3) "Department" means the Utah Department of Health.

(4) "Emotional abuse" means behavior that could impair a child's emotional development, such as threatening, intimidating, humiliating, or demeaning a child, constant criticism, rejection, profane language, and inappropriate physical restraint.

(5) "Health care provider" means a licensed professional with prescriptive authority, such as a physician, nurse practitioner, or physician's assistant.

(6) "Inaccessible to children" means:

(a) locked, such as in a locked room, cupboard or drawer;

(b) secured with a child safety device, such as a child safety cupboard lock or doorknob device;

(c) behind a properly secured child safety gate;

(d) located in a cupboard or on a shelf more than 36 inches above the floor; or

(e) not in any location in a bathroom where a child could reach, including by climbing on a toilet, bathtub, or counter.

(7) "Infant" means a child aged birth through 11 months of age.

(8) "Infectious disease" means an illness that is capable of being spread from one person to another.

(9) "Licensee" means the person holding a Department of Health child care license.

(10) "Over-the-counter medication" means medication that can be purchased without a written prescription. This includes herbal remedies and vitamin and mineral supplements.

(11) "Parent" means the parent or legal guardian of a child in care.

(12) "Physical abuse" means causing nonaccidental physical harm to a child.

(13) "Preschooler" means a child aged 2 through 4, and 5 year olds who have not yet started kindergarten.

(14) "Provider" means the licensee, a substitute, a caregiver, or an assistant caregiver.

(15) "Related children" means children for whom a provider is the parent, legal guardian, step-parent, grandparent, step-grandparent, great-grandparent, sibling, step-sibling, aunt, step-aunt, great-aunt, uncle, step-uncle, or great-uncle.

(16) "Sanitize" means to reduce the number of germs on a surface to such a level that disease transmission by that surface is unlikely.

(17) "School age" means kindergarten and older age children.

(18) "Sexual abuse" means abuse as provided in Utah Code, Section 76-5-404.1.

(19) "Sexually explicit material" means any depiction of sexually explicit conduct, as defined in Utah Code, Section 76-5a-2(8).

(20) "Sleeping equipment" means a cot, mat, crib, bassinet, porta-crib, play pen, or bed.

(21) "Stationary play equipment" means equipment such

as a climber, a slide, a swing, a merry-go-round, or a spring rocker that is meant to stay in one location when a child uses it. Stationary play equipment does not include:

(a) a sandbox;

(b) a stationary circular tricycle;

(c) a sensory table; or

(d) a playhouse, if the playhouse has no play equipment, such as a slide, swing, ladder, or climber attached to it.

(22) "Strangulation hazard" means something on a component of playground equipment on which a child's clothes or something around a child's neck could become caught. For example, bolt ends that extend more than two threads beyond the face of the nut, hardware configurations that form a hook or leave a gap or space between components, and open "S" type hooks.

(23) "Substitute" means a person who assumes either the licensee's or a caregiver's duties under this rule when the licensee or caregiver is not present. This includes emergency substitutes.

(24) "Supervision" means the function of observing, overseeing, and guiding a child or group of children.

(25) "Toddler" means a child aged 12 months but less than 24 months.

(26) "Unrelated children" means children who are not related children.

(27) "Use zone" means the area beneath and surrounding a play structure or piece of equipment that is designated for unrestricted movement around the equipment, and onto which a child falling from or exiting the equipment could be expected to land.

(28) "Volunteer" means a person who provides direct care to a child but does not receive direct or indirect compensation for doing so. A volunteer is not included in the provider to child ratio.

**R430-90-3. License Required.**

(1) A person must either be licensed under this rule or certified under R430-50, if he or she:

(a) provides care in lieu of care ordinarily provided by a parent;

(b) provides care for five or more unrelated children;

(c) provides care for four or more hours per day;

(d) has a regularly scheduled, ongoing enrollment; and

(e) provides care for direct or indirect compensation.

(2) The Department does not license, nor is a license required for:

(a) a person who cares for related children only; or

(b) a person who provides care on a sporadic basis only.

**R430-90-4. Indoor Environment.**

(1) The licensee shall ensure that any building or playground structure on the premises constructed prior to 1978 which has peeling, flaking, chalking, or failing paint is tested for lead based paint. If lead based paint is found, the licensee shall contact the local health department and follow all required procedures for the remediation of the lead based paint hazard.

(2) There shall be a working toilet and a working handwashing sink accessible to each non-diapered child in care.

(3) Each school age child shall have privacy when using the bathroom.

(4) The home shall be ventilated by mechanical ventilation or by windows that open and have screens.

(5) The licensee shall maintain the indoor temperature between 65 and 82 degrees Fahrenheit.

(6) The licensee shall maintain adequate light intensity for the safety of children and the type of activity being conducted and shall keep the lighting equipment in good working condition.

(7) There shall be at least 35 square feet of indoor play

space for each child, including providers' related children who are ages four through twelve.

(8) Indoor space per child may include floor space used for furniture, fixtures, or equipment if the furniture, fixture, or equipment is used:

- (a) by children;
- (b) for the care of children; or
- (c) to store children's materials.

(9) Bathrooms, closets, hallways, and entryways are not included when calculating indoor space for children's use.

#### **R430-90-5. Cleaning and Maintenance.**

(1) The licensee shall ensure that a clean and sanitary environment is maintained.

(2) The licensee shall take safe and effective measures to prevent and eliminate the presence of insects, rodents, and other vermin.

(3) The licensee shall maintain ceilings, walls, floor coverings, draperies, blinds, furniture, fixtures, and equipment in good repair to prevent injury to children.

(4) The licensee shall ensure that entrances, exits, steps and outside walkways are maintained in a safe condition, and free of ice, snow, and other hazards.

#### **R430-90-6. Outdoor Environment.**

(1) There shall be an outdoor play area for children that is safely accessible to children.

(2) The outdoor play area shall have at least 40 square feet of space for each child using the space at one time.

(3) The outdoor play area shall be enclosed within a 4 foot high fence or wall, or within a solid natural barrier that is at least 4 feet high if:

(a) the licensee's home is located on a street with a speed limit higher than 25 miles per hour, or within half a mile of a street with a speed limit higher than 25 miles per hour; or

(b) the licensee's home is located on a street with more than two lanes of traffic, or within half a mile of a street with more than two lanes of traffic.

(4) If any of the following hazards exist, they must be located behind a 4 foot high fence, wall, or solid barrier that separates the hazard from the children's outdoor play area:

(a) livestock on the licensee's property or within 50 yards of the licensee's property line;

(b) a water hazard, such as a swimming pool, pond, ditch, lake, reservoir, river, stream, creek, or animal watering trough, on the licensee's property or within 100 yards of the licensee's property line;

(c) dangerous machinery, such as farm equipment, on the licensee's property or within 50 yards of the licensee's property line;

(d) a drop-off of more than five feet on the licensee's property or within 50 yards of the licensee's property line; or

(e) barbed wire within 30 feet of the children's play area.

(5) The outdoor play area shall be free of poisonous plants, harmful objects, toxic or hazardous substances, and standing water.

(6) When in use by a child in care, the outdoor play area shall be free of animal excrement.

(7) If a fence or barrier is required in Subsections (3) or (4) above, or Subsections 12(10)(c)(i) or 12(11)(b) below, there shall be no gap greater than five inches in the fence or barrier, nor shall any gap between the bottom of the fence or barrier and the ground be greater than five inches.

(8) The outdoor play area shall have a shaded area to protect each child from excessive sun and heat.

(9) An outdoor source of drinking water, such as individually labeled water bottles or a pitcher of water and individual cups that are taken outside, shall be available to each child whenever the outside temperature is 75 degrees or higher.

(10) Stationary play equipment used by any child in care shall not be located over hard surfaces such as cement, asphalt, or packed dirt, and shall have a 3' use zone that is free of hard surfaces. The licensee shall have until 1 September 2013 to meet the 3' use zone requirement.

(11) The licensee shall ensure that children using outdoor play equipment use it safely and in the manner intended by the manufacturer.

(12) There shall be no openings of a size greater than 3-1/2 by 6-1/4 inches and less than 9 inches in diameter on or within the use zone of any piece of stationary play equipment where the feet of any child in care whose head is entrapped in the opening cannot touch the ground.

(13) There shall be no strangulation hazard on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.

(14) There shall be no crush, shearing, or sharp edge hazards on, within the use zone of, or adjacent to the use zone of any piece of stationary play equipment.

(15) There shall be no tripping hazards, such as concrete footings, tree stumps, exposed tree roots, or rocks within the use zone of any piece of stationary play equipment.

(16) The licensee shall ensure that outdoor play areas and outdoor play equipment are maintained to protect each child's safety.

#### **R430-90-7. Personnel.**

(1) The licensee and all substitutes and caregivers must:

(a) be at least 18 years of age; and

(b) have knowledge of and comply with all applicable laws and rules.

(2) All assistant caregivers shall:

(a) be at least 16 years of age;

(b) work under the immediate supervision of a provider who is at least 18 years of age; and

(c) have knowledge of and comply with all applicable laws and rules.

(3) Assistant caregivers may be included in provider to child ratios, but only if there is also another provider present in the home who is 18 years of age or older.

(4) Assistant caregivers shall meet the training requirements of this rule.

(5) The licensee may make arrangements for a substitute who is at least 18 years old and who is capable of providing care, supervising children, and handling emergencies in the absence of the licensee.

(6) Substitutes who care for children an average of 10 hours per week or more shall meet the training, first aid, and CPR requirements of this rule.

(7) In an unforeseeable emergency, such as a medical emergency requiring immediate care at a hospital or at an urgent care center or a lost child, the licensee may assign an emergency substitute who has not had a criminal background screening to care for the children. A licensee may use an emergency substitute for up to 24 hours for each emergency event.

(a) The emergency substitute shall be at least 18 years of age.

(b) The emergency substitute is not required to meet the training, first aid, and CPR requirements of this rule.

(c) The emergency substitute cannot be a person who has been convicted of a felony or misdemeanor or has been investigated for abuse or neglect by any federal, state, or local government agency. The emergency substitute must provide a signed, written declaration to the licensee that he or she is not disqualified under this subsection.

(d) During the term of the emergency, the emergency substitute may be counted as a provider for the purpose of maintaining the required provider to child ratios.

(e) The licensee shall make reasonable efforts to minimize



the time that the emergency substitute has unsupervised contact with the children in care.

(8) Any new caregiver, volunteer, or non-emergency substitute shall receive orientation training prior to assuming caregiving duties. Orientation training shall be documented in the individual's file and shall include the following topics:

- (a) specific job responsibilities;
- (b) the licensee's written policies and procedures;
- (c) the licensee's emergency and disaster plan;
- (d) the current child care licensing rules found in Sections R430-90-11 through 24;
- (e) introduction and orientation to the children in care;
- (f) a review of the information in the health assessment for each child in care;
- (g) procedure for releasing children to authorized individuals only;
- (h) proper clean up of body fluids;
- (i) signs and symptoms of child abuse and neglect, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;
- (j) obtaining assistance in emergencies; and
- (k) if the licensee accepts infants or toddlers for care, orientation training topics shall also include:
  - (i) preventing shaken baby syndrome and coping with crying babies; and
  - (ii) preventing sudden infant death syndrome.

(9) Substitutes who care for children an average of 10 hours per week or more, the licensee, and all caregivers shall complete a minimum of 20 hours of child care training each year, based on the license date. A minimum of 10 hours of the required annual training shall be face-to-face instruction.

(a) Documentation of annual training shall be kept in each individual's file, and shall include the name of the training organization, the date, the training topic, and the total hours or minutes of training.

(b) All caregivers and non-emergency substitutes who begin employment partway through the license year shall complete a proportionate number of training hours based on the number of months worked prior to the relicensure date.

(c) Annual training hours shall include the following topics at least once every two years:

- (i) a review of all of the current child care licensing rules found in Sections R430-90-11 through 24;
- (ii) a review of the licensee's written policies and procedures and emergency and disaster plan, including any updates;
- (iii) signs and symptoms of child abuse and neglect, and legal reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation;
- (iv) principles of child growth and development, including development of the brain; and
- (v) positive guidance; and
- (d) if the licensee accepts infants or toddlers for care, required training topics shall also include:
  - (i) preventing shaken baby syndrome and coping with crying babies; and
  - (ii) preventing sudden infant death syndrome.

#### **R430-90-8. Administration.**

(1) The licensee is responsible for all aspects of the operation and management of the child care program.

(2) The licensee shall comply with all federal, state, and local laws and rules pertaining to the operation of a child care program.

(3) The licensee shall not engage in or allow conduct that is adverse to the public health, morals, welfare, and safety of the children in care.

(4) The licensee shall take all reasonable measures to protect the safety of each child in care. The licensee shall not

engage in activity or allow conduct that unreasonably endangers any child in care.

(5) Either the licensee or a substitute with authority to act on behalf of the licensee shall be present whenever there is a child in care.

(6) Each week, the licensee shall be present at the home at least 50% of the time that one or more children are in care.

(7) There shall be a working telephone in the home. The licensee shall inform the parents of each child in care and the Department of any changes to the licensee's telephone number within 48 hours of the change.

(8) The licensee shall call the Department within 24 hours to report any fatality, hospitalization, emergency medical response, or injury that requires attention from a health care provider, unless an emergency medical transport was part of a child's individualized medical treatment plan identified by the parent. The licensee shall also mail or fax a written report to the Department within five days of the incident.

(9) The licensee shall establish, and shall ensure that all providers follow, written policies and procedures for the health and safety of each child in care. The written policies and procedures shall address at least the following areas:

- (a) direct supervision and protection of each child at all times, including when he or she is sleeping, outdoors, and during off-site activities;
- (b) procedures to account for each child's attendance and whereabouts;
- (c) the licensee's policy and practices regarding sick children, and whether they are allowed to be in care;
- (d) recognizing early signs of illness and determining when there is a need for exclusion from care;
- (e) discipline of children, including behavioral expectations of children and discipline methods used;
- (f) transportation to and from off-site activities, or to and from home, if the licensee offers these services; and
- (g) if the program offers transportation to or from school, policies addressing:
  - (i) how long a child will be unattended by a provider before school starts and after school lets out;
  - (ii) what steps will be taken if a child fails to meet the vehicle; and
  - (iii) how and when parents will be notified of delays or problems with transportation to and from school.

(10) The licensee shall ensure that the written policies and procedures are available for review by parents and the Department during business hours.

(11) The licensee shall train and supervise all caregivers and substitutes to:

- (a) ensure their compliance with this rule;
- (b) ensure they meet the needs of the children in care as specified in this rule; and
- (c) ensure that children are not subjected to emotional, physical, or sexual abuse while in care.

#### **R430-90-9. Records.**

(1) The licensee shall maintain on-site for review by the Department during any inspection the following general records:

- (a) documentation of the previous 12 months of quarterly fire drills and annual disaster drills as specified in R430-90-10(9) and R430-90-10(11);
- (b) current animal vaccination records as required in R430-90-22(2)(b);
- (c) a six week record of child attendance as required in R430-90-13(3);
- (d) a current local health department kitchen inspection;
- (e) an initial local fire department clearance for all areas of the home being used for care;
- (f) approved initial "CBS/LIS Consent and Release of Liability for Child Care" form for all providers, volunteers, and

each person age 12 and older who resides in the licensee's home;

(g) if the licensee has been licensed for more than a year, the most recent criminal background "Disclosure Statement" which includes all providers, volunteers, and each person age 12 and older who resided in the home of the licensee at any time since the last license renewal; and

(h) if the licensee has been licensed for more than a year, the most recent "Request for Annual Renewal of CBS/LIS Criminal History Information for Child Care" which includes all providers, volunteers, and each person age 12 and older who resided in the home of the licensee at any time since the last license renewal.

(2) The licensee shall maintain on-site for review by the Department during any inspection the following records for each enrolled child:

(a) an admission form containing the following information for each child:

(i) name;

(ii) date of birth;

(iii) the parent's name, address, and phone number, including a daytime phone number;

(iv) the names of people authorized by the parent to pick up the child;

(v) the name, address and phone number of a person to be contacted in the event of an emergency if a provider is unable to contact the parent;

(vi) child health information, as required in R430-90-14(7); and

(vii) current emergency medical treatment and emergency medical transportation releases with the parent's signature;

(b) current immunization records or documentation of a legally valid exemption, as specified in R430-90-14(5) and (6);

(c) a completed transportation permission form, if transportation services are offered to any child in care;

(d) a six week record of medication permission forms, and a six week record of medications actually administered as specified in R430-90-17(4) and R430-90-17(6)(f), if medications are administered to any child in care; and

(e) a six week record of incident, accident, and injury reports.

(3) The licensee shall maintain on-site for review by the Department during any inspection the following records for the licensee and each non-emergency substitute and caregiver:

(a) orientation training documentation for all non-emergency substitutes and caregivers as required in R430-90-7(8);

(b) annual training documentation for the past two years, for the licensee and all non-emergency substitutes and caregivers, as required in R430-90-7(9)(a); and

(c) current first aid and CPR certification, as required in R430-90-10(2), R430-90-20(3)(d), and R430-90-21(2).

(4) The licensee shall maintain on-site for review by the Department during any inspection orientation training documentation for each volunteer as required in R430-90-7(8).

(5) The licensee shall ensure that information in any child's file is not released without written parental permission.

#### **R430-90-10. Emergency Preparedness.**

(1) The licensee shall post the home's street address and emergency numbers, including ambulance, fire, police, and poison control, near the telephone.

(2) The licensee and all substitutes who care for children an average of 10 hours per week or more shall maintain a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification. Equivalent CPR certification must include hands-on testing.

(3) The licensee shall maintain first-aid supplies in the home, including at least antiseptic, band-aids, and tweezers.

(4) The licensee shall have a written emergency and

disaster plan which shall include at least the following:

(a) procedures for responding to medical emergencies and serious injuries that require treatment by a health care provider;

(b) procedures for responding to fire, earthquake, flood, power failure, and water failure;

(c) the location of and procedure for emergency shut off of gas, electricity, and water;

(d) procedures to be followed if a child is missing;

(e) the name and phone number of a substitute to be called in the event the licensee must leave the home for any reason;

(f) an emergency relocation site where children will be housed if the licensee's home is uninhabitable;

(g) provisions for emergency supplies, including at least food, water, a first aid kit, and diapers if the licensee accepts diapered children for care; and

(h) procedures for ensuring adequate supervision of children during emergency situations, including while at the emergency relocation site.

(5) The licensee shall ensure that the emergency and disaster plan is followed in the event of an emergency.

(6) The licensee shall review the emergency and disaster plan annually, and update it as needed. The licensee shall note the date of reviews and updates to the plan on the plan.

(7) The emergency and disaster plan shall be available for immediate review by parents and the Department during business hours.

(8) The licensee shall conduct fire evacuation drills quarterly. Drills shall include complete exit of all children and staff from the home.

(9) A provider shall document all fire drills, including:

(a) the date and time of the drill;

(b) the number of children participating;

(c) the total time to complete the evacuation; and

(d) any problems encountered.

(10) The licensee shall conduct drills for disasters other than fires at least once every 12 months.

(11) A provider shall document all disaster drills, including:

(a) the type of disaster, such as earthquake, flood, prolonged power outage, or tornado;

(b) the date and time of the drill;

(c) the number of children participating;

(d) the total time to complete the evacuation; and

(e) any problems encountered.

(12) The licensee shall vary the days and times on which fire and other disaster drills are held.

#### **R430-90-11. Supervision and Ratios.**

(1) The licensee or a substitute shall be physically present on-site and provide care and direct supervision of each child at all times, both indoors and outdoors. Direct care and supervision of each child includes:

(a) awareness of and responsibility for each child in care, including being near enough to intervene if needed;

(b) ensuring that there is a provider present inside the home when a child in care is inside the home, and there is a provider present in the outdoor play area when a child in care is outdoors, except as allowed in subsection (2) below for school age children; and

(c) monitoring of each sleeping infant in one of the following ways:

(i) by placing each infant for sleep in a location where the infant is within sight and hearing of a provider;

(ii) by in person observation of each sleeping infant at least once every 15 minutes; or

(iii) by using a Department-approved infant sleep monitoring device.

(2) A provider shall actively supervise each child during outdoor play to minimize the risk of injury to a child. A

provider may allow only school age children to play outdoors while the provider is indoors, if:

- (a) a provider can hear the children playing outdoors; and
- (b) the children playing outdoors are in an area completely enclosed within a 4 foot high fence or wall, or a solid natural barrier that is at least 4 feet high.
- (3) The licensee may permit a child to participate in supervised out of the home activities without the licensee if:
  - (a) the licensee has prior written permission from the child's parent for the child's participation; and
  - (b) the licensee has clearly assigned the responsibility for the child's whereabouts and supervision to a responsible adult who accepts responsibility for the care and supervision of the child throughout the period of the out of home activity.
- (4) The maximum allowed capacity for a licensed family child care facility is 16 children, including providers' own children under age four.
- (5) The licensee shall maintain a provider to child ratio of one provider for up to eight children in care, and two providers for nine to sixteen children in care.
  - (a) Children in care include the providers' own children under the age of four.
  - (b) Providers who are included in the provider to child ratio must meet all of the requirements of this rule.
- (6) There shall be no more than four children under the age of two in care with two providers; and no more than two children under the age of two in care with one provider, except that if there are six or fewer children in care, there may be up to three children under the age of two in care.
- (7) The total number of children in care may be further limited based on square footage, as found in Subsections R430-90-4(7) through (9).
- (8) The licensee shall not exceed the maximum group sizes found in Table 1 and Table 2.

TABLE 1

MAXIMUM GROUP SIZE WITH 1 PROVIDER

# of Providers' Related Children Ages 4-12 Present in the Home During Child Care Hours	Maximum Allowed Number of Children in Care, Including the Providers' Children Under Age 4	Total # of All Children Through Age 12 Present in the Home During Child Care Hours
0-4	8 children	12
5	7 children	12
6	6 children	12
7	5 children	12
8	4 children	12
9	3 children	12
10	2 children	12
11	1 child	12

TABLE 2

MAXIMUM GROUP SIZE WITH 2 PROVIDERS

# of Providers' Related Children Ages 4-12 Present in the Home During Child Care Hours	Maximum Allowed Number of Children in Care, Including the Providers' Children Under Age 4	Total # of All Children Through Age 12 Present in the Home During Child Care Hours
0-8	16 children	24
9	15 children	24
10	14 children	24
11	13 children	24
12	12 children	24
13	11 children	24
14	10 children	24
15	9 children	24
16	8 children	24
17	7 children	24
18	6 children	24
19	5 children	24
20	4 children	24
21	3 children	24

22	2 children	24
23	1 child	24

**R430-90-12. Injury Prevention.**

- (1) The licensee shall ensure that the home, outdoor play area, toys, and equipment are maintained and used in a safe manner to prevent injury to children.
- (2) The licensee shall ensure that walkways are free of tripping hazards such as unsecured flooring or cords in walkways.
- (3) Areas accessible to children shall be free of unstable heavy equipment, furniture, or other items that a child could pull down on himself or herself.
- (4) The following items shall be inaccessible to each child in care:
  - (a) firearms, ammunition, and other weapons on the premises. Firearms shall be stored separately from ammunition, in a cabinet or area that is locked with a key or combination lock, unless the use is in accordance with the Utah Concealed Weapons Act, or as otherwise allowed by law;
  - (b) tobacco, open containers of alcohol, illegal substances, and sexually explicit material;
  - (c) when in use: portable space heaters, fireplaces, and wood burning stoves;
  - (d) toxic or hazardous chemicals such as cleaners, insecticides, lawn products, and flammable materials;
  - (e) poisonous plants;
  - (f) matches or cigarette lighters;
  - (g) open flames;
  - (h) sharp objects, edges, corners, or points which could cut or puncture skin;
  - (i) for children age 4 and under, ropes, cords, chains, and wires long enough to encircle a child's neck, such as those found on window blinds or drapery cords;
  - (j) for children age 4 and under, empty plastic bags large enough for a child's head to fit inside, latex gloves, and balloons; and
  - (k) for children age 2 and under, toys or other items with a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches, or objects with removable parts that have a diameter of less than 1-1/4 inch and a length of less than 2-1/4 inches.
- (5) The licensee shall ensure that all toxic or hazardous chemicals are stored in a container labeled with its contents.
- (6) Electrical outlets and surge protectors accessible to children age four and younger shall have protective caps or safety devices when not in use.
- (7) Hot water accessible to children shall not exceed 120 degrees Fahrenheit.
- (8) High chairs shall have T-shaped safety straps or devices that are used whenever a child is in the chair.
- (9) If a wading pool is used:
  - (a) a provider must be at the pool supervising each child whenever there is water in the pool;
  - (b) diapered children must wear swim diapers and rubber pants whenever they are in the pool;
  - (c) the pool shall be emptied and sanitized after each use; and
  - (d) before each child in care uses the pool, the licensee shall obtain parental permission for the child to use the pool.
- (10) If there is a swimming pool on the premises that is not emptied after each use:
  - (a) a provider must be at the pool supervising each child whenever a child in care is using the pool or has access to the pool;
  - (b) diapered children must wear swim diapers and rubber pants whenever they are in the pool;
  - (c) the licensee shall ensure that children in care are protected from unintended access to the pool in one of the following ways:
    - (i) the pool is enclosed within a fence or other solid barrier

at least four feet high that is kept locked whenever the pool is not in use by any child in care; or

(ii) the pool has a properly working safety cover that meets ASTM Standard F1346, and the safety cover is in place whenever the pool is not in use by any child in care;

(d) the licensee shall maintain the pool in a safe manner;

(e) the licensee shall meet all applicable state and local laws and ordinances related to the operation of a swimming pool;

(f) if the pool is over six feet deep, there shall be a Red Cross certified life guard on duty, or a lifeguard certified by another agency that the licensee can demonstrate to the Department to be equivalent to Red Cross certification, any time any child in care has access to the pool; and

(g) before each child in care uses the pool, the licensee shall obtain parental permission for the child to use the pool.

(11) If there is a hot tub on the premises with water in it, the licensee shall ensure that children in care are protected from unintended access to the hot tub in one of the following ways:

(a) it shall have a properly working locking cover that is kept locked whenever there is any child in care on the premises; or

(b) it shall be surrounded by a four foot fence.

(12) If there is a trampoline on the premises that is accessible to any child in care, the licensee shall ensure compliance with the following requirements:

(a) A provider must be at the trampoline supervising its use whenever any child in care is on the trampoline.

(b) Only one person at a time may use a trampoline.

(c) No child in care shall be allowed to do somersaults or flips on the trampoline.

(d) The trampoline must have shock absorbing pads that completely cover its springs, hooks, and frame.

(e) The trampoline must be placed at least 6' away from any structure or object onto which a child could fall, including playground equipment, trees, and fences. If the trampoline is completely enclosed within properly installed netting that is in good repair and is at least 6' tall, and that is used as specified by the manufacturer, the trampoline must be placed at least 3' away from any structure or object onto which a child could fall, including playground equipment, trees, and fences.

(f) There shall be no ladders near the trampoline.

(g) No child in care shall be allowed to play under the trampoline when it is in use.

(h) A parent of each child in care who uses the trampoline shall sign a Department-approved permission form before his or her child uses the trampoline.

(i) The trampoline shall be placed over grass or six inches of protective cushioning, which shall extend six feet from the perimeter of the trampoline frame, or three feet from the perimeter of the trampoline frame if a net is used as specified above in subsection (e).

#### **R430-90-13. Parent Notification and Child Security.**

(1) The licensee shall either post or, upon enrollment, give each parent a copy of the Department's child care guide.

(2) At all times when their child is in care, parents shall have access to those areas of the licensee's home and outdoor area that are used for child care.

(3) The licensee shall ensure that a daily attendance record is maintained each day there is a child in care, to document each child's attendance.

(4) Only parents or persons with written authorization from the parent may pick up any child. In an emergency, a provider may accept verbal authorization if the provider can confirm the identity of the person giving the verbal authorization and the identity of the person picking up the child.

(5) The licensee shall ensure that parents are given a written report of every serious incident, accident, or injury

involving their child on the day of occurrence. A provider and the person picking up the child shall sign the report to acknowledge that he or she has received it.

(6) The licensee shall ensure that parents are notified verbally of minor accidents and injuries on the day of occurrence.

(7) In the case of a life threatening incident or injury to a child, or an incident or injury that poses a threat of the loss of vision, hearing, or a limb, a provider shall contact emergency personnel immediately, before contacting the parent. If the parent cannot be reached after emergency personnel have been contacted, a provider shall attempt to contact the child's emergency contact person.

(8) If a child is injured and the injury appears serious but not life threatening, a provider shall contact the parent immediately, in addition to giving the parent a written report of the injury.

#### **R430-90-14. Child Health.**

(1) The licensee shall ensure that no child is subjected to physical, emotional, or sexual abuse while in care.

(2) All providers shall follow the reporting requirements for witnessing or suspicion of abuse, neglect, and exploitation found in Utah Code, Section 62A-4a-403 and 62A-4a-411.

(3) The use of alcohol, illegal substances, or sexually explicit material on the premises or in vehicles used to transport children is prohibited any time that a child is in care.

(4) At any time when a child is in care, the provider shall ensure that tobacco is not used:

(a) in the home, garage, or any other building used by a child in care;

(b) in any vehicle that is being used to transport a child in care;

(c) within 25 feet of any entrance to the home, garage, or any other building occupied by a child in care; or

(d) in any outdoor area where a child in care plays, or within 25 feet of any outdoor area where a child in care plays.

(5) The licensee shall not enroll any child for care without documentation of:

(a) proof of current immunizations as required by Utah law;

(b) proof of receiving at least one dose of each required vaccine prior to enrollment, and a written schedule to receive all subsequent required vaccinations; or

(c) written documentation of an immunization exemption due to personal, medical or religious reasons.

(6) The licensee shall not provide ongoing care to a child without documentation of:

(a) proof of current immunizations as required by Utah law; or

(b) written documentation of an immunization exemption due to personal, medical or religious reasons.

(7) The licensee shall not admit any child for care without the following written health information from the parent:

(a) known allergies;

(b) known food sensitivities;

(c) acute and chronic medical conditions;

(d) instructions for special or non-routine daily health care;

(e) current medications; and

(f) any other special health instructions for the licensee.

(8) If the parent of a child in care has informed the provider that his or her child has a food allergy or sensitivity, that child shall not be given the food or beverage they are allergic to.

(9) The licensee shall ensure that each child's parent reviews, updates, and signs or initials the child's health information at least annually.

**R430-90-15. Child Nutrition.**

(1) If food service is provided:

(a) The licensee shall ensure that his or her meal service complies with local health department food service regulations.

(b) Foods served by license holders not currently participating and in good standing with the USDA Child and Adult Care Food Program (CACFP) shall comply with the nutritional requirements of the CACFP. The licensee shall either use standard Department-approved menus, current menus provided by the CACFP, or menus approved by a registered dietician. Dietitian approval shall be noted and dated on the menus, and shall be current within the past 5 years.

(c) License holders not currently participating and in good standing with the CACFP shall keep a one week record of foods served at each meal or snack.

(d) The current week's menu shall be available for parent review.

(2) The licensee shall ensure that each child in care is offered a meal or a snack at least once every three hours.

(3) Providers shall serve each child's food on dishes, napkins, or sanitary high chair trays, except for individual serving size items, such as crackers, if they are placed directly in the child's hands. Providers shall not place food on a bare table.

(4) The licensee shall ensure that food and drink brought in by parents for an individual child's use is labeled with the child's name or another unique identifier, and refrigerated if needed. Children in care shall not be served food or beverages that were brought in for another child.

**R430-90-16. Infection Control.**

(1) All providers and volunteers shall wash their hands with soap and running water at the following times:

- (a) before handling or preparing food or bottles;
- (b) before and after eating meals and snacks or feeding a child;
- (c) after diapering each child;
- (d) after using the toilet or helping a child use the toilet;
- (e) after coming into contact with any body fluid;
- (f) after playing with or handling animals;
- (g) when coming in from outdoors; and
- (h) before administering medication.

(2) The licensee shall ensure that each child washes his or her hands with soap and running water at the following times:

- (a) before and after eating meals and snacks;
- (b) after using the toilet;
- (c) after coming into contact with any body fluid; and
- (d) when coming in from outdoors.

(3) During outdoor play time, the requirements of Subsections (1) and (2) may be met by having each provider, volunteer, and child clean his or her hands with individual disposable wet wipes and hand sanitizer.

(4) Only single-use paper towels or individually labeled cloth towels shall be used to dry a child's hands. If cloth towels are used, they shall not be shared by children, providers, or volunteers, and a provider shall wash the towels daily.

(5) The licensee shall ensure that toilet paper is accessible to each child, and that it is kept in a dispenser.

(6) The licensee shall ensure that children are taught proper hand washing techniques, and shall oversee hand washing whenever possible.

(7) Personal hygiene items such as toothbrushes, or combs and hair accessories that are not sanitized between each use, shall not be shared by children or used by a provider on more than one child. Each child's items shall be stored so that they do not touch another child's items.

(8) The licensee shall ensure that all washable toys and materials are cleaned and sanitized after each 5 days of use, or more often if needed.

(9) Stuffed animals, cloth dolls, and dress-up clothes must be machine washable. Pillows must be machine washable, or have removable covers that are machine washable. The licensee shall ensure that all stuffed animals, cloth dolls, dress-up clothes, and pillows or covers are washed after each 5 days of use, or more often if needed.

(10) If a water play table or tub is used, the licensee shall ensure that the table or tub is washed and sanitized daily, and that each child washes his or her hands prior to engaging in the activity.

(11) Persons with contagious TB shall not work with, assist with, or be present with any child in care.

(12) A provider shall promptly change a child's clothing if the child has a toileting accident.

(13) If a child's clothing is wet or soiled from any body fluid, the licensee shall ensure that:

- (a) the clothing is washed and dried; or
- (b) the clothing is placed in a leakproof container, labeled with the child's name, and returned to the parent.

(14) If a child uses a potty chair, the licensee shall ensure that it is cleaned and sanitized after each use.

(15) Except for diaper changes, which are covered in Section R430-90-23, and children's clothing that is soiled from a toileting accident, which is covered in Subsection R430-90-16(13), the licensee shall ensure that the following precautions are taken when cleaning up blood, urine, feces, and vomit.

(a) The person cleaning up the substance shall wear waterproof gloves;

- (b) the surface shall be cleaned using a detergent solution;
- (c) the surface shall be rinsed with clean water;
- (d) the surface shall be sanitized;

(e) if disposable materials such as paper towels or other absorbent materials are used to clean up the body fluid, they shall be disposed of in a leakproof plastic bag;

(f) if non-disposable materials, such as a cleaning cloth, mop, or re-usable rubber gloves are used to clean up the body fluid, they shall be washed and sanitized before reuse; and

(g) the person cleaning up the fluid shall wash his or her hands after cleaning up the body fluid.

(16) The licensee shall ensure that any child who is ill with an infectious disease is separated from any other children in care in a safe, supervised location.

(17) The licensee shall ensure that a parent of any child who becomes ill after arrival is contacted as soon as the illness is observed or suspected.

(18) The licensee shall ensure that the parents of every child in care are informed when any person in the home or child in care has an infectious disease or parasite. Parents shall be notified the day the infectious disease or parasite is discovered.

**R430-90-17. Medications.**

(1) Only a provider trained in the administration of medications as specified in this rule may administer medication to a child in care.

(2) All over-the-counter and prescription medications shall:

- (a) be labeled with the child's name;
- (b) be kept in the original or pharmacy container;
- (c) have the original label; and,
- (d) have child-safety caps.

(3) The licensee shall ensure that all non-refrigerated over-the-counter and prescription medication is inaccessible to children. The licensee shall ensure that all refrigerated over-the-counter and prescription medication is placed in a waterproof container to avoid contamination between food and medication.

(4) The licensee shall have a written medication permission form completed and signed by the parent prior to the administering of any over-the-counter or prescription medication brought in by a parent for his or her child. The

permission form must include:

- (a) the name of the child;
- (b) the name of the medication;
- (c) written instructions for administration; including:
  - (i) the dosage;
  - (ii) the method of administration;
  - (iii) the times and dates to be administered; and
  - (iv) the disease or condition being treated; and
  - (d) the parent's signature and the date signed.
- (5) If the licensee keeps over-the-counter medication that is not brought in by a parent for his or her child's use, the medication shall not be administered to any child without prior parental consent for each instance it is given. The consent must be either:
  - (a) prior written consent; or
  - (b) oral consent for which a provider documents in writing the date and time of the consent, and which the parent signs upon picking up the child.
- (6) When administering medication, the person administering the medication shall:
  - (a) wash his or her hands;
  - (b) if the parent supplies the medication, check the medication label to confirm the child's name;
  - (c) if the parent supplies the medication, compare the instructions on the parent release form with the directions on the prescription label or product package to ensure that a child is not given a dosage larger than that recommended by the health care provider or the manufacturer;
  - (d) if the licensee supplies the medication, check the product package to ensure that a child is not given a dosage larger than that recommended by the manufacturer;
  - (e) administer the medication; and
  - (f) immediately record the following information:
    - (i) the date, time, and dosage of the medication given;
    - (ii) the signature or initials of the provider who administered the medication; and,
    - (iii) any errors in administration or adverse reactions.
- (7) The licensee shall ensure that any adverse reaction to a medication or any error in administration is reported to the parent immediately upon recognizing the error or reaction, or after notifying emergency personnel if the reaction is life threatening.

#### **R430-90-18. Napping.**

- (1) The licensee shall ensure that children in care are offered a daily opportunity for rest or sleep in an environment that provides a low noise level and freedom from distractions.
- (2) If the licensee has a scheduled nap time for children, it shall not exceed two hours daily.
- (3) If a child uses sleeping equipment, sleeping bags, a pillow, a pillow case, sheets, or blankets while in care, the licensee shall meet the following requirements:
  - (a) The licensee shall maintain sleeping equipment in good repair.
  - (b) If sleeping equipment, sleeping bags, pillow cases, sheets, or blankets are clearly assigned to and used by an individual child, a provider must clean and sanitize them as needed, but at least weekly.
  - (c) If sleeping equipment, sleeping bags, pillow cases, sheets, or blankets are not clearly assigned to and used by an individual child, a provider must clean and sanitize them prior to each use.
  - (4) If a child uses a pillow without a pillow case while in care, then the provider must clean and sanitize the pillow as required in Subsection (3). If a child uses a pillow with a pillow case while in care, then the provider must clean and sanitize the pillow case as required in Subsection (3).
  - (5) Sleeping equipment may not block exits at any time.

#### **R430-90-19. Child Discipline.**

- (1) The licensee shall inform non-emergency substitutes, caregivers, parents, and children of the licensee's behavioral expectations for children.
- (2) Providers and volunteers may discipline children using positive reinforcement and redirection, and by setting clear limits that promote a child's ability to become self-disciplined.
- (3) A provider may use gentle, passive restraint with a child only when it is needed to stop the child from injuring himself or herself or others or from destroying property.
- (4) Disciplinary measures shall not include any of the following:
  - (a) any form of corporal punishment such as hitting, spanking, shaking, biting, pinching, or any other measure that produces physical pain or discomfort;
  - (b) restraining a child's movement by binding, tying, or any other form of restraint that exceeds that specified in Subsection (3) above;
  - (c) shouting at any child;
  - (d) any form of emotional abuse;
  - (e) forcing or withholding of food, rest, or toileting; and,
  - (f) confining a child in a closet, locked room, or other enclosure such as a box, cupboard, or cage.

#### **R430-90-20. Activities.**

- (1) The licensee shall develop a daily activity plan that offers activities to support each child's healthy physical, social-emotional, and cognitive-language development.
- (2) The licensee shall ensure that the toys and equipment needed to carry out the activity plan are accessible to children.
- (3) If off-site activities are offered:
  - (a) the licensee shall obtain parental consent for off-site activities in advance;
  - (b) a provider who meets all of the caregiver requirements of this rule shall accompany the children and shall take a copy of each child's admission form as specified in Subsection R430-90-9(2)(a).
  - (c) a provider shall maintain required provider to child ratios and direct supervision during the activity;
  - (d) at least one provider present shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification. Equivalent CPR certification must include hands-on testing. And
  - (e) a provider shall ensure that there is a way for each provider, volunteer, and child to wash his or her hands as specified in R430-90-16(1) and (2). If there is no source of running water, providers, volunteers, and children may clean their hands with individual disposable wet wipes and hand sanitizer.
- (4) If off-site swimming activities are offered, providers shall remain with the children during the activity, and lifeguards and pool personnel shall not count toward the provider to child ratio.

#### **R430-90-21. Transportation.**

- (1) Any vehicle used for transporting any child in care shall:
  - (a) be enclosed;
  - (b) be equipped with individual, size appropriate safety restraints, properly installed and in working order, for each child being transported;
  - (c) be maintained in a safe condition and have a current vehicle registration and safety inspection;
  - (d) be maintained in a clean condition;
  - (e) maintain temperatures between 60-90 degrees Fahrenheit when in use; and
  - (f) contain first aid supplies, including at least antiseptic, band-aids, and tweezers.
- (2) At least one adult in each vehicle transporting any

child in care shall have a current Red Cross, American Heart Association, or equivalent first aid and infant and child CPR certification. Equivalent CPR certification must include hands-on testing.

(3) The adult transporting any child in care shall:

(a) have and carry with him or her a current valid Utah driver's license for the type of vehicle being driven whenever he or she is transporting any child in care;

(b) have with him or her a copy of each child's admission form as specified in Subsection R430-90-9(2)(a);

(c) ensure that each child in care being transported is wearing an appropriate individual safety restraint;

(d) ensure that each child is always attended by an adult while in the vehicle;

(e) ensure that all children remain seated while the vehicle is in motion;

(f) ensure that keys are never left in the ignition when the driver is not in the driver's seat; and,

(g) ensure that the vehicle is locked during transport.

#### **R430-90-22. Animals.**

(1) The licensee shall inform parents of the types of animals permitted on the premises.

(2) The licensee shall ensure that all animals on the premises and accessible to any child in care :

(a) are clean and free of obvious disease or health problems that could adversely affect any child in care; and

(b) have current vaccinations for all vaccine preventable diseases that are transmissible to humans. The licensee shall have documentation of the vaccinations.

(3) The licensee shall ensure that there is no animal on the premises that has a history of dangerous, attacking, or aggressive behavior, or a history of biting even one person.

(4) The licensee shall ensure that no child in care assists with the cleaning of animals or animal cages, pens, or equipment.

(5) The licensee shall ensure that there is no animal or animal equipment in food preparation or eating areas during food preparation or eating times.

(6) The licensee shall ensure that no child in care handles reptiles or amphibians while in care.

#### **R430-90-23. Diapering.**

If children in care are diapered on the premises, the following applies:

(1) The diapering area shall not be located in a food preparation or eating area.

(2) Children shall not be diapered directly on the floor, or on any surface used for another purpose.

(3) The diapering surface shall be smooth, waterproof, and in good repair.

(4) A provider shall clean and sanitize the diapering surface after each diaper change, or use a disposable non-permeable diapering surface that is thrown away after each diaper change.

(5) The provider shall wash his or her hands after each diaper change.

(6) The provider shall place soiled disposable diapers in a container that has a disposable plastic lining and a tightly fitting lid, or place soiled diapers directly in an outdoor garbage container that has a tightly fitting lid or is inaccessible to children.

(7) A provider shall daily clean and sanitize indoor containers where soiled diapers are placed.

(8) If cloth diapers are used:

(a) they shall not be rinsed at the facility; and

(b) after a diaper change, the provider shall place the cloth diaper directly into a leakproof container that is inaccessible to any child and labeled with the child's name, or a leakproof

diapering service container.

(9) The licensee shall ensure that each child's diaper is checked at least once every two hours, and that each child's diaper is changed promptly if it is wet or soiled. If a child is napping at the end of a two-hour period, the child's diaper must be checked when the child awakes.

#### **R430-90-24. Infant and Toddler Care.**

If the licensee accepts infants or toddlers for care, the following applies:

(1) If an infant is not able to sit upright and hold his or her own bottle, a provider shall hold the infant during bottle feeding. Bottles shall not be propped.

(2) A provider shall clean and sanitize high chair trays prior to each use.

(3) A provider shall cut solid foods for infants into pieces no larger than 1/4 inch in diameter. A provider shall cut solid foods for toddlers into pieces no larger than 1/2 inch in diameter.

(4) If there is more than one infant or toddler in care, baby food, formula, and breast milk for each child that is brought from home must be labeled with the child's name or another unique identifier.

(5) Baby food, formula, and breast milk that is brought from home for an individual child's use must be:

(a) kept refrigerated if needed; and

(b) discarded within 24 hours of preparation or opening, except that powdered formula or dry foods which are opened, but are not mixed, are not considered prepared.

(6) The licensee shall ensure that formula and milk, including breast milk, is discarded after each feeding, or within two hours of initiating a feeding.

(7) To prevent burns, a provider shall shake each heated bottle and test it for temperature before the bottle is fed to a child.

(8) If there is more than one infant or toddler in care, pacifiers and bottles shall be:

(a) labeled with each child's name or another unique identifier; or

(b) washed and sanitized after each individual use, before use by another child.

(9) The licensee shall ensure that only one infant or toddler occupies any one piece of equipment, such as a crib, playpen, stroller, or swing, at any time, unless the equipment has individual seats for more than one child.

(10) The licensee shall ensure that infants sleep in equipment designed for sleep, such as a crib, bassinet, porta-crib or play pen. The licensee shall ensure that infants are not placed to sleep on mats or cots, or in bouncers, swings, car seats, or other similar pieces of equipment, unless the licensee has written permission from the infant's parent.

(11) The licensee shall ensure that each crib used by a child in care:

(a) has a tight fitting mattress;

(b) has slats spaced no more than 2-3/8 inches apart;

(c) has at least 20 inches from the top of the mattress to the top of the crib rail, or at least 12 inches from the top of the mattress to the top of the crib rail if the child using the crib cannot sit up without assistance; and

(d) does not have strings, cords, ropes, or other entanglement hazards strung upon the crib rails or within reach of the child.

(12) The licensee shall ensure that infants are not placed on their stomachs for sleeping, unless there is documentation from a health care provider for treatment of a medical condition.

(13) The licensee shall ensure that each infant and toddler is allowed to follow his or her own pattern of sleeping and eating.

(14) Infant walkers with wheels are prohibited.

(15) The licensee shall ensure that infants and toddlers do not have access to objects made of styrofoam.

(16) The licensee shall ensure that a provider responds as promptly as possible to infants and toddlers who are in emotional distress due to conditions such as hunger, fatigue, wet or soiled diapers, fear, teething, or illness.

(17) The licensee shall ensure that awake infants and toddlers receive positive physical stimulation and positive verbal interaction with a provider at least once every 20 minutes.

(18) The licensee shall ensure that awake infants and toddlers are not confined for more than 30 minutes in one piece of equipment, such as swings, high chairs, cribs, play pens, or other similar pieces of equipment.

(19) The licensee shall ensure that mobile infants and toddlers have freedom of movement in a safe area.

(20) To stimulate their healthy development, there shall be safe toys accessible to infants and toddlers. The licensee shall ensure that there are enough toys for each child in the group to be engaged in play with toys.

(21) The licensee shall ensure that all toys used by infants and toddlers are cleaned and sanitized:

- (a) weekly;
- (b) after being put in a child's mouth before another child uses it; and
- (c) after being contaminated by any body fluid.

**KEY: child care facilities, licensed family child care**

**January 1, 2013**

**26-39**

**Notice of Continuation May 29, 2013**



**R512. Human Services, Child and Family Services.****R512-300. Out-of-Home Services.****R512-300-1. Purpose and Authority.**

- (1) The purposes of Out-of-Home Services are:
- (a) To provide a temporary, safe living arrangement for a child placed in the custody of the Division of Child and Family Services (Child and Family Services) or the Department of Human Services by court order or through voluntary placement by the child's parent or legal guardian.
- (b) To provide services to protect the child and facilitate the safe return of the child home or to another permanent living arrangement.
- (c) To provide safe and proper care and address the child's needs while in state custody.
- (2) Sections 62A-4a-105 and 62A-4a-106 authorize Child and Family Services to provide Out-of-Home Services and 42 USC Section 672 authorizes federal foster care. 42 USC Sections 671 and 672 (2007), and 45 CFR Parts 1355 and 1356 (2008) are incorporated by reference.
- (3) This rule is authorized by Section 62A-4a-102.

**R512-300-2. Definitions.**

The following terms are defined for the purposes of this rule:

- (1) "Custody by court order" means temporary custody or custody authorized by Sections 78A-6-117 or 78A-6-322. It does not include protective custody.
- (2) "Child and Family Services" means the Division of Child and Family Services.
- (3) "Department" means the Department of Human Services.
- (4) "Least restrictive" means most family-like.
- (5) "Placement" means living arrangement.

**R512-300-3. Scope of Services.**

- (1) Qualification for Services. Out-of-Home Services are provided to:
- (a) A child placed in the custody of Child and Family Services by court order and the child's parent or guardian, if the court orders reunification;
- (b) A child placed in the custody of the Department by court order for whom Child and Family Services is given primary responsibility for case management or for payment for the child's placement, and the child's parent or guardian if reunification is ordered by the court;
- (c) A child voluntarily placed into the custody of Child and Family Services and the child's parent or guardian.
- (2) Service Description. Out-of-Home Services consist of:
- (a) Protection, placement, supervision, and care of the child;
- (b) Services to a parent or guardian of a child receiving Out-of-Home Services when a reunification goal is ordered by the court or to facilitate return of a child home upon completion of a voluntary placement.
- (c) Services to facilitate another permanent living arrangement for a child receiving Out-of-Home Services if a court determines that reunification with a parent or guardian is not required or in the child's best interests.
- (3) Availability. Out-of-Home Services are available in all geographic regions of the state.
- (4) Duration of Services. Out-of-Home Services continue until a child's custody is terminated by a court or when a voluntary placement agreement expires or is terminated.
- (5) As specified in Section 62A-4a-415, Child and Family Services may not consent to the interview of a child in state custody by a law enforcement officer, unless consent for the interview is obtained from the child's Guardian ad Litem. This provision does not apply if a Guardian ad Litem is not appointed for the child.

**R512-300-4. Child and Family Services Responsibility to a Child Receiving Out-of-Home Services.**

- (1) Child and Family Team.
- (a) With the family's assistance, a child and family team shall be established for each child receiving Out-of-Home Services.
- (b) At a minimum, the child and family team shall assist with assessment, child and family plan development, and selection of permanency goals; oversee progress towards completion of the plan; provide input into adaptations to the plan; and recommend placement type or level.
- (2) Assessment.
- (a) A written assessment is completed for each child placed in custody of Child and Family Services through court order or voluntary placement and for the child's family.
- (b) The written assessment evaluates the child and family's strengths and underlying needs.
- (c) The type of assessment is determined by the unique needs of the child and family, such as cultural considerations, special medical or mental health needs, and permanency goals.
- (d) Assessment is ongoing.
- (3) Child and Family Plan.
- (a) Based upon an assessment, each child and family receiving Out-of-Home Services shall have a written child and family plan in accordance with Section 62A-4a-205.
- (b) The child's parent or guardian and other members of the child and family team shall assist in creating the plan based on the assessment of the child and family's strengths and needs.
- (c) In addition to requirements specified in Section 62A-4a-205, the child and family plan shall include the following to facilitate permanency:
- (i) The current strengths of the child and family as well as the underlying needs to be addressed.
- (ii) A description of the type of placement appropriate for the child's safety, special needs and best interests, in the least restrictive setting available and, when the goal is reunification, in reasonable proximity to the parent. If the child with a goal of reunification has not been placed in reasonable proximity to the parent, the plan shall describe reasons why the placement is in the best interests of the child.
- (iii) Goals and objectives for assuring the child receives safe and proper care including the provision of medical, dental, mental health, educational, or other specialized services and resources.
- (iv) If the child is age 14 or older, a written description of the programs and services to help the child prepare for the transition from foster care to independent living in accordance with Rule R512-305.
- (v) A visitation plan for the child, parents, and siblings, unless prohibited by court order.
- (vi) Steps for monitoring the placement and plan for worker visitation and supports to the Out-of-Home caregiver for a child placed in Utah or out of state.
- (vii) If the goal is adoption or placement in another permanent home, steps to finalize the placement, including child-specific recruitment efforts.
- (d) The child and family plan is modified when indicated by changing needs, circumstances, progress towards achievement of service goals, or the wishes of the child, family, or child and family team members.
- (e) A copy of the completed child and family plan shall be provided to the parent or guardian, Out-of-Home caregiver, juvenile court, assistant attorney general, guardian ad litem, legal counsel for the parent, and the child, if the child is able to understand the plan.
- (4) Permanency Goals.
- (a) A child in Out-of-Home care shall have a primary permanency goal and a concurrent permanency goal identified by the child and family team.

- (b) Permanency goals include:
- (i) Reunification.
  - (ii) Adoption.
  - (iii) Guardianship (Relative).
  - (iv) Guardianship (Non-Relative).
  - (v) Individualized Permanency.
- (c) For a child whose custody is court ordered, both primary and concurrent permanency goals shall be submitted to the court for approval.
- (d) The primary permanency goal shall be reunification unless the court has ordered that no reunification efforts be offered.
- (e) A determination that Transition to Adult Living services are appropriate for a child does not preclude adoption as a primary permanency goal. Enrollment in Transition to Adult Living services can occur concurrently with continued efforts to locate and achieve placement of an older child with an adoptive family.
- (5) Placement.
- (a) A child receiving Out-of-Home Services shall receive safe and proper care in an appropriate placement according to placement selection criteria specified in Rule R512-302.
- (b) The type of placement, either initial or change in placement, is determined within the context of the child and family team utilizing a need level screening tool designated by Child and Family Services.
- (c) Placement decisions are based upon the child's needs, strengths, and best interests.
- (d) The following factors are considered in determining placement:
- (i) Age, special needs, and circumstances of the child;
  - (ii) Least restrictive placement consistent with the child's needs;
  - (iii) Placement of siblings together;
  - (iv) Proximity to the child's home and school;
  - (v) Sensitivity to cultural heritage and needs of a minority child;
  - (vi) Potential for adoption.
- (e) A child's placement shall not be denied or delayed on the basis of race, color, or national origin of the Out-of-Home caregiver or the child involved.
- (f) Placement of an Indian child shall be in compliance with the Indian Child Welfare Act, 25 USC Section 1915 (2007), which is incorporated by reference.
- (g) When a young woman in state custody is the mother of a child and desires and is able to parent the child with the support of the Out-of-Home caregiver, the child shall remain in the Out-of-Home placement with the mother. Child and Family Services shall only petition for custody of the young woman's child if there are concerns of abuse, neglect, or dependency in accordance with Section 78A-6-322.
- (h) The child and family team may recommend a Transition to Adult Living placement for a child age 14 years or older in accordance with Rule R512-305 when in the child's best interests.
- (6) Federal Benefits.
- (a) Child and Family Services may apply for eligibility for Title IV-E foster care and Medicaid benefits for a child receiving Out-of-Home Services. Information provided by the parent or guardian, as specified in Rule R512-301, shall be utilized in determining eligibility.
- (b) Child and Family Services may apply to be protective payee for a child in state custody who has a source of unearned income, such as Supplemental Security Income or Social Security Income. A representative payee account shall be maintained by Child and Family Services for management of the child's income. The unearned income shall be utilized only towards costs of the child's care and personal needs in accordance with requirements of the regulating agency.
- (7) Visitation with Familial Connections.
- (a) The child has a right to purposeful and frequent visitation with a parent or guardian and siblings, unless the court orders otherwise.
- (b) Visitation is not a privilege to be earned or denied based on behavior of the child or the parent or guardian.
- (c) Visitation may be supplemented with telephone calls and written correspondence.
- (d) The child also has a right to communicate with extended family members, the child's attorney, physician, clergy, and others who are important to the child.
- (e) Intensive efforts shall be made to engage a parent or guardian in continuing contacts with a child, when not prohibited by court order.
- (f) If clinically contraindicated for the child's safety or best interests, Child and Family Services may petition the court to deny or limit visitation with specific individuals.
- (g) Visitation and other forms of communication with familial connections shall only be denied when ordered by the court.
- (h) A parent whose parental rights have been terminated does not have a right to visitation.
- (8) Out-of-Home Worker Visitation with the Child.
- (a) The Out-of-Home worker shall visit with the child to ensure that the child is safe and is appropriately cared for while in an Out-of-Home placement. If the child is placed out of the area or out of state, arrangements may be made for another worker to perform some of the visits. The child and family team shall develop a specific plan for the worker's contacts with the child based upon the needs of the child.
- (9) Case Reviews.
- (a) Pursuant to Sections 78A-6-313 and 73-3a-312, periodic reviews of court ordered Out-of-Home Services shall be held no less frequently than once every six months.
- (b) Child and Family Services shall seek to ensure that each child receiving Out-of-Home Services has timely and effective case reviews and that the case review process:
- (i) Expedites permanency for a child receiving Out-of-Home Services,
  - (ii) Assures that the permanency goals, child and family plan, and services are appropriate,
  - (iii) Promotes accountability of the parties involved in the child and family planning process, and
  - (iv) Monitors the care for a child receiving Out-of-Home Services.
- (10) Maximum Number of Children in Out-of-Home Care.
- (a) At no time during the fiscal year will the proportion of children in Out-of-Home care for over 24 months exceed one-third of the total number of children currently in Out-of-Home care.
- (b) On an annual basis, the statewide quality improvement committee will review data on the proportion of children in foster care over 24 months and the steps taken by Child and Family Services to ensure that proportion is not exceeded. As appropriate, recommendations for improvement will be made from the committee to Child and Family Services administration.

**KEY: social services, child welfare, domestic violence, child abuse**

**August 11, 2010**

**Notice of Continuation May 16, 2013**

**62A-4a-102**

**62A-4a-105**

**42 U.S.C. 671**

**R512. Human Services, Child and Family Services.****R512-301. Out-of-Home Services, Responsibilities Pertaining to a Parent or Guardian.****R512-301-1. Purpose and Authority.**

(1) The purposes of this rule are to clarify:

(a) Roles and responsibilities of Child and Family Services to a parent or guardian of a child receiving out-of-home services in accordance with Rule R512-300, and

(b) Roles and responsibilities of a parent or guardian while a child is receiving out-of-home services.

(2) Sections 62A-4a-105 and 62A-4a-106 authorize Child and Family Services to provide out-of-home services and 42 USC 672 authorizes federal foster care. 42 USC 672 as amended by Public Law 110-351 (October 7, 2008), and 45 CFR Parts 1355 and 1356 (October 1, 2008) are incorporated by reference.

(3) This rule is authorized by Section 62A-4a-102.

**R512-301-2. Definitions.**

The following terms are defined for the purposes of this rule:

(1) Child and Family Services means the Division of Child and Family Services.

(2) Out-of-Home Services means those services defined in Rule R512-300.

(3) Child and Family Team means a group that includes the child and family and meets together as often as needed to support the family and assist them in meeting their needs to achieve goals that will lead to conclusion of Child and Family Services involvement. This may include the referent or other concerned individuals identified by the family as support persons.

(4) Reunification means safely returning the child to the parent or guardian from whom the child was removed by court order or through a voluntary placement.

**R512-301-3. Child and Family Services Roles and Responsibilities to a Parent or Guardian of a Child Receiving Out-of-Home Services when Reunification is the Primary Permanency Goal.**

(1) Child and Family Services is responsible to make reasonable efforts to reunify a child with a parent or guardian when a court has determined that reunification is appropriate in accordance with Section 62A-4a-203 or when a child has been placed with Child and Family Services through a voluntary placement.

(2) Child and Family Services shall actively seek the involvement of the parent or guardian in the Child and Family Team process, including participation in establishing the Child and Family Team, completing an assessment, developing the Child and Family Plan, and selecting the child's primary and concurrent permanency goals as described in Rule R512-300.

(3) The Child and Family Plan shall not only address the child's strengths and needs, but shall also address the family's strengths and underlying needs. In accordance with Section 62A-4a-205, the plan shall identify specifically what the parents must do in order for the child to be returned home, including how those requirements may be accomplished behaviorally and how they shall be measured. Provisions of the plan shall be crafted by the Child and Family Team and designed to maintain and enhance parental functioning, care, and familial connections.

(4) In accordance with Section 62A-4a-205, additional weight and attention shall be given to the input of the child's parent in the plan development.

(5) The parent or guardian and the parent or guardian's legal counsel shall be provided a copy of the completed Child and Family Plan.

(6) The caseworker shall have regular contact with the

parent or guardian to facilitate progress towards goal achievement as determined by the needs of the parent and the recommendations of the Child and Family Team. At a minimum, the caseworker shall visit the parent or guardian at least once per month.

(7) Child and Family Services shall make efforts to engage a parent or guardian in continuing contacts with the child, whether through visitation, phone, or written correspondence. Visitation requirements specified in Rule R512-300 apply.

(8) Child and Family Services shall also make efforts to engage a parent or guardian in appropriate parenting tasks such as attending school meetings and health care visits.

(9) The parent or guardian has a right to reasonable notice and may participate in court and administrative reviews for the child in accordance with 42 USC 675 and Section 78A-6-317.

**R512-301-4. Roles and Responsibilities of a Parent or Guardian of a Child Receiving Out-of-Home Services when Reunification is the Primary Permanency Goal.**

In addition to responsibility to comply with orders made by the court, a parent or guardian has responsibility to:

(1) Participate in the Child and Family Team process.

(2) Provide input into the assessment and Child and Family Plan development process to help identify changes in behavior and actions necessary to enable the child to safely return home.

(3) Complete goals and objectives of the plan.

(4) Communicate with the caseworker about progress in completing the plan or regarding problems in meeting specified goals or objectives in advance of proposed completion time frames.

(5) Maintain communication and frequent visitation with the child in accordance with Rule R512-300, when not prohibited by the court.

(6) Provide information necessary to determine the child's eligibility for Federal benefits while in care in accordance with Rule R512-300, including information on household income, assets, and household composition.

(7) Provide financial support for the child's care in accordance with 42 USC 671 and Sections 62A-4a-114 and 78A-6-1106, unless deferred or waived as specified in Rule R495-879.

**R512-301-5. Guidelines for Making Recommendations for Reunification to the Court.**

(1) In accordance with Section 62A-4a-205, when considering reunification, the child's health, safety, and welfare shall be the paramount concern.

(2) The Child and Family Team shall consider the following factors in determining whether to recommend that the court order reunification:

(a) The risk factors that led to the placement were acute rather than chronic.

(b) The child and family assessments (including factors such as threats of harm, protective capacities of the parent or guardian, the child's vulnerabilities, the level of informal and formal supports available to the family, and the family history, including past patterns of behavior) conclude that the parent appears to possess or have the potential to develop the ability to ensure the child's safety and provide a nurturing environment.

(c) The parent is committed to the child and indicates a desire to have the child returned home.

(d) The child has a desire for reunification as determined using age appropriate assessments.

(e) Members of the Child and Family Team support a reunification plan.

(f) If the parent is no longer living with the individual who severely abused the minor, reunification may be considered if the parent is able to implement a plan that ensures the child's

ongoing safety.

(g) Existence of factors or exceptions that preclude reunification as specified in Section 78A-6-312.

(3) Child and Family Services shall provide additional relevant facts, when available, to assist the court in making a determination regarding the appropriateness of reunification services such as:

(a) The parent's failure to respond to previous services or service plan.

(b) The child being abused while the parent was under the influence of drugs or alcohol.

(c) Continuation of a chaotic, dysfunctional lifestyle.

(d) The parent's past history of violent behavior.

(e) The testimony of a properly qualified professional or expert witness that the parent's behavior is unlikely to be successfully changed.

**R512-301-6. Return Home and Trial Home Placement.**

(1) When a child and family's safety needs have been met and the original reasons and risks have been reduced or eliminated, the child may return home, when allowable by court order or in conjunction with provisions of a voluntary placement.

(2) The Child and Family Team shall plan for the transition and return home prior to the child being returned.

(3) Child and Family Services shall provide reasonable notice (unless otherwise ordered by the court) of the date the child will be returning home to all pertinent parties such as the child, parents, Guardian ad Litem, out-of-home care provider, school staff, therapist, and partner agencies, so all parties can be adequately prepared for the return home.

(4) Prior to and when the child is returned home, Child and Family Services shall provide services directed at assisting the child and family with the transition back into the home and shall contact relevant parties to ensure that no further abuse or neglect is occurring.

(5) If it is determined that the child and family require more intensive services to ensure successful reunification, intensive family reunification services may be utilized in accordance with Rule R512-100.

(6) A child may be returned home for a trial home visit for up to 60 days. The trial home visit shall continue until the court has returned custody to the parent or guardian.

**R512-301-7. Voluntary Relinquishment of Parental Rights.**

(1) When it is not in a child's best interest to be reunified with the child's parents, Child and Family Services may explore with both parents the option of voluntary relinquishment in accordance with Section 78A-6-514.

(2) If the child is Native American, provisions of the Indian Child Welfare Act (ICWA), 25 USC 1913 shall be met.

**R512-301-8. Termination of Parental Rights.**

(1) If a court determines that reunification services are not appropriate, Child and Family Services shall petition for termination of parental rights in accordance with 42 USC 675, 42 CFR 1356.21, and Section 62A-4a-203.5 unless exceptions specified in 42 CFR 1356.21 or Section 62A-4a-203.5 apply.

(2) Child and Family Services shall document in the Child and Family Plan care by kin or compelling reasons for determining that filing for termination of parental rights is not in the child's best interests and shall make the plan available to the court for review.

(3) When Child and Family Services files a petition to terminate parental rights, the caseworker must also concurrently begin to identify, recruit, process, and seek approval of a qualified adoptive family for the child. These efforts must be documented in the case record as specified in Rule R512-300.

(4) If the child is Native American, provisions of the

ICWA, 25 USC 1913, shall be met.

(5) Child and Family Services shall not give approval to finalize an adoption until the period to appeal a termination of parental rights has expired.

**KEY: social services, child welfare, domestic violence, child abuse**

**December 22, 2010**

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**62A-4a-102**

**62A-4a-105**

**62A-4a-106**

**R512. Human Services, Child and Family Services.**  
**R512-302. Out-of-Home Services, Responsibilities Pertaining to an Out-of-Home Caregiver.**  
**R512-302-1. Purpose and Authority.**

(1) The purposes of this rule are to clarify:

(a) Qualification, selection, payment criteria, and roles and responsibilities of a caregiver while a child is receiving Out-of-Home Services, and

(b) Roles and responsibilities of Child and Family Services to a caregiver for a child receiving Out-of-Home Services in accordance with Rule R512-300.

(2) This rule is authorized by Section 62A-4a-102. Sections 62A-4a-105 and 62A-4a-106 authorize Child and Family Services to provide Out-of-Home Services and 42 USC Section 672 authorizes federal foster care. 42 USC Section 672 (2007), and 45 CFR Parts 1355 and 1356 (2008) are incorporated by reference.

**R512-302-2. Definitions.**

In addition to definitions in R512-300-2, the following terms are defined for the purposes of this rule:

(1) "Caregiver" means a licensed resource family, also known as a licensed foster family, and may also include a licensed kin provider or a foster family certified by a contract provider that is licensed as a child placing agency. Caregiver does not include a group home or residential facility that provides Out-of-Home Services under contract with Child and Family Services.

(2) "Cohabiting" means residing with another person and being involved in a sexual relationship.

(3) "Involved in a sexual relationship" means any sexual activity and conduct between persons.

(4) "Out-of-Home Services" means those services described in Rule R512-300.

(5) "Residing" means living in the same household on an uninterrupted or an intermittent basis.

**R512-302-3. Qualifying as a Caregiver for a Child Receiving Out-of-Home Services.**

(1) An individual or couple shall be licensed by the Office of Licensing as provided in Rule R501-12 to qualify as a caregiver for a child receiving Out-of-Home Services. After initial licensure, the caregiver shall take all steps necessary for timely licensure renewal to ensure that the license does not lapse.

(2) A caregiver qualifying for an initial license and any adults living in the home shall complete criminal background checks required by Section 78A-6-308 and P.L. 109-248 before a child in state custody may be placed in that home.

(3) Child and Family Services or the contract provider shall provide pre-service training required in Rule R501-12-5 after the provider has held an initial consultation with the individual or couple to clearly delineate duties of caregivers.

(4) The curriculum for pre-service and in-service training shall be developed by the contract provider and approved by Child and Family Services according to Child and Family Services' contract with the provider.

(5) Child and Family Services or the contract provider shall verify in writing a caregiver's completion of training required for licensure as provided in Rule R501-12-5.

(6) Child and Family Services or the contract provider shall also verify in writing a caregiver's completion of supplemental training required for serving children with more difficult needs.

(7) Once a license is issued, the caregiver's name and identifying information may be shared with the court, Assistant Attorney General, Guardian ad Litem, foster parent training contract provider, resource family cluster group, foster parent associations, the Department of Health, and the child's primary

health care providers.

**R512-302-4. Selection of a Caregiver for a Child Receiving Out-of-Home Services.**

(1) A caregiver shall have the experience, personal characteristics, temperament, and training necessary to work with a child and the child's family to be approved and selected to provide Out-of-Home Services.

(2) An Out-of-Home caregiver shall be selected according to the caregiver's skills and abilities to meet a child's individual needs and, when appropriate, an ability to support both parents in reunification efforts and to consider serving as a permanent home for the child if reunification is not achieved. When dictated by a child's level of care needs, Child and Family Services may require one parent to be available in the home at all times.

(3) An Out-of-Home caregiver shall be selected according to the caregiver's compatibility with the child, as determined by Child and Family Services exercising its professional judgment. The best interest of the child shall be Child and Family Services' primary consideration when making a placement decision.

(a) Child and Family Services may consider the Out-of-Home caregiver's possession or use of a firearm or other weapon, espoused religious beliefs, or choice to school the child outside the public education system in accordance with Section 63G-4-104.

(b) Child and Family Services may consider the child's sex, age, behavior, and the composition of the foster family.

(4) A child in state custody shall be placed with an Out-of-Home caregiver who is fully licensed as provided in Rule R501-12. A child may be placed in a home with a probationary license only if the Out-of-Home caregiver is a child-specific placement.

(5) An Out-of-Home caregiver shall be given necessary information to make an informed decision about accepting responsibility to care for a child. The worker shall obtain all available necessary information about the child's permanency plan, family visitation plans, and needs such as medical, educational, mental health, social, behavioral, and emotional needs, for consideration by the caregiver.

(6) If the court has not given custody to a non-custodial parent or kin provider, to provide safety and maintain family ties, the child shall be placed in the least restrictive placement that meets the child's special needs and is in the child's best interests, according to the following priorities:

(a) A relative of the child.

(b) A friend designated by the custodial parent or guardian of the child, if the friend is a licensed foster parent.

(c) A former foster placement, shelter facility, or other foster placement designated by Child and Family Services.

(7) If a child is reentering custody of the state, the child's former Out-of-Home caregiver shall be given preference as provided in Section 62A-4a-206.1.

(8) A child's placement shall not be denied or delayed on the basis of race, color, or national origin of the Out-of-Home caregiver or the child involved.

(9) Selection of an Out-of-Home caregiver for an Indian child shall be made in compliance with the Indian Child Welfare Act, 25 USC Section 1915 (2007), which is incorporated by reference.

**R512-302-5. Child and Family Services' Roles and Responsibilities to a Caregiver for a Child Receiving Out-of-Home Services.**

(1) Child and Family Services shall actively seek the involvement of the caregiver in the child and family team process, including participation in the child and family team, completing an assessment, and developing the child and family plan as described in Rule R512-300-4.

(2) The child and family plan shall include steps for

monitoring the placement and a plan for worker visitation and supports to the Out-of-Home caregiver for a child placed in Utah or out of state.

(3) In accordance with Section 62A-4a-205, additional weight and attention shall be given to the input of the child's caregiver in plan development.

(4) The caregiver shall be provided a copy of the completed child and family plan.

(5) The caregiver has a right to reasonable notice and may participate in court and administrative reviews for the child in accordance with Sections 78A-6-310 and 78A-6-317.

(6) Child and Family Services shall provide support to the caregiver to ensure that the child's needs are met, and to prevent unnecessary placement disruption.

(7) Options for temporary relief may include paid respite, non-paid respite, childcare, and babysitting.

(8) The worker shall provide the caregiver with a portable, permanent record that provides available educational, social, and medical history information for the child and that preserves vital information about the child's life events and activities while receiving Out-of-Home Services.

#### **R512-302-6. Roles and Responsibilities of a Caregiver of a Child Receiving Out-of-Home Services.**

(1) An Out-of-Home caregiver shall be responsible to provide daily care, supervision, protection, and experiences that enhance the child's development as provided in a written agreement entered into with Child and Family Services and the child and family plan.

(2) The caregiver shall be responsible to:

(a) Participate in the child and family team process.

(b) Provide input into the assessment and child and family plan development process.

(c) Complete goals and objectives of the plan relevant to the caregiver.

(d) Promptly communicate with the worker the child's progress and concerns and progress in completing the plan or regarding problems in meeting specified goals or objectives in advance of proposed completion time frames.

(e) Support and assist with parental visitation.

(3) The caregiver shall document individualized services provided for the child, when required, such as skills development or transportation.

(4) The caregiver shall maintain and update the child's portable, permanent record to preserve vital information about the child's life events, activities, health, social, and educational history while receiving Out-of-Home Services. The caregiver shall share relevant health and educational information during visits with appropriate health care and educational providers to ensure continuity of care for the child.

#### **R512-302-7. Payment Criteria for a Caregiver of a Child Receiving Out-of-Home Services.**

(1) An Out-of-Home caregiver shall receive payments according to the rate established for the child's need level, not upon the highest level of service the caregiver has been trained to provide.

(2) The daily rate for the monthly foster care maintenance payment provides for the child's board and room, care and supervision, basic clothing and personal incidentals, and may also include a supplemental daily payment based upon a child's medical need or to assist with care of a youth's child while residing with the youth in an Out-of-Home placement. Foster care maintenance may also include periodic one-time payments for special needs such as an initial clothing allowance, additional needs for a baby, additional clothing, gifts, lessons or equipment, recreation, non-tuition school expenses, and other needs recommended by the child and family team and approved by Child and Family Services.

(3) A caregiver may also be reimbursed for transporting a foster child for visitation with a parent or siblings, to participate in case activities such as child and family team meetings and reviews, and for transporting the child to activities beyond those normally required for a family. The caregiver must document all mileage on a form provided by Child and Family Services.

(4) The caregiver shall submit required documentation to receive payments for care or reimbursement for costs.

#### **R512-302-8. Child Abuse Reporting and Investigation of a Caregiver Providing Out-of-Home Services.**

(1) Investigation of any report or allegation of abuse or neglect of a child that allegedly occurs while the child is living with an Out-of-Home caregiver shall be investigated by staff designated for this purpose by the Department of Human Services or law enforcement as provided in Section 62A-4a-202.3.

#### **R512-302-9. Removal of a Child from a Caregiver Providing Services.**

(1) Removal of a child from a caregiver shall occur as provided in Section 62A-4a-206 and Rule R512-31.

#### **R512-302-10. Cohabitation Not Permitted for Foster Parents.**

(1) A foster parent or foster parents must complete a declaration of compliance with Section 78B-6-137 that they are not cohabiting with another person in a sexual relationship. Child and Family Services gives priority for foster care placements to families in which both a man and a woman are legally married or valid proof that a court or administrative order has established a valid common law marriage, Section 30-1-4.5. An individual who is not cohabiting may also be a foster parent if the Region Director determines it is in the best interest of the child. Legally married couples and individuals who are not cohabiting and are blood relatives of the child in state custody may be foster parents pursuant to Section 78A-6-307.

#### **KEY: child welfare**

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**R512. Human Services, Child and Family Services.****R512-305. Out-of-Home Services, Transition to Adult Living Services.****R512-305-1. Purpose and Authority.**

(1) The purpose of Transition to Adult Living (TAL) services is to help prepare a youth who is receiving out-of-home services in accordance with Rule R512-300 to gain skills to transition to adulthood and to provide support to youth upon leaving the Division of Child and Family Services (Child and Family Services) custody. TAL is a continuum of services that begins while youth are in care and continues through post-discharge with the Young Adult Resource Network (YARN).

(2) TAL services, which includes the Education and Training Voucher Program, are authorized by the John H. Chafee Foster Care Independence Program, 42 USC 677 (January 3, 2007), incorporated by reference.

(3) This rule is authorized by Section 62A-4a-102.

**R512-305-2. Scope of Services.**

(1) Qualification for and duration of services:

(a) TAL services are required for all youth receiving out-of-home services, age 14 years or older, until Child and Family Services custody is terminated regardless of permanency goal, as specified in Rule R512-300.

(b) The YARN provides services for youth if they are no longer in Child and Family Services custody and are not yet 21 years of age, and the youth:

(i) Ages out of out-of-home care, or

(ii) While in out-of-home care, after the age of 14 years, received at least 12 consecutive months of TAL services and the court terminated reunification.

(2) Service description:

(a) TAL services build on the youth's individual strengths and develop personal assets in order to help young people acquire the motivation and the means to be successful throughout their lives. The strategies are aimed at helping youth achieve five fundamental aspects of adult life, including safe and affordable housing, educational attainment and stable employment, health care access, positive sense of self, and supportive and enduring relationships.

(b) YARN consists of time-limited support to youth. This assistance can be provided through support, financial aid, or Basic Life Skills training. It may include housing, counseling, employment education, and other appropriate support and services to complement a youth's efforts to achieve self-sufficiency.

(3) Availability:

(a) TAL services and YARN are available in all geographic regions of the state.

(b) TAL services and YARN are available on the same basis to Native American youth who are or were formerly in Tribal custody within the boundaries of the state.

**R512-305-3. Transition to Adult Living Services for a Youth in Child and Family Services Custody.**

(1) The caseworker, with the assistance of the youth and Child and Family Team, ensures completion of the empirically validated life skills assessment to identify the strengths and needs of the youth.

(2) Based upon the empirically validated life skills assessment, a TAL plan is developed that identifies the youth's strengths, needs, and specific services.

(3) The Child and Family Team determines the TAL plan. Youth aged 14 years or older are required to have a TAL plan, with youth aged 16 years or older taking the lead in setting goals and facilitating the Child and Family Team with staff guidance.

(4) The TAL plan includes a continuum of training and services to be completed by the youth and designated team members in such settings as at the foster home, with a therapist,

at school, or through other community-based resources and programs.

(5) Basic Life Skills training shall be offered to each youth who attains age 16 years. The training may include training in daily living skills, budgeting, career development and financial management skills, substance abuse prevention, and preventive health activities (including smoking avoidance, nutrition education, and pregnancy prevention).

(6) Each youth who completes Basic Life Skills training may receive a completion payment.

**R512-305-4. Transition to Adult Living Placement for a Youth in Child and Family Services Custody.**

(1) A TAL placement may be used as an alternative to out-of-home care when it is determined that such a placement is in the best interest of the youth. The appropriate types of living arrangements for youth in this situation include living with kin; living with former out-of-home caregivers while paying rent; living in the community with roommates of the same sex; living alone; living in a group facility, YWCA, boarding house, or dorm; or living with an adult who has passed a background check or the placement was assessed and approved by the region director or designee. This recommendation will be presented to the Child and Family Team, who will work to ensure that this type of placement is appropriate and that the following Practice Guidelines are met:

(a) A TAL placement may be used as an out-of-home care placement.

(b) A youth must be at least 16 years of age to be in a TAL placement.

(c) The Child and Family Team is responsible to determine if a recommendation for a TAL placement for a youth is appropriate.

(d) The region director or designee is authorized to approve a TAL placement.

(e) The caseworker and youth shall complete a contract outlining responsibilities and expectations while in the TAL placement.

(f) The caseworker shall visit with and monitor progress of the youth at an interval determined by the Child and Family Team, but no less frequently than once per month.

(g) The youth may receive a TAL stipend while in the TAL placement.

(h) If the TAL placement is not successful, the Child and Family Team shall meet to determine, with the youth, a more appropriate living arrangement in accordance with R512-305-4.

**R512-305-5. Child and Family Services Responsibility to a Youth Leaving Out-of-Home Care.**

(1) The YARN provides support to youth who leave out-of-home care, as specified in R512-305-2.

(2) A youth may access services by contacting a Child and Family Services office and being referred to a regional TAL coordinator.

(3) Services may include additional Basic Life Skills training, information and referral, mentoring, computer access for resources, and follow-up support. Funds may also assist eligible youth in the four areas listed below:

(a) Education, Training, and Career Exploration.

(b) Physical, Mental Health, and Emotional Support.

(c) Transportation.

(d) Housing Support.

(4) Funds used for room and board are subject to federal limits.

**KEY: social services, child welfare, out-of-home care, Transition to Adult Living**

**December 22, 2010**

**Notice of Continuation May 16, 2013**

**62A-4a-102**

**62A-4a-105**

**R539. Human Services, Services for People with Disabilities.****R539-3. Rights and Protections.****R539-3-1. Purpose.**

(1) The purpose of this rule is to support Persons in exercising their rights as Persons receiving funding from the Division. The procedures of this rule constitute the minimum rights for Persons receiving Division funded services and supports.

**R539-3-2. Authority.**

(1) This rule establishes procedures and standards for the protection of Persons' constitutional liberty interests as required by Subsection 62A-5-103(2)(b).

**R539-3-3. Definitions.**

(1) Terms used in this rule are defined in Section 62A-5-101 and R539-1-3.

**R539-3-4. Human Rights Committee.**

(1) This rule applies to the Division, Persons funded by the Division, Providers, Providers' Human Rights Committees, and the Division Human Rights Council.

(2) All Persons shall have access to a Provider Human Rights Committee with the exception of the following:

- (a) Persons receiving physical disabilities services.
- (b) Families using the Self-Administered Model.
- (c) Persons receiving only family supports or respite.

(3) The Provider Human Rights Committee approves the services agencies provide relating to rights issues, such as rights restrictions and the use of intrusive behavior supports. In addition, the Committee provides recommendations relating to abuse and neglect prevention, rights training, and supporting people in exercising their rights.

(4) Any interested party may request that the rights of a Person be reviewed by a Provider Human Rights Committee by contacting the Person's Provider agency verbally or in writing.

(5) Any interested party may request an appeal of the Provider Human Rights Committee decision by sending a request to the Division, 195 North 1950 West, Salt Lake City, UT 84116. The Division shall make a decision whether there will be a review and shall notify the Person, Provider, and Support Coordinator concerning the decision within eight business days. The notification shall contain a statement of the issue to be reviewed and the process and timeline for completing the review.

**R539-3-5. Representative Payee Services.**

(1) Unless a Person voluntarily signs the Division Voluntary Financial Support Agreement Form 1-3 or a Provider Human Rights Committee has approved restriction on the use and access to personal funds, the Person shall have access to and control over such funds.

(2) The Representative Payee shall follow all Social Security Administration requirements outlined in 20CFR416.601-665.

(3) The Division shall review Provider records for a sample of Representative Payee files on an annual basis.

(4) If the Department does not have guardianship or conservatorship and the Division has not been named as Representative Payee by the Social Security Administration, the Person may sign a Voluntary Financial Support Agreement, Division Form 1-3, allowing the Department to act as Representative Payee.

(5) If the Division is acting as the Representative Payee for a Person, the Division may initiate termination of a Representative Payee relationship through written notification to the Person and the funding agency.

(a) The Division shall initiate termination of a Representative Payee arrangement when:

(i) a Person with a voluntary arrangement requests termination of Representative Payee status;

(ii) a funding agency requests termination of Representative Payee status;

(iii) Person with a Representative Payee becomes ineligible for funding; or

(iv) a Person moves out of the service area.

**R539-3-6. Personal Property.**

(1) Restrictions to property that are implemented by the Division or Provider shall be part of a written plan or as an Emergency Behavior Intervention in accordance with Division Administrative Rule. Restrictions shall be approved by the Team and Provider Human Rights Committee.

**R539-3-7. Privacy.**

(1) Persons shall have privacy, including private communications (i.e. mail, telephone calls and private conversations), personal space, personal information, and self-care practices (i.e. dressing, bathing, and toileting).

(2) Restrictions to privacy that are implemented by the Division or Provider shall be part of a written plan and approved by the Team and Provider Human Rights Committee. Circumstances that require assistance in self-care due to functional limitations do not require a written plan.

(3) No Person shall be subject to electronic surveillance of any kind without:

(a) express written consent from the Person to be under surveillance or the Person's guardian;

(b) approval of both the Person's Team and the Provider Human Rights Committee;

(c) certification by the Provider Human Rights Committee that the electronic surveillance meets a necessary health or safety concern and is done in the least intrusive manner possible; and

(d) submission of Electronic Surveillance Certification to the Division Quality Manager.

(4) Electronic surveillance shall not be placed in common areas without:

(a) express written consent from all Persons who live at the site, or the guardians of those Persons;

(b) approval of the Provider Human Rights Committee;

(c) certification by the Provider Human Rights Committee that the electronic surveillance meets a necessary health or safety concern and is done in the least intrusive manner possible; and

(d) submission of Electronic Surveillance Certification to the Division Quality Manager.

(5) Under no circumstances shall electronic surveillance be used by administrative or supervisory staff as a substitute for supervision of employees providing direct care to Persons.

(6) Visitors shall be provided with notice of electronic surveillance upon entering the premises.

(a) Notice shall be provided by placing a sign of substantial size, in a conspicuous location, so as to attract the attention of visitors as they enter.

(7) The Person's Team and the Provider Human Rights Committee shall conduct reviews of electronic surveillance:

(a) at least annually; and

(b) in response to specific requests for review from the Person under surveillance or that Person's guardian.

(8) Electronic surveillance at the Utah State Developmental Center shall comply with federal regulations outlined in 42 C.F.R. 483.420(a)(7) (2011), 42 C.F.R. 483.440(f)(3)(i)-(iii) (2011) and 42 C.F.R. 483.470(d)(2) (2011).

**R539-3-8. Notice of Agency Action and Administrative Hearings.**

(1) Persons have the right to receive adequate written



Notice of Agency Action and to present grievances about agency action by requesting a formal or informal administrative hearing in accordance with R497-100 for Persons receiving non-Waiver services, and R410-14 for Persons receiving Waiver services.

(2) Pursuant to Utah Code Annotated, Title 63G, Chapter 4, the Division shall notify a Person in writing before taking any agency action, such as changes in funding, eligibility, or services.

(3) At least 30 calendar days before the Division terminates or reduces a Person's services or benefits, the Division shall send the Person a written Notice of Agency Action.

(4) The Notice of Agency Action shall comply with Subsection 63G-4-201 and R497-100-4(2)(a).

(5) To assist a Person in requesting an administrative hearing, the Division shall send the Person a Hearing Request Form 490S when the Division sends the Notice of Agency Action Form 522.

(6) To request an informal hearing with the Department of Human Services for non-waiver services, the Person must file a Hearing Request Form 490S with the Division within 30 calendar days of the mailing date shown on the Notice of Agency Action Form 522.

(7) To request a formal hearing with the Department of Health for Waiver services, the Person must file the Medicaid Standard Hearing Request Form with the Division and Department of Health, Division of Health Care Finance within 30 calendar days of the mailing date shown on the Notice of Agency Action Form 522.

(8) This 30-day deadline for formal and informal hearings applies regardless of whether the Person also wishes to participate in the Division's conflict resolution process.

(a) If the Person files the Hearing Request within ten calendar days of the mailing date of the Notice of Agency Action, the Person's services shall continue unchanged during the formal or informal hearing process.

(b) If the Person files the Hearing Request Form between 11 and 30 calendar days after the mailing date of the Notice of Agency Action, the Person is entitled to an administrative hearing, but the Person's services and benefits shall be discontinued or reduced according to the Notice of Agency Action during the formal or informal hearing process.

(9) A Person may file a Request for Hearing Form for a formal or informal hearing and choose to still participate in the Division's conflict resolution process prior to the formal or informal hearing.

(10) If the Person requests an informal hearing and also chooses the conflict resolution process, the conflict resolution process must be completed before the informal hearing can begin, unless the Person submits a written request to the Division to end the conflict resolution process prematurely.

#### **R539-3-9. Participation in Hospice Services.**

(1) Persons expected by their physicians to live fewer than six months have the right to pursue hospice services as their choice of end-of-life care. A Person who is expected by two physicians to live fewer than six months and who receives Division funding for services and supports may request to continue to receive their Division-funded services and supports while participating in hospice services.

(2) If a Person has not executed a Durable Power of Attorney for Health Care and is incapable of making an informed decision about hospice services or signing a Hospice Agreement, choices related to end-of-life care shall be made on behalf of the Person by the Team upon approval of the Provider Human Rights Committee unless a guardian has been appointed by the Court with the legal authority to make end-of-life decisions for the Person.

(3) If a Person receives Waiver services through the

Division and elects the Medicaid hospice benefit and meets the program eligibility requirements in accordance with R414-14A-3, hospice shall become the primary service delivery program, including the primary case management program, for the care of the Person. All other Medicaid programs serving the Person at the time of hospice election, including Waivers, shall coordinate with the hospice case management team to determine the full scope of services that shall be provided from that point forward.

(a) Pursuant to R414-14A-7(A), a Person can continue to receive Division services through the Waiver program that are necessary to prevent institutionalization, are not duplicative of services covered by the hospice benefit, and do not conflict with the hospice plan of treatment.

(b) The Medicaid hospice benefit shall determine the actual number of times a Person can revoke and re-elect hospice services, which hospice Providers and services are available, and which Waiver services may continue concurrently with hospice services.

(c) If the Division wishes to initiate disenrollment of a Medicaid-funded Person from the Waiver based on the Person's election of hospice services, it shall be considered an involuntary disenrollment and will be subject to review and approval by the Department of Health, Division of Health Care Finance.

#### **R539-3-10. Prohibited Procedures.**

(1) The following procedures are prohibited for Division staff and Providers, including staff hired for Self-Administered Services, in all circumstances in supporting Persons receiving Division funding:

(a) Physical punishment, such as slapping, hitting, and pinching.

(b) Demeaning speech to a Person that ridicules or is abusive.

(c) Locked confinement in a room.

(d) Denial or restriction of access to assistive technology devices, except where removal prevents injury to self, others, or property as outlined in Section R539-3-6.

(e) Withholding or denial of meals, or other supports for biological needs, as a consequence or punishment for problems.

(f) Any Level II or Level III Intervention, as defined in R539-4-3(n) and R539-4-3(o), used as coercion, as convenience to staff, or in retaliation.

(g) Any procedure in violation of R495-876, R512-202, R510-302, 62A-3-301 thru 62A-3-321, and 62A-4a-402 thru 62A-4a-412 prohibiting abuse.

**KEY: people with disabilities, rights**

**May 10, 2013**

**Notice of Continuation August 17, 2009**

**62A-5-102**

**62A-5-103**

**R590. Insurance, Administration.****R590-102. Insurance Department Fee Payment Rule.****R590-102-1. Authority.**

This rule is adopted pursuant to Subsections 31A-3-103(3), 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 purposes of this rule are to:
- (a) publish the schedule of fees approved by the legislature;
  - (b) establish fee deadlines; and
  - (c) disclose this information to licensees and the public.
- (2) The rule applies to:
- (a) all persons engaged in the business of insurance in Utah;
  - (b) all licensees;
  - (c) applicants for licenses, registrations, certificates, or other similar filings; and
  - (d) all persons requesting services provided by the department for which a fee is required.

**R590-102-3. Definitions.**

In addition to the definitions in Title 31A, the following definitions shall apply for the purposes of this rule:

- (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, sponsored captive, and special purpose financial captive.
- (4) "Deadline" means the final date or time:
- (a) imposed by:
    - (i) statute;
    - (ii) rule; or
    - (iii) order, and
  - (b) by which
    - (i) a payment must be received by the department without incurring penalties for late payment or non-payment; or
    - (ii) required information must be received by the department without incurring penalties for late receipt or non-receipt.
- (5) "Fee" means an amount set by the commissioner, by statute, or by rule and approved 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 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) the date delivered to and stamped received by the department, if delivered in person;
  - (b) the postmark date, if delivered by mail;
  - (c) the delivery service's postmark date or pick-up date, if delivered by a delivery service; or
  - (d) the received date recorded on an item delivered, if delivered by:
    - (i) facsimile;
    - (ii) email; or
    - (iii) another electronic method; or
  - (e) a date specified in:
    - (i) a statute;
    - (ii) a rule; or
    - (iii) an order.

**R590-102-4. General Instructions.**

- (1) Any fee payable to the department not included in Subsections R590-102-5 through 19, shall be due when service is requested, if applicable, otherwise by the due date on the invoice.
- (2) Payment.
- (a) A non-electronic payment processing fee will be added to a payment when the department has provided an electronic payment process and stated the electronic process is the preferred process for receiving a payment.
  - (b) Check.
    - (i) Checks shall be made payable to the Utah Insurance Department.
    - (ii) 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.
    - (iii) Late fees and other penalties, resulting from the voided action will apply until proper payment is made.
    - (iv) A check payment that is dishonored is a violation of this rule.
  - (c) Cash. The department is not responsible for un-receipted cash that is lost or misdelivered.
  - (d) Electronic.
    - (i) Credit Card.
      - (A) Credit cards may be used to pay any fee due to the department.
      - (B) Credit card payments that are dishonored will not constitute payment of the fee and any action taken based on the payment will be voided.
      - (C) Late fees and other penalties, resulting from the voided action, will apply until proper payment is made.
      - (D) A credit card payment that is dishonored is a violation of this rule.
        - (ii) Automated clearinghouse (ACH).
          - (A) Payers or purchasers desiring to use this method must contact the department for the proper routing and transit information.
          - (B) 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.
          - (C) Late fees and other penalties resulting from the voided action will apply until proper payment is made.

(D) 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 R590-102-15.

#### **R590-102-5. Admitted Insurer and Prescription Drug Plan Fees.**

(1) Annual license fees:

(a) certificate of authority, initial license application - due with license application: \$1,000;

(b) certificate of authority - renewal - due by the due date on the invoice: \$300;

(c) certificate of authority - late renewal - due for any renewal paid after the date on the invoice: \$350;

(d) certificate of authority - reinstatement - due with application for reinstatement: \$1,000.

(2) Other license fees:

(a) certificate of authority - amendments - due with request for amendment: \$250;

(b)(i) Form A - application for merger, acquisition, or change of control, due with filing: \$2,000.

(ii) Expenses incurred for consultant(s) services necessary to evaluate a Form A will be charged to the applicant and due by the due date on the invoice;

(c) redomestication filing - due with filing: \$2,000; and

(d) 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: \$1,000.

(3) 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.

(4) Annual service fee:

(a) Due annually by the due date on the invoice.

(b) A prescription drug plan is exempted from payment of a service fee.

(c) 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.

(d) Fee schedule:

(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.

(e) 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.

(f) 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.

(5) Other fees:

(a) E-commerce fee: (see R590-102-18).

(b) Insurer examination costs reimbursements from examined insurers - due by due date on the invoice: actual costs plus overhead expense.

#### **R590-102-6. Surplus Lines Insurer, Accredited Reinsurer, Trusteed Reinsurer, and Employee Welfare Fund Administrative/Service Fees.**

(1) Initial Fee - due with application, alien surplus lines insurers file Utah State Alien Surplus Lines Information Form \$1,000.

(2) Annual Fee - due annually by the due date on the invoice: 500;

(3) Late annual payment - due for any annual payment paid after the due date on the invoice: 550;

(4) Reinstatement - due with application, alien surplus insurers submit request for reinstatement: \$1,000;

(5) The initial or annual surplus line 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.

(6) The initial or annual accredited reinsurer and trusteed reinsurer license fee includes the annual statement filing - due annually on March 1.

(7) The annual fee includes the following services for which no additional fee is required and is paid in advance:

(a) filing of power of attorney;and

(b) filing of registered agent.

(8) Other fees: E-commerce fee: see R590-102-18.

#### **R590-102-7. Other Organization Fees.**

(1) Annual license fee:

(a) initial - due with application: \$250;

(b) renewal - due annually by the due date on the invoice: \$200;

(c) late renewal - due for any renewal paid after the date on the invoice: \$250;

(d) reinstatement - due with application for reinstatement: \$250;

(e) The annual other organization initial or renewal fee

includes the risk retention group annual statement filing - due annually on May 1.

(2) Annual service fee - due annually by the due date on the invoice: \$200.

(a) 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; and
- (iii) rate, form, report or service contract filing.

(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.

(3) Other fees: E-commerce fee: see R590-102-18.

#### **R590-102-8. Captive Insurer Fees.**

(1) Initial license application - due with license application: \$200.

(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: \$5,000;
- (b) renewal - due by the due date on the invoice: \$5,000;
- (c) late renewal - due for any renewal paid after the date on the invoice: \$5,050;

(d) reinstatement - due with application for reinstatement: \$5,050.

(4) Other fees:

(a) e-commerce fee: see R590-102-18.

(b) Examination costs reimbursements from examined captive insurers - due by due date on the invoice: actual costs plus overhead expense.

#### **R590-102-9. Life Settlement Provider Fees.**

(1) Annual license fees:

- (a) initial - due with application: \$1,000;
- (b) renewal - due by the due date on the invoice: \$300;
- (c) late renewal - due for any renewal paid after the date on the invoice: \$350;

(d) reinstatement - due with reinstatement application: \$1,000.

(2) Annual service fee - due by the due date on the invoice: \$600.

(a) The annual service fee includes the following service for which no additional fee is required: rate, form, report or service contract filing.

(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.

(3) Other fees:

(a) e-commerce fee: see R590-102-18; and

(b) examination costs reimbursements from examined viatical settlement providers - due by due date on the invoice: actual costs plus overhead expense.

#### **R590-102-10. Professional Employer Organization (PEO) Fees.**

(1) Annual license fees:

- (a) PEO - not certified by an assurance organization:
  - (i) initial - due with application: \$2,000;
  - (ii) renewal - due by the due date on the invoice: \$2,000;
  - (iii) late renewal - due for any renewal paid after the date on the invoice: \$2,050;
- (iv) reinstatement - due with reinstatement application: \$2,050;

(b) PEO - certified by an assurance organization:

- (i) initial - due with application: \$2,000;
- (ii) renewal - due by the due date on the invoice: \$1,000;
- (iii) late renewal - due for any renewal paid after the date

on the invoice: \$1,050;

(iv) reinstatement - due with reinstatement application: \$1,050;

(c) PEO - small operator:

- (i) initial - due with application: \$2,000;
- (ii) renewal - due by the due date on the invoice: \$1,000;
- (iii) late renewal - due for any renewal paid after the date on the invoice: \$1,050;

(iv) reinstatement - due with reinstatement application: \$1,050.

(5) E-commerce fee: see R590-102-18.

#### **R590-102-11. Individual Resident and Non-Resident License Fees.**

(1) Biennial resident and non-resident full-line individual initial license or renewal fee:

(a) initial license fee - due with application: \$70;

(b) renewal license fee if renewed prior to license expiration date - due with renewal application: \$70;

(c) reinstatement license fee if inactive license is reinstated within one year following the license expiration date - due with application for reinstatement: \$120.

(2) Biennial resident and non-resident limited-line individual initial or renewal license fee:

(a) initial license fee - due with application: \$45;

(b) renewal license fee if renewed prior to license expiration date - due with renewal application: \$45;

(c) reinstatement license fee if inactive license is reinstated within one year following the license expiration date - due with application for reinstatement: \$95.

(3) Other license fees: addition of producer classification or line of authority to individual producer license - due with request for additional classification or line of authority: \$25.

(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.

(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) Other fees:

(a) e-commerce fee: see R590-102-18; and

(b) title insurance product or service approval for dual licensed title licensee form filing fee - due with filing: \$25.

#### **R590-102-12. Agency License Fees, Other than Bail Bond Agencies.**

(1) Biennial resident and non-resident agency initial or renewal license for a full-line agency and for a limited-line agency:

(a) initial license fee - due with application: \$75;

(b) renewal license fee if renewed prior to license expiration date - due with renewal application: \$75;

(c) reinstatement license fee if inactive license is reinstated within one year following the license expiration date - due with application for reinstatement: \$125;

(d) resident title license:

(i) initial license fee - due with application: \$100;

(ii) renewal license fee, if renewed prior to license expiration date - due with renewal application: \$100.

(iii) reinstatement license fee, if reinstated within one year following the license inactivation date -- due with application for reinstatement: \$150.

(2) Other license fees: addition of producer classification or line of authority to agency license - due with request for additional classification or line of authority: \$25.

(3) The 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; and
  - (g) filing of power of attorney.
- (4) Other fees: E-commerce fee: see R590-102-18.

#### **R590-102-13. Bail Bond Agency.**

- (1) Annual bail bond agency per annual license period:
- (a) initial license fee - due with application: \$250;
  - (b) renewal license fee if renewed prior to license expiration date - due with renewal application: \$250;
  - (c) reinstatement license fee if inactive license is reinstated within one year following the license expiration date - due with application for reinstatement: \$300.
- (2) The annual 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; and
  - (g) filing of power of attorney.
- (3) E-commerce fee: see R590-102-18.

#### **R590-102-14. Health Insurance Purchasing Alliance.**

- (1) Annual license fee:
- (a) initial - due with application: \$500;
  - (b) renewal - due by the due date on the invoice: \$500;
  - (c) late renewal - due for any renewal paid after the date of the invoice: \$550; and
  - (d) reinstatement - due with application for reinstatement: \$500.
- (2) E-commerce fee: see R590-102-18.

#### **R590-102-15. Continuing Education Fees.**

- (1) Annual continuing education provider license fees per annual license period:
- (a) initial license fee - due with application: \$250;
  - (b) renewal license fee if renewed prior to license expiration date - due with renewal application: \$250;
  - (c) reinstatement license fee if inactive license is reinstated within one year following the license expiration date - due with application for reinstatement: \$300.
- (2) Continuing education course post-approval fee - due with request for approval: \$5 per credit hour, minimum fee \$25.

#### **R590-102-16. Non-electronic Processing or Payment Fees.**

- (1) Non-electronic 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 non-electronic filing or by the due date on the invoice: \$5.
- (2) Non-electronic 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 non-electronic application or by the due

date on the invoice: \$25.

(3) Non-electronic payment processing fee - assessed on a non-electronic payment when the department has provided an electronic payment process and stated the electronic process is the preferred process for receiving a payment - due with each non-electronic payment or by the due date on the invoice: \$25.

#### **R590-102-17. Dedicated Fees.**

- The following are fees dedicated to specific uses:
- (1)(a) annual fraud assessment fee as calculated under Section 31A-31-108 and stated in the invoice - due by the due date on the invoice;
- (b) late fee -- due for any fraud assessment fee paid after the due date on the invoice: \$50;
- (2) annual title insurance regulation assessment fee as calculated under Section 31A-23a-415 and Rule R592-10 and stated in the invoice - due by the due date on the invoice;
- (3) annual title assessment for the Title Recovery, Education, and Research Fund fee:
- (a) individual title licensee applicant for initial license or renewal license - due with the initial application or the renewal application: \$15;
  - (b) agency title licensee applicant - due with the initial application: \$1,000;
  - (c) annual agency title licensee assessment based on annual written title insurance premium - due by the due date on the invoice:
    - (i) Band A: \$0 to \$1 million: \$125;
    - (ii) Band B: more than \$1 million to \$10 million: \$250;
    - (iii) Band C: more than \$10 million to \$20 million: \$375;
    - (iv) Band D: more than \$20 million: \$500;
  - (4) relative value study book fee - due when book purchased or by invoice due date: \$10;
  - (5) mailing fee for books - due if book is to be mailed to purchaser: \$3;
  - (6) fingerprint fee - due with application for individual license:
    - (a) Bureau of Criminal Investigation (BCI): \$20.00; and
    - (b) Federal Bureau of Investigation (FBI): \$16.50;
  - (7) annual health insurance actuarial review assessment fee as calculated under Section 31A-30-115 and stated in the invoice due by the due-date on the invoice.

#### **R590-102-18. Electronic Commerce Dedicated Fees.**

- (1) E-commerce and internet technology services fee:
- (a) admitted insurer and surplus lines insurer - due with the initial, annual, renewal, or reinstatement application: \$75;
  - (b) captive insurer - due with the initial, annual renewal, or reinstatement application: \$250;
  - (c) other organization, professional employer organization, and life settlement provider - due with the initial, annual renewal, or reinstatement application: \$50;
  - (d) continuing education provider - due with the initial, annual renewal, or reinstatement application: \$20;
  - (e) agency - due with the initial, biennial renewal, or reinstatement application: \$10;
  - (f) health insurance purchasing alliance - due with the initial, annual renewal, or reinstatement application: \$10; and
  - (g) individual - due with the initial, biennial renewal, or reinstatement application: \$5.
- (2) Database access fees:
- (a) information accessed through an electronic portal set up for that purpose - due when the department's database is accessed to input or acquire data: \$3 per transaction;
  - (b) rate and form filing database access to an electronic public rate and form filing:
    - (i) a separate fee is assessed per line of insurance accessed (accident and health, life and annuity, or property-casualty);
    - (ii) each line of insurance accessed is charged the

following fees:

(A) a base fee, which entitles the user up to 30 minutes of access, the assistance of staff during that time, and one DVD - \$45;

(B) each additional 30 minutes of access time or fraction thereof, including the assistance of staff during that time - \$45;

(iii) additional DVD - \$2;

(iv) payment due at time of service or by the due date on the invoice.

**R590-102-19. Other Fees.**

(1) Photocopy fee - per page: \$.50.

(2) Complete annual statement copy fee - per statement: \$40.

(3) Fee for accepting service of legal process: \$10.

(4) Fees for production of information lists regarding licensees or other information that can be produced by list:

(a) printed list, if the information is already in list format and only needs to be printed or reprinted: \$1 per page;

(b) electronic list compiled by accessing information stored in the Department's database:

(i) a separate fee is assessed for each list compiled;

(ii) each list is assessed one or more of the following fees:

(A) a base fee, which entitles the requestor up to 30 minutes of staff time to draft the information query, compile the information, prepare a CD, and prepare a CD for mailing to the requestor - \$50, due with request for information;

(B) each additional 30 minutes or fraction thereof to draft the information query, compile the information, prepare a CD, and prepare a CD for mailing to the requestor - \$50, due by the due date on the invoice;

(iii) additional CD - \$1.00, due by the due date on the invoice.

(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.

(8) Independent Review Organization. Initial application fee -- due with application: \$250.

**R590-102-20. 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 the rule and the application of this provision to other persons or circumstances shall not be affected.

**KEY: insurance fees**

May 14, 2013

31A-3-103

Notice of Continuation December 29, 2011

**R590. Insurance, Administration.****R590-219. Credit Scoring.****R590-219-1. Authority.**

This rule is promulgated pursuant to Subsection 31A-2-201(3)(a) in which the commissioner may make rules to implement the provisions of this title. Also, specific authority is provided in Subsection 31A-22-320(3) to enforce the provisions of Section 31A-22-320.

**R590-219-2. Scope and Purpose.**

This rule sets forth minimum standards for all property and casualty insurers doing private passenger automobile business in Utah that use credit history or an insurance score as part of their underwriting criteria or rating plans.

**R590-219-3. Definitions.**

In addition to the definitions in Section 31A-1-301 and 31A-22-320, the following definition shall apply for the purposes of this rule:

- (1)(a) "Initial underwriting" shall include:
- (i) deciding whether or not to issue a policy to the consumer;
  - (ii) the amount and terms of the coverage;
  - (iii) the duration of the policy;
  - (iv) the rates or fees charged; and
  - (v) those additional drivers related to the named insured or spouse by blood, marriage, adoption, or guardianship who were emancipated prior to becoming an additional driver in the named insured's household.
- (b) "Initial underwriting" shall not include additional vehicles or drivers added to the household of a current auto insurance policyholder of the insurer, provided:
- (i) the additional vehicle is owned by the named insured, spouse or persons related to the named insured by blood, marriage, adoption, or guardianship that are residents of the named insured's household;
  - (ii) the additional driver is related to the named insured or spouse by blood, marriage, adoption, or guardianship and is a resident of the named insured's household, including those who usually make their home in the same household but temporarily live elsewhere.
  - (iii) a divorced spouse or child where an insurer has a record of the driving history from an existing policy.
- (2) "Adverse action" shall have the same meaning as defined in the Fair Credit Reporting Act, 15 U.S.C. sec.1681 et seq. An adverse action includes the following:
- (a) cancellation, denial or non-renewal of insurance coverage;
  - (b) charging a higher premium than would have been offered if the credit history or credit score had been more favorable, whether the charge is by:
    - (i) application of a rating rule;
    - (ii) assignment to a rating category within a single insurer, into which insureds with substantially like risk or exposure factors and expense elements are placed for purposes of determining rate or premium, that does not have the lowest available rates;
    - (iii) placement with an affiliate insurer that does not offer the lowest rates available to the consumer within the affiliate group of insurers; or
    - (iv) a reduction or an adverse or unfavorable change in the terms of coverage or amount of insurance owing to a consumer's credit history or insurance score.
  - (c) A reduction or an adverse or unfavorable change in the terms of coverage occurs when:
    - (i) coverage provided to the consumer is not as broad in scope as coverage requested by the consumer but available to other insureds of the insurer or any affiliate; or
    - (ii) the consumer is not eligible for benefits such as

dividends that are available through affiliate insurers.

**R590-219-4. Insurer's Obligation If Credit Information Is Used.**

(1) An insurer must comply with all notification requirements of the federal Fair Credit Reporting Act, 15 U.S.C. 1681 et seq. If any adverse action is taken, the insurance company must provide to the applicant or insured:

- (a) the identity, telephone number, and address of any consumer-reporting agency from which a credit report was obtained;
- (b) notification of the applicant's or insured's right to receive a free copy of their credit report from the consumer reporting agency for a period of 60 days from the date of application; and
- (c) notification of the applicant's or insured's right to lodge a dispute with the consumer-reporting agency and have erroneous information corrected in accordance with the Fair Credit Reporting Act.

(2) After an adverse action is taken, if it is later determined that the initial information in the credit report was incorrect, the insurance company, at the request of the applicant or insured, shall underwrite or rate the policy again using the correct information. If the insurer determines that the insured has overpaid premium, the insurer shall refund to the insured the amount of overpayment calculated back to the shorter of either the last 12 months of coverage or the actual policy period.

(3) An insurer shall establish procedures that allow consumers or their insurance producers to request that a person's credit history or score be re-examined if a correction has been made to the consumer's credit report.

(4) An insurer shall refrain from penalizing consumers on new and renewal policies issued on or after the effective date of this rule based on identity theft; credit inquiries not initiated by the consumer; insurance-related inquiries; medical related collection accounts, if the information can be identified on a credit report; and multiple lender inquiries, if captured on a credit report as being from the home mortgage industry and made within a 30 day period, unless only one inquiry is considered.

**R590-219-5. Prohibited Uses of Credit Information.**

Insurers may not use credit information:

- (1) to cancel or non-renew any private passenger auto insurance policy that has been in effect for 60 days or more;
- (2) for initial underwriting, unless risk related factors, other than credit information, are considered;
- (3) to determine rates as part of a filed rating plan for private passenger auto insurance, except to provide a premium discount or similar reduction in rates and, when an insurer issues a new or renewal policy on or after the effective date of this rule with a discount based on credit, that discount shall not be removed or reduced based on credit information only;
- (4) to cancel or non-renew an existing private passenger auto insurance policy which has been in effect for 60 days or more, nor decline or refuse to issue a new policy or coverage for an additional vehicle owned by the named insured or persons related to the named insured by blood, marriage, adoption, or guardianship who are residents of the named insured's household; or
- (5) to cancel or non-renew an existing private passenger auto insurance policy which has been in effect for 60 days or more when adding a newly licensed driver who is related to the named insured by blood marriage, adoption, or guardianship, and continues to be a resident of the named insured's household.

**R590-219-6. Offer of Placement.**

An offer of placement with an affiliated insurance company is not considered a cancellation, non-renewal, declination, or

refusal to issue a policy.

**R590-219-7. Enforcement Date.**

The commissioner will begin enforcing the provisions of this rule 45 days from the rule's effective date.

**R590-219-8. Severability.**

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

**KEY: insurance, credit scoring**

**June 13, 2003**

**Notice of Continuation May 7, 2013**

**31A-2-201**

**31A-22-320**



**R590. Insurance, Administration.****R590-222. Life Settlements.****R590-222-1. Authority.**

This rule is promulgated by the insurance commissioner pursuant to the authority provided in Subsection 31A-2-201(3), authorizing rules to implement the provisions of Title 31A, and Section 31A-36-119, authorizing rules to implement the provisions of Title 31A, Chapter 36.

**R590-222-2. Purpose and Scope.**

The purpose of this rule is to implement procedures for licensure of life settlement providers and producers, provider annual reports, disclosures, advertising, reporting of fraud, prohibited practices, standards for life settlement payments, and procedures for requests for verification of coverage.

This rule applies to all life settlement providers and producers and to insurers whose policies are being settled.

**R590-222-3. Incorporation by Reference.**

The following appendices are hereby incorporated by reference within this rule and are available at [www.insurance.utah.gov/legalresources/currentrules.html](http://www.insurance.utah.gov/legalresources/currentrules.html):

- (1) Appendix A, Utah Life Settlement Provider Initial Application, dated 2009.
- (2) Appendix B, Utah Life Settlement Provider Annual Report, dated 2009.
- (3) Appendix C, NAIC Life Settlement brochure Selling Your Life Insurance Policy, dated 2004.
- (4) Appendix D, NAIC Verification of Coverage for Life Insurance Policies, dated 2004.
- (5) Appendix E, Utah Life Settlement Provider Renewal Application, dated 2009.

**R590-222-4. Definitions.**

In addition to the definitions in Section 31A-1-301 and 31A-36-102, the following definitions apply to this rule:

- (1) For purposes of this rule, "insured" means the person covered under the policy being considered for settlement.
- (2) "Patient identifying information" means an insured's address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, social security number, or any other information that is likely to lead to the identification of the insured.

**R590-222-5. License Requirements.**

- (1) Life Settlement Provider License.
  - (a) A person may not perform, or advertise any service as a life settlement provider in Utah, without a valid license.
  - (b) A life settlement provider license shall be issued on an annual basis upon:
    - (i) the submission of a complete initial or renewal application; and
    - (ii) the payment of the applicable fees under Section 31A-3-103.
  - (c) An applicant for a license shall:
    - (i) use the application form prescribed by the commissioner and available on the department's website. For the initial application, see Appendix A and for the renewal application, see Appendix E;
    - (ii) with an initial application, provide a copy of the applicant's plan of operation that is to:
      - (A) describe the market the applicant intends to target;
      - (B) explain who will produce business for the applicant and how these people will be recruited, trained, and compensated;
      - (C) estimate the applicant's projected Utah business over the next 5 years;
      - (D) describe the corporate organizational structure of the applicant, its parent company, and all affiliates;

(E) describe the procedures used by the applicant to insure that life settlement proceeds will be sent to the owner within three business days as required by Subsection 31A-36-110 (3); and

(F) describe the procedures used by the applicant to insure that the identity, financial information, and medical information of an insured are not disclosed except as authorized under Section 31A-36-106;

(iii) with an initial application, provide the antifraud plan as required by Section 31A-36-117;

(iv) with both an initial and renewal application, provide any other information requested by the commissioner; and

(v) with both an initial and renewal application, provide evidence of financial responsibility in the amount of \$250,000 in the form of a surety bond issued by an insurer authorized in this state. The surety bond shall be in the favor of this state and shall specifically authorize recovery by the commissioner on behalf of any person in this state who sustained damages as the result of erroneous acts, failure to act, conviction of fraud or conviction of unfair practices by the life settlement provider;

(A) The evidence of financial responsibility shall remain in force for as long as the licensee is active.

(B) The bond shall not be terminated or reduced without 30 days prior written notice to the licensee and the commissioner.

(C) The commissioner may accept as evidence of financial responsibility, proof that a surety bond, in accordance with the requirements in subsection 1(c)(v), has been filed with the commissioner of any other state where the life settlement provider is licensed as a life settlement provider as long as the benefits provided by the surety bond extend to this state.

(d) The commissioner may refuse to issue or renew a license of a life settlement provider if any officer, one who is a holder of more than 10% of the provider's stock, partner, or director fails to meet the standards of Title 31A, Chapter 36.

(e) If, within the time prescribed, a life settlement provider fails to pay the renewal fee, fails to submit the renewal application, or fails to submit the report required in Section R590-222-6, the nonpayment or failure to submit shall:

- (i) result in lapse of the license; and
- (ii) subject the provider to administrative penalties and forfeitures.

(f) If a life settlement provider has, at the time of license renewal, life settlements where the insured has not died, the life settlement provider shall:

(i) renew or maintain its current license status until the earlier of the following events:

(A) the date the life settlement provider properly assigns, sells, or otherwise transfers the life settlements where the insured has not died; or

(B) the date that the last insured covered by a life settlement transaction has died;

(ii) designate, in writing, either the life settlement provider that entered into the life settlement or the producer who received commission from the life settlement, if applicable, or any other life settlement provider or producer licensed in this state, to make all inquiries to the owner, or the owner's designee, regarding health status of the insured or any other matters.

(g) The commissioner shall not issue a license to a nonresident life settlement provider unless a written designation of an agent for service of process is filed and maintained with the commissioner.

(2) Life Settlement Producer license.

Life settlement producers shall be licensed in accordance with Title 31A, Chapter 23a with a life insurance line of authority.

**R590-222-6. Annual Report.**

- (1) By March 1 of each calendar year, each life settlement

provider licensed in this state shall submit a report to the commissioner. Such report shall be limited to all life settlement transactions where the owner is a resident of this state.

(2) This report shall be submitted in the format in Appendix B and contain the following information for the previous calendar year for each life settlement contracted during the reporting period:

- (a) a coded identifier;
- (b) policy issue date;
- (c) date of the life settlement;
- (d) net death benefit settled;
- (e) amount available to the policyholder under the terms of the policy at the time of the settlement; and
- (f) net amount paid to owner.

(3) The completed report is to be submitted by email to life.uid@utah.gov.

#### **R590-222-7. Payment Requirements.**

(1) Payment of the proceeds of a life settlement pursuant to Subsection 31A-36-110(3) shall be by means of wire transfer to an account designated by the owner or by certified check or cashier's check.

(2) Payment of the proceeds to the owner pursuant to a life settlement shall be made in a lump sum except where the life settlement provider has purchased an annuity or similar financial instrument issued by a licensed life insurance company or bank, or an affiliate of either. Retention of a portion of the proceeds, not disclosed or described in the life settlement by the life settlement provider or escrow agent, is not permissible without written consent of the owner.

#### **R590-222-8. Disclosures.**

(1) As required by Subsection 31A-36-108(1), the disclosure, which is to be provided no later than the time of the application for the life settlement, shall be provided in a separate document that is signed by the owner and the life settlement provider or producer, and shall contain the following information:

(a) There are possible alternatives to a life settlement, including any accelerated death benefits, loans, or other benefits offered under the owner's life insurance policy.

(b) Some or all of the proceeds of the life settlement may be taxable under federal and state income taxes, and assistance should be sought from a professional tax advisor.

(c) Proceeds of the life settlement could be subject to the claims of creditors.

(d) Receipt of the proceeds of a life settlement may adversely affect the owner's eligibility for Medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies.

(e) The owner has the right to rescind a life settlement within 15 calendar days after the receipt of the life settlement proceeds by the owner as provided by Subsection 31A-36-109(7). If the insured dies during the rescission period, the settlement is deemed to have been rescinded. Rescission is subject to repayment of all life settlement proceeds and any premiums, loans and loan interest to the life settlement provider.

(f) Funds will be sent to the owner within three business days after the life settlement provider has received the insurer or group administrator's written acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated.

(g) Entering into a life settlement may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the owner. Assistance should be sought from a financial adviser.

(h) Disclosure to an owner shall include distribution of a copy of the National Association of Insurance Commissioners

(NAIC) Life Settlement brochure, dated 2004, that describes the process of life settlements, see Appendix C.

(i) The disclosure document shall contain the following language: "All medical, financial or personal information solicited or obtained by a life settlement provider or producer about an insured, including the insured's identity or the identity of family members, a spouse or a significant other may be disclosed as necessary to effect the life settlement between the owner and the life settlement provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years."

(j) Following execution of a life settlement, the insured may be contacted for the purpose of determining the insured's health status and to confirm the insured's residential or business street address and telephone number. This contact shall be limited to once every three months if the insured has a life expectancy of more than one year, and no more than once per month if the insured has a life expectancy of one year or less. All such contacts shall be made only by a life settlement provider licensed in the state in which the owner resided at the time of the life settlement, or by the authorized representative of a duly licensed life settlement provider.

(2) A life settlement provider shall provide the owner with at least the following disclosures no later than the date the life settlement is signed by all parties. The disclosures shall be conspicuously displayed in the life settlement or in a separate document signed by the owner and provide the following information:

(a) The affiliation, if any, between the life settlement provider and the issuer of the insurance policy to be settled.

(b) The document shall include the name, business address and telephone number of the life settlement provider.

(c) The amount and method of calculating the compensation paid or to be paid to the life settlement producer or any other person acting for the owner in connection with the transaction. The term "compensation" includes anything of value paid or given for the placement of a policy.

(d) If an insurance policy to be settled has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be settled, the owner shall be informed of the possible loss of coverage on the other lives under the policy and shall be advised to consult with an insurance producer or the insurer issuing the policy for advice on the proposed life settlement.

(e) State the dollar amount of the current death benefit payable to the life settlement provider under the policy or certificate. If known, the life settlement provider shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate, and the extent to which the owner's interest in those benefits will be transferred as a result of the life settlement.

(f) State the name, business address, and telephone number of the independent third party escrow agent, and the fact that the owner may inspect or receive copies of the relevant escrow or trust agreements or documents.

(3) If the life settlement provider transfers ownership or changes the beneficiary of the insurance policy, the provider shall communicate in writing the change in ownership or beneficiary to the insured within 20 days after the change.

#### **R590-222-9. Standards for Evaluation of Reasonable Payments.**

The life settlement provider is responsible for assuring that the net proceeds from the life settlement exceed the benefits that are available at the time of the life settlement under the terms of

the policy including cash surrender, long-term care, and accelerated death benefits.

**R590-222-10. Requests for Verification of Coverage.**

(1) Insurers, authorized to do business in this state, whose policies are being settled, shall respond to a request for verification of coverage from a life settlement provider or producer within 30 calendar days of the date a request is received, subject to the following conditions:

(a) a current authorization consistent with applicable law, signed by the policyholder or certificate holder, accompanies the request;

(b) in the case of an individual policy, submission of a form substantially similar to the NAIC Verification of Coverage for Life Insurance Policies, dated 2004, which has been completed by the life settlement provider or producer in accordance with the instructions on the form, see Appendix D;

(c) in the case of group insurance coverage:

(i) submission of a form substantially similar to the NAIC Verification of Coverage for Life Insurance Policies dated 2004, which has been completed by the life settlement provider or producer in accordance with the instructions on the form, see Appendix D; and

(ii) which has previously been referred to the group policyholder and completed to the extent the information is available to the group policyholder.

(2) An insurer whose policy is being settled may not charge a fee for responding to a request for information from a life settlement provider or producer in compliance with this rule in excess of any usual and customary charges to policyholders, certificate holders or insureds for similar services.

(3) The insurer whose policy is being settled shall send an acknowledgment of receipt of the request for verification of coverage to the policyholder or certificate holder and, where the policyholder or certificate holder is other than the insured, to the insured. The acknowledgment may contain a general description of any accelerated death benefit or similar benefit that is available under a provision of or rider to the life insurance contract.

**R590-222-11. Advertising.**

(1) This section shall apply to advertising of life settlements, related products, or services intended for dissemination in this state. Failure to comply with any provision of this section is determined to be a violation of Section 31A-36-112.

(2) The form and content of an advertisement of a life settlement shall be sufficiently complete and clear so as to avoid misleading or deceiving the reader, viewer, or listener. It shall not contain false or misleading information, including information that is false or misleading because it is incomplete.

(3) Information required to be disclosed shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

(4) An advertisement shall not omit material information or use words, phrases, statements, references or illustrations if the omission or use has the capacity, tendency or effect of misleading or deceiving owners, as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence.

(5) An advertisement shall not use the name or title of an insurer or an insurance policy unless the affected insurer has approved the advertisement.

(6) An advertisement shall not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable or in any manner an incorrect or improper practice.

(7) The words "free," "no cost," "without cost," "no

additional cost", "at no extra cost," or words of similar import shall not be used with respect to any benefit or service unless true. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the payment or use other appropriate language.

(8) Testimonials, appraisals or analysis used in advertisements must be genuine; represent the current opinion of the author; be applicable to the life settlement product or service advertised, if any; and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective owners as to the nature or scope of the testimonials, appraisal, analysis or endorsement. In using testimonials, appraisals or analysis, the life settlement licensee makes, as its own, all the statements contained therein, and the statements are subject to all the provisions of this section.

(a) If the individual making a testimonial, appraisal, analysis or an endorsement has a financial interest in the party making use of the testimonial, appraisal, analysis or endorsement, either directly or through a related entity as a stockholder, director, officer, employee or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.

(b) An advertisement shall not state or imply that a life settlement benefit or service has been approved or endorsed by a group of individuals, society, association or other organization unless that is the fact and unless any relationship between an organization and the life settlement licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled or managed by the life settlement licensee, or receives any payment or other consideration from the life settlement licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.

(c) When an endorsement refers to benefits received under a life settlement, all pertinent information shall be retained for a period of five years after its use.

(9) An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.

(10) An advertisement shall not disparage insurers, life settlement providers, life settlement producers, life settlement investment agents, anyone who may recommend a life settlement, insurance producers, policies, services or methods of marketing.

(11) The name of the life settlement licensee shall be clearly identified in all advertisements about the licensee or its life settlement, products or services, and if any specific life settlement is advertised, the life settlement shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name and administrative office address of the life settlement provider shall be shown on the application.

(12) An advertisement shall not use a trade name, group designation, name of the parent company of a life settlement licensee, name of a particular division of the life settlement licensee, service mark, slogan, symbol or other device or reference without disclosing the name of the life settlement licensee, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the life settlement licensee, or to create the impression that a company other than the life settlement licensee would have any responsibility for the financial obligation under a life settlement.

(13) An advertisement shall not use any combination of words, symbols or physical materials that by their content, phraseology, shape, color or other characteristics are so similar to a combination of words, symbols or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective owners

into believing that the solicitation is in some manner connected with a government program or agency.

(14) An advertisement may state that a life settlement licensee is licensed in the state where the advertisement appears, provided it does not exaggerate that fact or suggest or imply that a competing life settlement licensee may not be so licensed. The advertisement may ask the audience to consult the licensee's web site or contact the department of insurance to find out if the state requires licensing and, if so, whether the life settlement provider or producer is licensed.

(15) An advertisement shall not create the impression that the life settlement provider, its financial condition or status, the payment of its claims, or the merits, desirability, or advisability of its life settlements are recommended or endorsed by any government entity.

(16) The name of the actual licensee shall be stated in all of its advertisements. An advertisement shall not use a trade name, any group designation, name of any affiliate or controlling entity of the licensee, service mark, slogan, symbol or other device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the actual licensee or create the false impression that an affiliate or controlling entity would have any responsibility for the financial obligation of the licensee.

(17) An advertisement shall not directly or indirectly create the impression that any division or agency of the state or of the U.S. government endorses, approves or favors:

(a) any life settlement licensee or its business practices or methods of operations;

(b) the merits, desirability or advisability of any life settlement;

(c) any life settlement; or

(d) any life insurance policy or life insurance company.

(18) If the advertisement emphasizes the speed with which the settlement will occur, the advertising must disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the owner.

(19) If the advertising emphasizes the dollar amounts available to owners, the advertising shall disclose the average purchase price as a percent of face value obtained by owners contracting with the licensee during the past six months.

#### **R590-222-12. Reporting of Fraud.**

(1) A person engaged in the business of life settlements under Title 31A, Chapter 36, that knows or has reasonable cause to suspect that any person has violated or will violate any provision of Section 31A-36-113, shall, upon acquiring the knowledge, promptly notify the commissioner and provide the commissioner with a complete and accurate statement of all of the relevant facts and circumstances. Any other person acquiring such knowledge may furnish the information to the commissioner in the same manner. The report is a protected communication and when made without actual malice does not subject the person making the report to any liability whatsoever. The commissioner may suspend, revoke, or refuse to renew the license of any person who fails to comply with this section.

#### **R590-222-13. Prohibited Practices.**

(1) A life settlement provider or producer shall obtain from a person that is provided with patient identifying information a signed affirmation that the person or entity will not further divulge the information without procuring the express, written consent of the insured for the disclosure. Notwithstanding the foregoing, if a life settlement provider or producer is served with a subpoena and, therefore, compelled to produce records containing patient identifying information, it shall notify the owner and the insured in writing at their last known addresses within five business days after receiving notice of the subpoena.

(2) A life settlement provider shall not also act as a life settlement producer in the same life settlement, whether entitled to collect a fee directly or indirectly.

(3) A life settlement producer shall not seek or obtain any compensation from the owner without the written agreement of the owner obtained prior to performing any services in connection with a life settlement.

(4) A life settlement provider or producer shall not unfairly discriminate in the making or soliciting of life settlements, or discriminate between owners with dependents and without dependents.

(5) A life settlement provider or producer shall not pay or offer to pay any finder's fee, commission or other compensation to any insured's physician, or to an attorney, accountant or other person providing medical, legal or financial planning services to the owner, or to any other person acting as an agent of the owner, other than a life settlement producer, with respect to the life settlement.

#### **R590-222-14. Filing of Forms.**

(1) All forms to be used for a life settlement shall be filed with the commissioner prior to use. The department is not required to review each form and does not provide approval for a filing. The forms will be identified as "filed for use" when submitted to the department with all requirements. The forms to be filed include the life settlement, disclosure to the owner, notice of intent to settle, verification of coverage, and application.

(2) A form filing consists of:

(a) a cover letter on the licensee's letterhead that provides the following:

(i) a list of the forms being filed by title and any identification number given the document;

(ii) a description of the filing; and

(iii) an indication whether the form:

(A) is new; or

(B) replacing or modifying a previously filed form; if so, describe the changes being made, the reason, and the date previously filed; and

(b) a copy of each form to be filed.

(3) The form filing and any responses must be submitted via email to [life.uid@utah.gov](mailto:life.uid@utah.gov).

(4) If a filing has been rejected, the filing must be resubmitted as a new filing.

(5) If a Filing Objection Letter has been issued, the response must include:

(a) a new cover letter identifying the changes made; and

(b) one copy of the revised form.

(6) Companies may request the status of their filing by email, telephone, or mail after 30 days from the date of submission.

#### **R590-222-15. Enforcement Date.**

The commissioner will begin enforcing the revised provisions of this rule 30 days from the rule's effective date.

#### **R590-222-16. Penalties.**

A person found, after an administrative proceeding, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

#### **R590-222-17. Severability.**

If any provision or clause of this rule or its application to any person or situation is held to be invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

**KEY: insurance, life settlement**  
**December 20, 2010**  
**Notice of Continuation May 7, 2013**

**31A-2-201**  
**31A-36-119**

**R590. Insurance, Administration.****R590-223. Rule to Recognize the 2001 CSO Mortality Table for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits.****R590-223-1. Authority.**

This rule is promulgated by the insurance commissioner pursuant to Subsections 31A-2-201(3), 31A-17-402(1) and 31A-22-408(11).

**R590-223-2. Purpose.**

The purpose of this rule is to recognize, permit and prescribe the use of the 2001 Commissioners Standard Ordinary (CSO) Mortality Table in accordance with Sections 31A-17-504, 31A-22-408 and R590-198-5.

**R590-223-3. Definitions.**

A. "2001 CSO Mortality Table" means mortality table, consisting of separate rates of mortality for male and female lives, developed by the American Academy of Actuaries CSO Task Force from the Valuation Basic Mortality Table developed by the Society of Actuaries Individual Life Insurance Valuation Mortality Task Force, and adopted by the NAIC in December 2002. The 2001 CSO Mortality Table is included in the Proceedings of the NAIC, 2nd Quarter 2002. Unless the context indicates otherwise, the "2001 CSO Mortality Table" includes both the ultimate form of that table and the select and ultimate form of that table and includes both the smoker and nonsmoker mortality tables and the composite mortality tables. It also includes both the age-nearest-birthday and age-last-birthday bases of the mortality tables.

B. "2001 CSO Mortality Table (F)" means mortality table consisting of the rates of mortality for female lives from the 2001 CSO Mortality Table.

C. "2001 CSO Mortality Table (M)" means mortality table consisting of the rates of mortality for male lives from the 2001 CSO Mortality Table.

D. "Composite mortality tables" means mortality tables with rates of mortality that do not distinguish between smokers and nonsmokers.

E. "Smoker and nonsmoker mortality tables" means mortality tables with separate rates of mortality for smokers and nonsmokers.

F. The tables identified in Subsections R590-223-3.A through E are hereby incorporated by reference within this rule and are available for public inspection at the Insurance Department during normal business hours.

**R590-223-4. 2001 CSO Mortality Table.**

A. At the election of the company for any one or more specified plans of insurance and subject to the conditions stated in this rule, the 2001 CSO Mortality Table may be used as the minimum standard for policies issued on or after July 1, 2003 and before the date specified in Subsection R590-223-4.B to which Subsections 31A-17-504(1)(c), 31A-22-408(6)(d)(viii)(VI), R590-198-5.A and R590-198-5.B are applicable. If the company elects to use the 2001 CSO Mortality Table, it shall do so for both valuation and nonforfeiture purposes.

B. Subject to the conditions stated in this rule, the 2001 CSO Mortality Table shall be used in determining minimum standards for policies issued on and after January 1, 2009, to which Subsections 31A-17-504(1)(c), 31A-22-408(6)(d)(viii)(VI), R590-198-5.A and R590-198-5.B are applicable.

**R590-223-5. Conditions.**

A. For each plan of insurance with separate rates for smokers and nonsmokers an insurer may use:

- (1) composite mortality tables to determine minimum

reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits;

(2) smoker and nonsmoker mortality tables to determine the valuation net premiums and additional minimum reserves, if any, required by Section 31A-17-511 and use composite mortality tables to determine the basic minimum reserves, minimum cash surrender values and amounts of paid-up nonforfeiture benefits; or

(3) smoker and nonsmoker mortality to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits.

B. For plans of insurance without separate rates for smokers and nonsmokers, the composite mortality tables shall be used.

C. For the purpose of determining minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits, the 2001 CSO Mortality Table may, at the option of the company for each plan of insurance, be used in its ultimate or select and ultimate form, subject to the restrictions of Section R590-223-6 and Valuation of Life Insurance Policies Rule R590-198 relative to use of the select and ultimate form.

D. When the 2001 CSO Mortality Table is the minimum reserve standard for any plan for a company, the actuarial opinion in the annual statement filed with the commissioner shall be based on an asset adequacy analysis in conformance with the requirements of Section R590-162-8. The commissioner may exempt a company from this requirement if it only does business in this state and in no other state.

**R590-223-6. Applicability of the 2001 CSO Mortality Table to Rule R590-198.**

A. The 2001 CSO Mortality Table may be used in applying R590-198 in the following manner, subject to the transition dates for use of the 2001 CSO Mortality Table in Section R590-223-4:

(1) Subsection R590-198-3.A.(2)(b): The net level reserve premium is based on the ultimate mortality rates in the 2001 CSO Mortality Table.

(2) Subsection R590-198-4.B: All calculations are made using the 2001 CSO Mortality Table, and, if elected, the optional minimum mortality standard for deficiency reserves stipulated in Subsection R590-223-6.A.(4). The value of " $q_{x+k+t}$ " is the valuation mortality rate for deficiency reserves in policy year  $k+t$ , but using the unmodified select mortality rates if modified select mortality rates are used in the computation of deficiency reserves.

(3) Subsection R590-198-5.A: The 2001 CSO Mortality Table is the minimum standard for basic reserves.

(4) Subsection R590-198-5.B: The 2001 CSO Mortality Table is the minimum standard for deficiency reserves. If select mortality rates are used, they may be multiplied by X percent for durations in the first segment, subject to the conditions specified in Subsections R590-198-5.B.(3)(a) through (i). In demonstrating compliance with those conditions, the demonstrations may not combine the results of tests that utilize the 1980 CSO Mortality Table with those tests that utilize the 2001 CSO Mortality Table, unless the combination is explicitly required by rule or necessary to be in compliance with relevant Actuarial Standards of Practice.

(5) Subsection R590-198-6.C: The valuation mortality table used in determining the tabular cost of insurance shall be the ultimate mortality rates in the 2001 CSO Mortality Table.

(6) Subsection R590-198-6.E.(4): The calculations specified in Subsection R590-198-6.E shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

(7) Subsection R590-198-6.F.(4): The calculations specified in Subsection R590-198-6.F shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

(8) Subsection R590-198-6.G.(2): The calculations specified in Subsection R590-198-6.G shall use the ultimate mortality rates in the 2001 CSO Mortality Table.

(9) Subsection R590-198-7.A.(1)(b): The one-year valuation premium shall be calculated using the ultimate mortality rates in the 2001 CSO Mortality Table.

B. Nothing in this section shall be construed to expand the applicability of R590-198 to include life insurance policies exempted under Subsection R590-198-3.A.

#### **R590-223-7. Gender-Blended Tables.**

A. For any ordinary life insurance policy delivered or issued for delivery in this state on and after July 1, 2003, that utilizes the same premium rates and charges for male and female lives or is issued in circumstances where applicable law does not permit distinctions on the basis of gender, a mortality table that is a blend of the 2001 CSO Mortality Table (M) and the 2001 CSO Mortality Table (F) may, at the option of the company for each plan of insurance, be substituted for the 2001 CSO Mortality Table for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits. No change in minimum valuation standards is implied by this Section of the rule.

B. The company may choose from among the blended tables developed by the American Academy of Actuaries CSO Task Force and adopted by the NAIC in December 2002

C. It shall not, in and of itself, be a violation of Subsection 31A-23-302(3) for an insurer to issue the same kind of policy of life insurance on both a sex-distinct and sex-neutral basis.

#### **R590-223-8. 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 the provision to other persons or circumstances shall not be affected.

#### **KEY: insurance reserves and nonforfeitures**

**June 13, 2003**

**Notice of Continuation May 7, 2013**

**31A-2-201**

**31A-17-402**

**31A-22-408**

**R597. Judicial Performance Evaluation Commission, Administration.****R597-1. General Provisions.****R597-1-1. Purpose and Intent.**

(1) The commission adopts these rules to describe how it intends to conduct judicial performance evaluations.

(2) The purpose of this rule is to ensure that:

(a) voters have information about the judges standing for retention election;

(b) judges have notice of the standards against which they will be evaluated; and

(c) the commission has the time necessary to fully develop the program mandated by Utah Code Ann. 78A-12-101 et seq.

**R597-1-2. Definitions.**

(1) Closed case.

(a) For purposes of administering a survey to a litigant, a case is "closed":

(i) in a district or justice court, on the date on which the court enters an order from which an appeal of right may be taken;

(ii) in a juvenile court, on the date on which the court enters a disposition;

(iii) in an appellate court, on the date on which the remittitur is issued.

(b) For purposes of administering a survey to a juror, a case is "closed" when the verdict is rendered or the jury is dismissed.

(2) Evaluation cycle. "Evaluation cycle" means a time period during which a judge is evaluated. Judges not on the supreme court are subject to two evaluations cycles over a six-year judicial term. Justices of the supreme court are subject to three evaluation cycles over a ten-year judicial term.

(3) Survey. "Survey" means the aggregate of questionnaires, each targeting a separate classification of survey respondents, which together are used to assess judicial performance.

(4) Surveyor. "Surveyor" means the organization or individual awarded a contract through procedures established by the state procurement code to survey respondents regarding judicial performance.

(5) Rebuttable presumption.

(a) A presumption to recommend a judge for retention arises when the judge meets all minimum performance standards.

(b) A presumption not to recommend a judge for retention arises when the judge fails to meet one or more minimum performance standards.

(c) A commissioner may overcome the presumption for or against a retention recommendation on any judge if the commissioner concludes that substantial countervailing evidence outweighs the presumption.

**KEY: performance evaluations, judicial performance evaluations, judiciary, judges**

May 14, 2013

78A-12



**R597. Judicial Performance Evaluation Commission, Administration.****R597-3. Judicial Performance Evaluations.****R597-3-1. Evaluation Cycles.**

(1) For judges not serving on the supreme court:

(a) The mid-term evaluation cycle. Except as provided in subsection (3) the mid-term evaluation cycle begins upon the appointment of the judge or on the first Monday in January following the retention election of the judge and ends 2 1/2 years later, on June 30th of the third year preceding the year of the judge's next retention election.

(b) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends two years later, on June 30th of the year preceding the year of the judge's next retention election.

(2) For justices serving on the supreme court:

(a) The initial evaluation cycle. The initial evaluation cycle begins upon the appointment of the justice or on the first Monday in January following the retention election of the justice and ends 2 1/2 years later, on June 30th of the seventh year preceding the year of the justice's next retention election.

(b) The mid-term evaluation cycle. The mid-term evaluation cycle begins the day after the initial evaluation cycle is finished and ends four years later, on June 30th of the third year preceding the year of the justice's next retention election.

(c) The retention evaluation cycle. The retention evaluation cycle begins the day after the mid-term evaluation cycle is finished and ends two years later, on June 30th of the year preceding the year of the justice's next retention election.

**(3) Transition Evaluation Cycles**

(a) For judges not on the supreme court standing for retention election in 2014, the retention evaluation cycle shall begin on June 1, 2012 and end on June 30, 2013.

(b) For supreme court justices standing for retention election in 2014, the retention evaluation cycle shall begin on June 1, 2012 and end on June 30, 2013.

(c) For judges not on the supreme court standing for retention election in 2016:

(i) Except as provided in subsection (3), the mid-term evaluation cycle shall begin on July 1, 2011 and end two years later on June 30, 2013.

(ii) The retention evaluation cycle shall be as described in R597-3(1)(b), supra.

(d) For supreme court justices standing for retention election in 2016:

(i) The initial evaluation cycle shall be combined with the mid-term evaluation, beginning in 2009 and ending on June 30, 2013.

(ii) The combined initial/mid-term evaluation cycle for surveys of attorneys shall begin in 2009 and end on June 30, 2013.

(iii) The combined initial/mid-term evaluation cycle for relevant pilot programs categories shall begin no later than July 1, 2010.

(iv) The retention evaluation cycle shall be as described in R597-3-1(2)(c).

(4) Timing of evaluations within cycles. In order to allow judges time to incorporate feedback from midterm evaluations into their practices, no evaluations shall be conducted during the first four months of the retention cycle.

**R597-3-2. Survey.**

(1) General provisions.

(a) All surveys shall be conducted according to the evaluation cycles described in R597-3-1, supra.

(b) The commission may provide a partial midterm evaluation to any judge whose appointment date precludes the collection of complete midterm evaluation data.

(c) The commission shall post on its website the survey

questionnaires upon which the judge shall be evaluated at the beginning of the survey cycle.

(d) The commission may select retention survey questions from among the midterm survey questions.

(e) Periodically, reviews may be conducted to ensure compliance with administrative rules governing the survey process.

(f) The commission may consider narrative survey comments that cannot be reduced to a numerical score.

**(2) Respondent Classifications**

(a) Attorneys

(i) Identification of survey respondents. Within 10 business days of the end of the evaluation cycle, the clerk for the judge or the Administrative Office of the Courts shall identify as potential respondents all attorneys who have appeared before the judge who is being evaluated at a minimum of one hearing or trial during the evaluation cycle. Attorneys who have been confirmed as judges during the evaluation cycle shall be excluded from the attorney pool.

(ii) Number of survey respondents.

(A) For each judge who is the subject of a survey, the surveyor shall identify the number of attorneys most likely to produce a response level yielding reliability at a 95% confidence level with a margin of error of +/- 5%.

(B) In the event that the attorney appearance list from the Administrative Office of the Courts contains an insufficient number of attorneys with one trial appearance or at least three total appearances before the evaluated judge to achieve the required confidence level, then the surveyor shall supplement the survey pool with other attorneys who have appeared before the judge during the evaluation cycle.

(iii) Sampling. The surveyor shall design the survey to comply with generally-accepted principles of surveying. All attorneys with one trial appearance or at least three total appearances before the evaluated judge shall be surveyed.

(iv) Distribution of surveys. Surveys shall be distributed by the third-party contractor engaged by the commission to conduct the survey. The contractor shall determine the maximum number of survey requests sent to a single attorney based on an analysis of the Administrative Office of the Courts appearance data at the time of the survey. In no event shall any attorney receive more than nine survey requests.

(b) Jurors

(i) Identification and number of survey respondents. All jurors who participate in deliberation shall be eligible to receive an online juror survey.

(ii) Distribution of surveys. Prior to the jury being dismissed, the bailiff or clerk in charge of the jury shall collect email addresses from all jurors. If email addresses are not available, street addresses shall be collected. The bailiff or clerk shall transmit all such addresses to the surveyor within 24 hours of collection. The surveyor shall administer the survey online and deliver survey results electronically to each judge. Paper surveys may be sent to those jurors who do not have access to email.

(c) Court Staff

(i) Definition of court staff who have worked with the judge. Court staff who have worked with the judge refers to employees of the judiciary who have regular contact with the judge as the judge performs judicial duties and also includes those who are not employed by the judiciary but who have ongoing administrative duties in the courtroom.

(ii) Identification of survey respondents. Court staff who have worked with the judge include, but are not limited to:

(A) judicial assistants;

(B) case managers;

(C) clerks of court;

(D) trial court executives;

(E) interpreters;

- (F) bailiffs;
- (G) law clerks;
- (H) central staff attorneys;
- (I) juvenile probation and intake officers;
- (J) other courthouse staff, as appropriate;
- (K) Administrative Office of the Courts staff.
- (f) Juvenile Court Professionals
  - (i) Definition of juvenile court professional. A juvenile court professional is someone whose professional duties place that individual in court on a regular and continuing basis to provide substantive input to the court.
  - (ii) Identification of survey respondents. Juvenile court professionals shall include, where applicable:
    - (A) Division of Child and Family Services ("DCFS") child protection services workers;
    - (B) Division of Child and Family Services ("DCFS") case workers;
    - (C) Juvenile Justice Services ("JJS") Observation and Assessment Staff;
    - (D) Juvenile Justice Services ("JJS") case managers;
    - (E) Juvenile Justice Services ("JJS") secure care staff;
    - (F) Others who provide substantive professional services on a regular basis to the juvenile court.
  - (iii) Beginning with juvenile court judges standing for retention in 2014, juvenile court professionals shall be included as an additional survey respondent group for both the midterm and retention evaluation cycles.
    - (3) Anonymity and Confidentiality
      - (a) Definitions
        - (i) Anonymous.
          - (A) "Anonymous" means that the identity of the individual who authors any survey response, including comments, will be protected from disclosure.
          - (B) The independent contractor conducting the surveys shall provide to the commission all written comments from the surveys, redacted to remove any information that identifies the person commenting. The contractor shall also redact any information that discloses the identity of any crime victims referenced in a written comment.
          - (C) The submission of a survey form containing an anonymous narrative comment does not preclude any survey respondent from submitting a public comment in writing pursuant to the Judicial Performance Evaluation Commission Act.
        - (ii) Confidentiality: Confidentiality means information obtained from a survey respondent that the respondent may reasonably expect will not be disclosed other than as indicated in the survey instrument.
        - (iii) The raw form of survey results consists of all quantitative survey data that contributes to the minimum score on the judicial performance survey.
        - (iv) The summary form of survey results consists of quantitative survey data in aggregated form.

### **R597-3-3. Courtroom Observation.**

- (1) General Provisions.
  - (a) Courtroom observations shall be conducted according to the evaluation cycles described in R597-3-1(1) and (2), supra.
  - (b) The commission shall provide notice to each judge at the beginning of the survey cycle of the courtroom observation process and of the instrument to be used by the observers.
  - (c) Only the content analysis of the individual courtroom observation reports shall be included in the retention report for each judge.
- (2) Courtroom Observers.
  - (a) Selection of Observers
    - (i) Courtroom observers shall be volunteers, recruited by the commission through public outreach and advertising.
    - (ii) Courtroom observers shall be selected by the

commission staff, based on written applications and an interview process.

(b) Selection Criteria. Observers with a broad and varied range of life experiences shall be sought. The following persons shall be excluded from eligibility as courtroom observers:

- (i) persons with a professional involvement with the state court system, the justice courts, or the judge;
- (ii) persons with a fiduciary relationship with the judge;
- (iii) persons within the third degree of relationship with a state or justice court judge (grandparents, parents or parents-in-law, aunts or uncles, children, nieces and nephews and their spouses);
- (iv) persons lacking computer access or basic computer literacy skills;
- (v) persons currently involved in litigation in state or justice courts;
- (vi) convicted felons;
- (vii) persons whose background or experience suggests they may have a bias that would prevent them from objectively serving in the program.

(c) Terms and Conditions of Service

(i) Courtroom observers shall serve at the will of the commission staff.

(ii) Courtroom observers shall commit to one one-year term of service.

(iii) Courtroom observers may serve up to three one-year terms, subject to annual renewal at the discretion of the commission.

(iv) Courtroom observers shall not disclose the content of their courtroom evaluations in any form or to any person except as designated by the commission.

(d) Training of Observers

(i) Courtroom observers must satisfactorily complete a training program developed by the commission before engaging in courtroom observation.

(ii) Elements of the training program shall include:

- (A) Orientation and overview of the commission process and the courtroom observation program;
- (B) Classroom training addressing each level of court;
- (C) In-court group observations, with subsequent classroom discussions, for each level of court;
- (D) Training on proper use of observation instrument;
- (E) Training on confidentiality and non-disclosure issues;
- (F) Such other periodic trainings as are necessary for effective observations.

(3) Courtroom Observation Program.

(a) Courtroom Requirements

(i) During each midterm and retention evaluation cycle, a minimum of four different observers shall observe each judge subject to that evaluation cycle.

(ii) Each observer shall observe each judge in person while the judge is in the courtroom and for a minimum of two hours while court is in session. The observations may be completed in one sitting or over several courtroom visits.

(iii) If a judge sits in more than one geographic location at the judge's appointed level or a justice court judge serves in more than one jurisdiction, the judge may be observed in any location or combination of locations in which the judge holds court.

(iv) When the observer completes the observation of a judge, the observer shall complete the observation instrument, which will be electronically transferred to the commission or the third party contractor for processing.

(b) Travel and Reimbursement

(i) All travel must be preapproved by the executive director.

(ii) All per diem and lodging will be reimbursed, when appropriate, in accordance with Utah state travel rules and regulations.

(iii) Travel reimbursement forms shall be submitted on a monthly basis or whenever the observer has accumulated a minimum of 200 miles of travel.

(iv) Travel may be reimbursed only after the observer has satisfactorily completed and successfully submitted the courtroom observation report for which the reimbursement is sought.

(v) Overnight lodging

(A) Overnight lodging is reimbursable when the courtroom is located over 100 miles from home base and court is scheduled to begin before 9:30 a.m., with any exceptions preapproved by commission staff.

(B) Multiple overnight lodging is reimbursable where the commission staff determines it is cost-effective to observe several courtrooms in a single trip.

(v) Each courtroom observer must provide a social security number or tax identification number to the commission in order to process state reimbursement.

(4) Principles and Standards used to evaluate the behavior observed.

(a) Procedural fairness, which focuses on the treatment judges accord people in their courts, shall be used to evaluate the judicial behavior observed in the courtroom observation program.

(b) To assess a judge's conduct in court with respect to procedural fairness, observers shall respond in narrative form to the following principles and behavioral standards:

(i) Neutrality, including but not limited to:

(A) displaying fairness and impartiality toward all court participants;

(B) acting as a fair and principled decision maker who applies rules consistently across court participants and cases;

(C) explaining transparently and openly how rules are applied and how decisions are reached.

(D) listening carefully and impartially;

(ii) Respect, including but not limited to:

(A) demonstrating courtesy toward attorneys, court staff, and others in the court;

(B) treating all people with dignity;

(C) helping interested parties understand decisions and what the parties must do as a result;

(D) maintaining decorum in the courtroom.

(E) demonstrating adequate preparation to hear scheduled cases;

(F) acting in the interests of the parties, not out of demonstrated personal prejudices;

(G) managing the caseload efficiently and demonstrating awareness of the effect of delay on court participants;

(H) demonstrating interest in the needs, problems, and concerns of court participants.

(iii) Voice, including but not limited to:

(A) giving parties the opportunity, where appropriate, to give voice to their perspectives or situations and demonstrating that they have been heard;

(B) behaving in a manner that demonstrates full consideration of the case as presented through witnesses, arguments, pleadings, and other documents.

(C) attending, where appropriate, to the participants' comprehension of the proceedings.

(c) Courtroom observers may also be asked questions to help the commission assess the overall performance of the judge with respect to procedural fairness.

#### **R597-3-4. Minimum Performance Standards.**

(1) In addition to the minimum performance standards specified by statute or administrative rule, the judge shall:

(a) Demonstrate by a preponderance of the evidence, based on courtroom observations and relevant survey responses, that the judge's conduct in court promotes procedural fairness for

court participants.

(b) Meet all performance standards established by the Judicial Council, including but not limited to:

(i) annual judicial education hourly requirement;

(ii) case-under-advisement standard; and

(iii) physical and mental competence to hold office.

(2) No later than October 1st of the year preceding each general election year, the Judicial Council shall certify to the commission whether each judge standing for retention election in the next general election has satisfied its performance standards.

#### **R597-3-5. Public Comments.**

(1) Persons desiring to comment about a particular judge with whom they have had first-hand experience may do so at any time, either by submitting such comments on the commission website or by mailing them to the executive director.

(2) In order for the commission to consider comments in making its retention recommendation on a particular judge, comments about that judge must be received no later than November 1st of the year preceding the election in which the judge's name appears on the ballot.

(3) Persons submitting comments pursuant to this section must include their full name, address, and telephone number with the submission.

(4) All comments must be based upon first-hand experience with the judge.

**KEY: judicial performance evaluations, judges, evaluation cycles, surveys**  
**May 14, 2012**

**78A-12**

**R657. Natural Resources, Wildlife Resources.****R657-20. Falconry.****R657-20-1. Purpose and Authority.**

(1) Under authority of Section 23-17-7 and in accordance with 50 CFR 21 and 22 (10/01/2000), which is incorporated by reference, the Wildlife Board has established this rule for the practice of falconry in the state of Utah.

(2) Take of any raptor species for the practice of falconry must be in compliance with these regulations.

(3) Raptor species possessed under the authority of this rule must be trained in the pursuit of wild game and used in hunting, unless specifically noted otherwise in special provisions granted under this rule.

(4) A federal falconry permit is no longer required for practicing the sport of falconry in the state of Utah.

(5) The Federal Migratory Bird Treaty Act prohibits any person from taking, possessing, purchasing, bartering, selling, or offering to purchase, barter, or sell, among other things, raptors listed in Section 10.13 of 50 CFR 21, unless the activities are allowed under provisions of this rule, or are permitted by other applicable state or Federal regulations.

(a) This rule covers all avian species in the Order Accipitriformes (i.e., vultures, California Condor, kites, eagles and hawks), Order Falconiformes (i.e., caracaras, and falcons) and Order Strigiformes (i.e., owls), and hybrids thereof, and applies to any person who possesses one or more wild-caught, captive-bred, or hybrid raptors to use in falconry.

(b) The Bald and Golden Eagle Protection Act in 16 U.S.C. 668-668d and 54 Stat. 250) provides for the taking of golden eagles from the wild to use in falconry, and specifies that the only golden eagles that may be used for falconry are those that would be taken because of depredations on livestock or wildlife (16 U.S.C. 668a).

(6) Specific season dates, possession limits, open and closed areas, number of permits or CORs, and other administrative regulations for practicing falconry are published in the Utah falconry Guidebook which is available by contacting the Division of Wildlife Resources office in Salt Lake City or online at <http://wildlife.utah.gov>.

(7) Possession of any raptor, raptor egg, shell fragment, semen, or any raptor part without a valid and applicable state COR or Federal permit is prima facie evidence that the raptor, raptor egg, shell fragment, semen, or any raptor part was illegally taken and is illegally held in possession.

(8) Pursuant to Utah Code Section 23-19-9, the Division has the authority to suspend or revoke any or all of the privileges granted under this rule.

(a) Upon request, a permittee whose COR has been suspended may reapply for a falconry COR, pursuant to the application procedures in this rule, at the end of the suspension period.

(9) Nothing in this rule shall be construed to allow the intentional taking of protected wildlife in violation of federal or state laws, rules, regulations, or guidebooks.

**R657-20-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2 and R657-6-2.

(2) In addition:

(a) "Abatement activities" means use of trained raptors to flush, haze or take birds (or other wildlife where allowed) to mitigate depredation problems, including threats to human health and safety.

(b) "Aerie" refers to the nest of any raptor.

(c) "Bate" refers to a hawk or falcon that attempts to fly while being tethered to the falconer's fist, a block or other form of perch, whether from wildness, or for exercise, or in an attempt to chase.

(d) "Business Day" refers to any day the Division is open

for business

(e) "Captive-bred" refers to raptors, including eggs, hatched in captivity from parents that mated or otherwise transferred gametes in captivity.

(f) "CFR" means the Code of Federal Regulations.

(g) "COR" for purposes of this rule means a Certificate of Registration (permit) issued by the Division authorizing an individual to participate in the sport of falconry.

(h) "Eyas" means a young raptor not yet capable of sustained flight such as a nestling or fledgling.

(i) "Division" means the Utah Division of Wildlife Resources.

(j) "Falconry" means, for the purposes of this rule, caring for and training raptors for pursuit of wild game, and hunting wild game with raptors. Falconry includes the taking of raptors from the wild to use in the sport of falconry; and caring for, training, and transporting raptors held for falconry.

(k) "Fledged" means the stage in a young raptor's life when the feathers and wing muscles are sufficiently developed for flight. A young raptor that has recently fledged but is still dependent upon parental care and feeding is called a fledgling.

(l) "Form 3-186A" means the Migratory Bird Acquisition and Disposition Report form.

(m) "Hacking" means the temporary or permanent release of a raptor held for falconry to the wild so that it may survive on its own.

(n) "Haggard" means a wild adult raptor.

(o) "Humane treatment" for purposes of this rule means to maintain raptors in accordance with accepted standards for practicing falconry, including care and treatment of a raptor so that it is physically healthy and maintaining raptors under conditions that are known to prevent predictable illness or injury.

(p) "Hybrid" means offspring of birds listed as two or more distinct species including but not limited to those listed in section 10.13 of Subchapter B of 50 CFR 21, or offspring of birds recognized by ornithological authorities as two or more distinct species including but not limited to those listed in section 10.13 of Subchapter B of 50 CFR 21.

(q) "Imping" means to graft new or additional feathers to existing feather shafts on a raptor's wing(s) or tail to repair damage or to increase flying capacity.

(r) "Imprint", for the purposes of falconry, means a bird that is hand-raised in isolation from the sight of other raptors from 2 weeks of age until it has fully feathered. An imprinted bird is considered to be so for its entire lifetime.

(s) "Landowner" means any individual, family or corporation who owns property in Utah and whose name appears on the deed as the owner of eligible property or whose name appears as the purchaser on a contract for sale of eligible property, or who is a lessee of the property.

(t) "Livestock depredation area" means a specific geographic location in which depredation on livestock by golden eagles has been recognized.

(u) "Marker or band" means a numbered band issued by the Service which, when affixed to a raptor's leg, identifies an individual raptor;

1) permanent, nonreusable (plastic, zip-tie) black-colored numbered leg bands identify an individual raptor that has been taken from the wild;

2) seamless (metal) yellow-colored numbered leg bands identify an individual raptor that has been captive-bred

(a) permanent, nonreusable (plastic, zip-tie) yellow-colored numbered leg bands are used when a seamless band needs to be replaced

(v) "Meet" means, for purposes of this rule, an organized falconry event where protected wildlife may be taken and for which a 5 day non-resident meet hunting license is approved by the Wildlife Board.

(w) "Mews" refers to a protected indoor facility (a residence or non-residence) where raptors are kept for falconry purposes.

(x) "Migratory game bird" means, for the purposes of this rule, ducks, geese, swans, snipe, coot, Mourning Dove, White-winged Dove, Band-tailed Pigeon, and Sandhill Crane.

(y) "Nest" refers to the structure or place where a raptor lays eggs and shelters its young.

(z) "Passage raptor" means a first-year raptor capable of sustained flight that is no longer dependent upon parental care and/or feeding

(aa) "Raptor" means any bird of the Order Accipitriformes, Order Falconiformes (falcons and caracaras) or the Order Strigiformes (owls) and hybrids thereof unless defined otherwise in this rule.

(bb) "Reasonable time of day" for inspections, or other business, at a falconers facilities refers to hours the Division is open for business, or some other prearranged time between the falconer and the Division representative.

(cc) "Service" means the U.S. Fish and Wildlife Service.

(dd) "Take" means to: hunt, pursue, harass, catch, capture, possess, angle, seine, trap or kill any protected wildlife; or attempt any such action.

(ee) "Transport" means to ship, carry, export, import, receive or deliver for shipment, conveyance, carriage, exportation or importation.

(ff) "Trial" means, for purposes of this rule, an organized falconry event where European Starling (*Sturnella neglecta*), House Sparrow (*Passer domesticus*), Rock Dove/feral pigeon (*Columba livia*), pen-reared game birds, and lawfully possessed, domestic birds may be taken.

(gg) "Upland game" means, for purposes of this rule, pheasant, quail, Chukar Partridge, Hungarian Partridge, Sage-grouse, Ruffed Grouse, Dusky ("Blue") Grouse, Sharp-tailed Grouse, cottontail rabbit, snowshoe hare, and White-tailed Ptarmigan.

(hh) "Weathering Area" refers to a protected outdoor facility where raptors are kept for falconry purposes.

(ii) "Wild" refers to an animal in its original natural state of existence; not domesticated nor cultivated.

(jj) "Year" refers to a normal calendar year of January 1 to December 31, unless defined otherwise in this rule.

#### **R657-20-3. Minimum Age Requirement.**

(1) A person who wishes to practice the sport of falconry in Utah must be at least 12 years of age.

#### **R657-20-4. Falconry COR, Permits, and Licenses.**

(1) The division may deny issuing a COR or permit to any applicant, if:

(a) The applicant has violated any provision of Title 23, Utah Wildlife Resources Code, Administrative Code R657, a certificate of registration, an order of the Wildlife Board or any other law that when considered with the functions and responsibilities of practicing the sport of falconry bears a reasonable relationship to the applicant's ability to safely and responsibly carry out such activities;

(b) the applicant misrepresented or failed to disclose material information required in connection with the application; or

(c) holding raptors at the proposed location violates federal, state, or local laws.

(2) A COR is not transferrable.

(3) CORs do not provide the holder with any rights of succession.

(4) Any COR issued to a business or organization shall be void upon the termination of the business or organization or upon bankruptcy or transfer.

(5) A resident must possess a valid COR issued by the

Division to take, possess, hunt with, or transport raptors for the purpose of practicing the sport of falconry in Utah.

(a) A falconry COR requires up to a 30-business day processing time from the date an application is received.

(b) A falconry COR is valid at the Apprentice Class level for a 3-year period from date of issuance.

(c) A falconry COR is valid at the General and Master Class level for a 5-year period from date of issuance.

(6) The falconer must have a falconry COR or a legible copy of it in their immediate possession when not at the location of their falconry facilities and is trapping, transporting, working with, or flying raptors in falconry.

(7) A falconer must obtain a Raptor Capture Permit prior to capturing or attempting to capture any raptor from the wild in Utah.

(i) A valid falconry COR is required for a Utah resident in order to obtain a Raptor Capture Permit.

(ii) Nonresident falconers are not required to purchase a Utah falconry COR in order to purchase a Nonresident Raptor Capture Permit.

(8) The falconry COR allows a resident falconer to use a raptor for unrestricted take of unprotected wildlife including coyote, field mouse, gopher, ground squirrel, jackrabbit, muskrat, raccoon, European Starling, House Sparrow, and rock dove or feral pigeon; no other license or permit is required other than the falconry COR for take of these species.

(a) A non-resident falconer is required to have a current falconry license or permit from his/her state of residence and a valid federal falconry permit, if applicable.

(9) With a falconry bird, a falconer may take any species for which a federal Depredation Order is in place under parts 21.43, 44, 45, or 46 of 50 CFR 21, at any time in accordance with the conditions of the applicable depredation order, as long as the falconer is not paid for doing so.

(10) A falconer releasing a raptor for the purpose of hunting protected wildlife, not held in private ownership, must first obtain the appropriate licenses, permits, tags, CORs and stamps as provided in the applicable rules and guide books of the Wildlife Board.

(a) The hunting of upland game shall be done in accordance with the rule and guide book of the Wildlife Board for taking upland game species.

(b) The hunting of migratory game birds shall be done in accordance with the rule and guide book of the Wildlife Board for taking migratory game species.

(c) A hunting license is not required to take pen-reared game birds with a trained raptor.

#### **R657-20-5. Application for a Falconry COR.**

(1) To obtain a falconry COR, applicants must have either an indoor mews or an outdoor weathering area, or both pursuant to Section R657-20-6

(2) Resident Applications

(a) A resident applying for or renewing a falconry COR shall:

(i) Submit a completed falconry application to the Division; and

(ii) Include the appropriate COR fee.

(b) As a condition to obtaining a falconry COR, the falconer agrees to reasonable administrative inspections of falconry raptors, facilities, equipment, CORs, and related documents.

(c) Falconry raptors, facilities, equipment, and documents may be inspected by the Division only in the presence of the permittee at a reasonable time of day.

(d) At the time of renewal, the current falconry COR number must be included on the falconry COR renewal application.

(e) A falconer claiming residency in Utah may not claim

residency in, or possess a resident falconry license or falconry permit from, another state.

(f) Resident falconers wishing to renew a valid falconry COR must submit a completed falconry COR renewal form to the Division upon or before the expiration date specified on the current falconry COR.

(i) Falconry COR Renewals require up to a 30-day processing time for completion.

(g) Residents who do not hold a valid falconry COR or do not submit a COR renewal form by the date their current COR lapses and who maintain raptors in possession are in violation of unlawful captivity of protected wildlife under Sections 23-13-4 and 23-20-3.

(h) Failure to submit required records and timely, accurate, or valid reports may result in administrative action by the Division.

(i) Administrative action that may be taken by the Division includes:

(A) Issuance of a probationary COR with restrictions on activities allowed; or

(B) Non-renewal of a COR until the required records and reports are completed.

(j) A falconry COR is considered to be lapsed if the falconer has not applied for renewal within 30 calendar days of the expiration of their current COR.

(i) Disposition of raptors held under a lapsed falconry COR is at the discretion of the Division.

(ii) Raptors held under a lapsed falconry COR are subject to seizure by the Division.

(k) A falconer who has allowed their COR to lapse may apply for a new COR.

(i) If a falconry COR has lapsed for fewer than 5 years, it will be reinstated at the level held previously if proof of certification at that level is provided and the applicant has appropriate facilities and equipment; and is otherwise qualified under R657-20-4.

(ii) If a falconry COR or Permit has lapsed for 5 years or longer, an applicant must correctly answer at least 80 percent of the questions on an examination administered by the Division as required in Section R657-20-9(1)(b).

(A) If the applicant passes the examination, a falconry COR will be reinstated at the level previously held.

(B) The applicant's facilities and equipment must also pass inspection by a Division representative before possessing a raptor for falconry as required in Sections R657-20-6.

(3) Falconers Wishing to Establish Residency in Utah

(a) A falconer entering Utah to establish residency must possess the following:

(i) A copy of the previous state's valid falconry license indicating class designation, a current federal falconry permit number, if applicable, a valid health certificate, the number and species of raptors with the band number (if banded) of each raptor held in possession, and an entry permit number obtained from the Utah Department of Agriculture must be presented to the Division within 5 business days after entering Utah.

(b) A six-month domicile period is required for a falconer entering Utah to establish residency.

(c) A falconer entering Utah to establish residency may possess legally obtained raptors that were acquired prior to entering Utah.

(i) If the raptor(s) is to be used for falconry during the six-month domicile period, the falconer must purchase all applicable Utah non-resident hunting licenses and/or permits.

(d) A falconer wishing to establish residency must maintain proper facilities and equipment (see Section R657-20-6, R657-20-7, and R657-20-8).

(e) At the conclusion of the six-month domicile period, a new resident applying for a falconry COR must submit the following to the Division:

(i) A completed falconry application indicating class designation;

(ii) A copy of a valid falconry license from the former state of residency indicating class designation;

(iii) A valid federal falconry permit number, if applicable;

(iv) The appropriate COR fee.

(f) A falconer that holds raptors in possession and fails to apply for a falconry COR within 30 days of qualifying for residency will be in violation of the law for unlawful captivity of protected wildlife under Sections 23-13-4 and 23-20-3 and may be denied a falconry COR, and any raptors in their possession may be subject to seizure.

#### **R657-20-6. Care and Facilities Requirements.**

(1) A person may not possess a raptor without first providing adequate facilities and equipment to humanely house and care for the raptor.

(2) Care Requirements.

(a) The Falconer is responsible for the maintenance and security of raptors held in his or her care.

(b) All raptors held under a falconry COR must be kept in humane and healthy conditions.

(i) The Division may impose additional requirements to insure the safe and humane handling and care of raptors when the birds are maintained in inhumane or unhealthy conditions.

(3) Facilities Requirements and Inspections.

(a) The primary consideration for raptor housing facilities whether an indoor mews or outdoor weathering area is protection of the raptor from unauthorized human access and disturbance, the environment, predators (to include domestic as well as wild animals), inhumane treatment, and other undue disturbances.

(b) Request for a facilities inspection must be made by calling the Regional Division office where the facilities are located.

(c) Once a request is received, a facilities inspection will be completed by the Division within 30 business days of the date the request is received.

(d) Before a person may obtain a falconry COR, the raptor housing facilities and equipment shall be inspected by a Division representative.

(i) Inspections must be conducted in the presence of the permittee.

(ii) In the course of this inspection, the Division representative may collect a photograph of the facilities to keep on file with the falconer's other state records.

(e) Detailed photos and a description of facilities and equipment, including measurements of mews or weathering areas, shall constitute a temporary inspection for purposes of issuing COR's if the Division has not physically inspected within 30 business days. The COR may be revoked if the photos and descriptions of facilities and equipment do not match the facilities in place. Any significant changes to facilities require notification to the Division.

(f) Facilities must be adequate to house the number of raptors in possession.

(i) Only inspected and approved indoor mews and weathering areas may be used for housing raptors for falconry.

(g) In conjunction with inspected and approved facilities, raptors may also be housed inside a place of residence as provided in Section R657-20-4(g).

(i) A new facilities inspection will be required when a permittee changes address or increases the number of raptors in their possession.

(h) The Utah Falconry Program Coordinator must be notified within five (5) business days of a change in the location of an individual's falconry facilities.

(i) Facilities requirements for non-resident falconers wishing to establish residency in Utah

(A) A raptor may be housed in a temporary facility for no more than six months, provided the temporary facility has been inspected and has a suitable perch for the raptor and adequately protects it from predators, domestic animals, extreme temperatures, wind, and excessive disturbance.

(4) The Mews.

(a) The mews must have a suitable perch for each raptor, at least one opening for sunlight, and must provide for a healthy environment for each raptor inside.

(b) A mews must be large enough to allow easy access for the care and feeding of raptors kept inside.

(c) Untethered raptors may be housed together in the mews if they are compatible with each other.

(i) If untethered raptors housed in an indoor mews that is not a place of residence, then the mews must be fully enclosed;

(ii) Walls and ceiling of the mews may be solid, or barred, or covered with heavy duty netting;

(iii) If bars, or heavy duty netting, or mesh are used, openings must be narrower than the width of the body of the smallest raptor housed in the mews.

(d) Each mews must be large enough to allow each raptor the opportunity to fly if it is untethered or, if tethered, to fully extend its wings or bate without damaging its feathers.

(e) Each raptor shall have a pan of clean water available to it at all times while in a mews, unless weather conditions, perch type used, or some other factor makes it inadvisable to have water available next to the raptor.

(f) Acceptable indoor facilities may include shelf perch enclosures where raptors are tethered side by side. Other innovative housing systems are acceptable if they provide the enclosed raptors with protection and opportunity to maintain undamaged feathers.

(g) A place of residence used for housing falconry raptors indoors is considered a mews provided each raptor is tethered to a suitable perch.

(i) A raptor may be untethered inside a place of residence when being handled.

(ii) If a raptor is housed inside a place of residence, there is no need to modify windows or other openings in the residence.

(iii) A raptor may be housed untethered inside a flight chamber constructed within a place of residence with the following provisions:

(A) the flight chamber must have a source of light;

(B) The flight chamber must be fully enclosed;

(C) Walls and ceiling of the flight chamber may be solid, or barred, or covered with heavy duty netting;

(D) If bars, or heavy duty netting, or mesh are used, openings must be narrower than the width of the body of the smallest raptor housed in the flight chamber.

(5) Weathering Area

(a) The weathering area must be totally enclosed, and can be made of heavy-gauge wire, heavy-duty plastic mesh, slats, pipe, wood, or other suitable material capable of preventing the raptor's escape and excluding predators and other animals capable of causing harm to the raptor.

(b) The weathering area must be covered and have at least one covered perch to protect a raptor from predators and weather.

(c) Adequate perches must be provided within the weathering area to ensure the health, safety and protection of the raptor.

(d) Raptors must be tethered while inside the weathering area.

(e) The weathering area must be large enough to insure that the raptor(s) cannot strike the enclosure when bating from the perch.

(f) Raptors may be perched next to a solid or fully opaque wall in the weathering area provided the proximity of the wall

to the perch will not cause injury to the raptor or feather damage.

(g) Each raptor should have a pan of clean water available.

(i) At the discretion of the permittee, this requirement is waived if weather conditions, the perch type used, or some other factor makes it inadvisable to have water available to the raptor.

(h) New types of housing facilities and/or husbandry practices may be used if they satisfy the requirements of this chapter and are approved by the Division.

(i) Falconry raptors may be kept outside in the open at any location if they are under watch by an individual familiar with the handling of raptors.

(j) Approved falconry facilities may be on property owned by another person, provided the falconer submits a signed and dated statement by the falconer and the property owner agreeing that the falconry facilities, equipment, and raptors may be inspected without advance notice by the Division at any reasonable time of day.

(k) Raptors in transit must be provided with an adequate perch and protected from extreme temperatures, wind, and excessive disturbance to ensure the health, safety and protection of any raptor being transported.

**R657-20-7. Temporary Care of Falconry Raptors.**

(1) Short-term handling of a raptor by a person other than the permitted falconer, such as allowing a person to handle or practice flying a permittee's raptor is not considered temporary possession for the purposes of this rule, provided the permittee is present and supervising the individual that is handling the raptor.

(2) Temporary care of raptors by another falconry permittee

(a) Another falconry permittee may care for a falconer's raptors for up to 120 consecutive calendar days.

(b) The temporary care permittee must have a signed and dated statement from the falconer authorizing the temporary possession, in addition to a copy of the FWS Form 3-186A for that raptor.

(i) The signed and dated statement must identify the time period for which the temporary permittee will keep the raptors and what activities are allowed to be carried out with the raptors.

(ii) Falconry raptors in temporary care will remain on the original falconer's COR and will not be counted against the possession limit of the person providing the temporary care for the raptors.

(iii) If the permittee providing temporary care for the raptors holds the appropriate level falconry permit, then the temporary permittee may fly the raptors in whatever way authorized by the falconer, including hunting.

(iv) Temporary care of raptors may be extended by the Division in extenuating circumstances such as, illness, military duty, and family emergency. The Division will consider extenuating circumstances on a case-by-case basis.

(3) Temporary care of raptors by a non-falconer.

(a) A non-falconer may care for a falconer's raptors for up to 45 consecutive calendar days.

(i) The raptors will remain on the original falconer's COR.

(ii) The raptors must remain at the original falconer's facilities.

(iii) Temporary care of raptors by non-falconers may be extended by the Division in extenuating circumstances such as illness, military duty, or family emergency. The Division will consider extenuating circumstances on a case-by-case basis.

(iv) A non-falconer caring for a falconer's raptors may not fly them for any reason.

(4) Transfer of falconry raptors when a permittee dies.

(a) A surviving spouse, executor, administrator, or other legal representative of a deceased falconry permittee may

transfer any raptor(s) held by the deceased permittee to another authorized permittee within 90 calendar days of the death of the original falconry permittee.

(b) After 45 calendar days from the death of the falconry permittee, disposition of raptors held under the permit is at the discretion of the Division.

#### **R657-20-8. Equipment.**

(1) Prior to the facilities inspection and issuance of a falconry COR, the applicant shall possess the following items for each raptor in possession or for each raptor proposed for future capture:

(a) At least one pair of Aylmeri jesses, or similar type, made from pliable, high quality leather or suitable synthetic material;

(b) The materials and equipment necessary to make Aylmeri jesses or other material to be used when any raptor is flown free.

(i) Traditional one-piece jesses may be used on raptors when not being flown.

(c) At least one flexible, weather-resistant leash.

(d) At least one swivel of acceptable falconry design.

(e) At least one suitable container, two to six inches deep and wider than the length of the raptor, to hold drinking and bathing water for each raptor.

(f) At least one perch of an acceptable design will be provided for use for each raptor.

(g) A reliable scale or balance suitable for weighing the raptor held and graduated to increments of not more than one-half ounce or less.

(h) For small raptors, such as kestrels, merlins, and sharp-shinned hawks, the scale must weight in increments of at least 1 gram.

#### **R657-20-9. Apprentice Class Falconer.**

(1) Apprentice class falconer requirements

(a) Applicants for an Apprentice Class falconry COR must be at least 12 years of age;

(i) Applicants for an Apprentice Class falconry COR who are under 18 years of age must have a parent or legal guardian sign their application;

(ii) The parents or legal guardian of a minor Apprentice Class falconer are legally responsible for the activities of their child.

(b) Applicants for an Apprentice Class falconry COR must correctly answer at least 80 percent of the questions on an examination administered by a Division representative.

(i) An individual may not take the falconry exam earlier than two months prior to their 12th birthday.

(ii) The examination questions will cover basic care and handling of falconry raptors, state and Federal laws and regulations relevant to falconry, raptor biology, diseases and health issues, raptor identification, trapping and training methods, and other appropriate subject matter.

(iii) An individual may contact any Division office for information about taking the examination.

(iv) Falconry examinations are administered at any Division office by appointment only during business hours.

(v) An individual that fails to correctly answer at least 80 percent of the questions on the exam may retake the exam after a minimum 14-day period.

(c) An applicant's facilities and equipment must pass inspection by the Division under R657-20-6 before a falconry COR can be issued.

(2) Possession of Raptors at the Apprentice Class

(a) An Apprentice Class falconer may take or possess for falconry

(i) Any wild-caught passage age raptor or captive-bred, or hybrid raptor species of the Order Accipitriformes,

Falconiformes or Strigiformes with the following exceptions:

(3) The hybrid raptor cannot be the result of a cross involving any species listed in Section 10.13 of 50 CFR 21 (Federal Migratory Bird Treaty Act)

(i) An Apprentice Class falconer may not take or possess wild caught, captive-bred, or hybrid eagles;

(ii) An Apprentice Class falconer may not take or possess federally listed threatened or endangered species;

(iii) An Apprentice Class falconer may not take or possess any wild-caught species listed as a national Species of Conservation Concern by the Service;

(b) An Apprentice Class falconer may possess no more than one (1) wild-caught passage age raptor or captive-bred raptor for use in falconry regardless of the number of state, tribal, or territorial falconry CORs or permits that the Apprentice has been issued.

(c) Another falconry permittee may capture a wild raptor and transfer the raptor to an Apprentice Class falconer as provided in R657-20-15.

(d) An Apprentice Class falconer may not take or possess a raptor taken from the wild as an eyas.

(e) An Apprentice Class falconer may not possess an imprint raptor.

#### **R657-20-10. Apprentice Class Sponsor.**

(1) Applicants for an Apprentice Class falconry COR must have a sponsor to mentor and assist the Apprentice Class falconer, as necessary, in:

(a) Husbandry and training of raptors held for falconry;

(b) Relevant wildlife laws and regulations, and

(c) Determining what species of raptor is appropriate for the Apprentice to possess.

(2) The person applying for an Apprentice Class falconry COR must provide the Division with a letter from their chosen sponsor stating that sponsor's willingness to serve as a sponsor for the Apprentice Class falconer.

(3) Requirements of an Apprentice Class Sponsor

(a) Any person sponsoring an apprentice under the age of 18, other than the minor's parent or legal guardian, must be approved in writing by the minor's parent or legal guardian and submitted to the Division before being designated as the minor's sponsor;

(b) A sponsor must be a Master Class Falconer who holds a valid Utah Falconry COR, or

(i) Be a General Class Falconer who is at least 18 years of age, has no less than 2 years experience at the General Class falconer level, and who holds a valid Utah falconry COR.

(4) Unless approved by the Division in writing, the sponsor cannot reside

(a) Greater than a 100 mile distance from the Apprentice; or

(b) Outside of Utah.

(5) Apprentice Class falconers that change or terminate sponsors must notify the Division in writing and provide a letter from the new sponsor showing compliance with the requirements listed in R657-20-10(3).

(a) In the event sponsorship is terminated, the holder of an Apprentice Class falconry COR must obtain a new sponsor within 30 calendar days of termination.

#### **R657-20-11. General Class Falconer.**

(1) General Class falconer requirements

(a) Applicants for a General Class falconry COR must be at least 16 years of age;

(i) Applicants for a General Class falconry COR who are under 18 years of age must have a parent or legal guardian sign their application;

(ii) The parents or legal guardian of a minor General Class falconer are legally responsible for the activities of their child.



(b) New General Class applicants must submit a request for class upgrade to the Division in writing or via email, and include a document from their General Class or Master Class sponsor stating that the General Class applicant has practiced falconry at the Apprentice Class Falconer level or equivalent for at least 2 years including maintaining, training, flying, and hunting raptors for at least 4 months in each separate 12-consecutive month period.

(i) For purposes of this Subsection, 2 years means two separate 12-consecutive month periods.

(ii) A General Class applicant may not substitute any falconry school program or education to shorten the minimum period of 2 years at the Apprentice level.

(iii) Evidence that a General Class applicant has had a valid General Class level falconry license or permit in another state for at least 2 years may be substituted for the Apprentice Class falconry COR requirement.

(2) Possession of raptors at the General Class

(a) A General Class falconer may take or possess any eyas or passage age wild-caught raptor,

(b) A General Class falconer may possess captive-bred, or hybrid raptor species of the Order Accipitriformes, Falconiformes or Strigiformes with the following exceptions:

(i) A General Class falconer may not take or possess eagles;

(ii) A General Class falconer may take or possess any wild-caught species listed as a national Species of Conservation Concern by the Service.

(c) A General Class falconer may possess no more than 3 wild-caught eyas or passage age raptors, captive-bred raptors, or hybrid raptors, or any combination thereof, for use in falconry regardless of the number of state, tribal, or territorial falconry CORs or permits that the General Class falconer has been issued.

#### **R657-20-12. Master Class Falconer.**

(1) Master Class falconer requirements

(a) Applicants for a Master Class falconry COR must have 5 years of experience practicing falconry with raptor(s) held under their own state, tribal, or territorial falconry COR or permits at the General Class Falconer level.

(i) For the purposes of this Subsection, "5 years of experience" means maintaining, training, flying, and hunting the raptor(s) for at least 4 months in each of five (5) separate 12-month periods.

(ii) Evidence that the applicant has had a valid General Class level falconry license or permit in another state for at least 5 years may be substituted for the General Class falconry COR requirement.

(iii) If an applicant has held falconry raptor(s) on an extended temporary basis, that experience may qualify for purposes of these requirements.

(2) Possession of Raptors at the Master Class

(a) A Master Class falconer may take or possess any wild-caught eyas or passage age, captive-bred raptor, or hybrid raptor species of the Order Accipitriformes, Falconiformes or Strigiformes with the following exceptions:

(i) A Master Class falconer may not take or possess a bald eagle (*Haliaeetus leucocephalus*)

(ii) A Master Class falconer may take or possess any wild-caught species listed as a national Species of Conservation Concern by the U. S. Fish and Wildlife Service

(b) A Master Class falconer may take and possess a golden eagle only if the qualifications set forth parting Subsection (2)(d) below are met.

(c) A Master Class falconer may possess no more than 5 wild-caught eyas or passage age raptors for use in falconry, including golden eagles, regardless of the number of state, tribal, or territorial falconry CORs or permits that the Master Class

falconer has been issued.

(i) A Master Class falconer may possess any number of captive-bred raptors, provided

(A) Approved facilities are available

(B) The captive-bred raptors must be trained in the pursuit of wild game and used for hunting.

(d) A Master Class falconer must obtain an authorization from the Division to possess an eagle for use in falconry pursuant to R657-20-13;

(i) Approval for a Master Class falconer to take or possess an eagle for use in falconry shall not be granted unless the following documentation is provided:

(A) A written statement documenting the experience of the Master Class falconer in handling large raptors, including information about the species handled and the type and duration of activities in which the experience was obtained.

(B) At least two letters of reference from individuals with experience in handling or flying large raptors such as eagles, ferruginous hawks (*Buteo regalis*), Northern goshawks, or great horned owls (*Bubo virginianus*).

(I) Each reference letter must contain a concise history of the author's experience with large raptors, which can include but is not limited to, handling of raptors held by zoos, rehabilitating large raptors, or scientific studies involving large raptors.

(II) Each reference letter must also assess the Master Class Falconer's ability to care for eagles and fly them in falconry.

#### **R657-20-13. Acquiring Raptors for Falconry.**

(1) Licensed falconers wishing to take raptors from the wild for falconry must purchase a Raptor Capture Permit from the Division.

(a) A Raptor Capture Permit is valid for one wild raptor authorized for possession in accordance with the restrictions and limitations of this rule.

(b) Raptor Capture Permits are non-transferable and non-assignable and can only be used by the person specified on the permit. However, another person can assist the permit holder pursuant to Section R657-20-15.

(c) The Raptor Capture Permit and falconry COR (or legible copies thereof) must be in the possession of the permittee while pursuing, capturing or attempting to capture a wild raptor.

(2) On an annual basis, the falconry Program Coordinator shall determine the available take of peregrine falconers and raptors listed on the most recent edition of the Utah sensitive species list.

(a) Notice of any limitations on the take of sensitive raptors shall be available by February 1 of each year.

(b) If the number of applications received exceeds the available take, then the Division will conduct a drawing.

(c) An individual may only draw once every 2 years to take peregrine falcons, sensitive raptor species, and nonresident legal raptors.

(i) If the number of applications received is less than the available take, then the 2 year restriction is waived, and the remaining take will be made available to resident and nonresident falconers of the appropriate class on a first-come first-served basis.

(3) A licensed falconer may not take more than 2 raptors from the wild each calendar year for falconry purposes.

(a) Haggard age raptors may not be taken from the wild for falconry.

(b) Any raptor taken from the wild for falconry is considered a "wild" raptor for the balance of the raptor's life, regardless of the length of captivity or the raptor's transfer to another permittee or permit type.

(c) A licensed falconer who wishes to take a raptor from the wild must meet all state and tribal requirements in this rule for capture of wild raptors for falconry.

(d) A permittee may not purchase, sell, trade, or barter a wild raptor.

(4) Resident Take of Wild Raptors

(a) While trapping, falconers shall not retain and transport more than one captured wild raptor per capture permit.

(5) Taking of wild raptors is prohibited within the boundaries of all National and State Parks in Utah

(6) A raptor may be taken from the wild by traps or nets that minimize the potential of physical injury and unnecessary stress to the raptor.

(a) Examples of acceptable devices are the bal-chatri, dho-gazza, harness-type, phi trap, bow net traps, or other trapping devices that are humane and acceptable as commonly used in falconry trapping procedures.

(b) Trapping devices must be constantly attended while in use.

(7) A raptor taken from the wild may be transferred to another permittee under the following conditions:

(a) The captured raptor will count as one of the raptors allowed for take from the wild in the calendar year it was taken by the capturing falconer;

(b) The transferred wild raptor will not count as a capture by the recipient.

(8) A permittee may not intentionally capture wild raptor species for falconry that their classification as a falconer does not allow them to possess.

(a) If a permittee captures a wild raptor he or she is not allowed to possess, it must be released immediately.

(9) A General or Master Class falconer may take no more than 1 raptor from the wild each year which belongs to a species listed as threatened or endangered under the federal Endangered Species Act if allowed under 50C CFR part 17, and if a federal endangered species permit is obtained before taking the bird.

(10) A General or Master Class falconer may take eyas raptors from a nest or aerie only during the seasons specified for taking eyas raptors in Subsection (12).

(a) At least one young must be left in any nest or aerie from which an eyas is taken.

(b) Removal of young is prohibited from a nest or aerie that contains only one eyas.

(c) An eyas may not be removed from its aerie prior to 10 days of age.

(d) Aeries may not be entered when young are 28 days or more of age.

(11) An Apprentice, General or Master Class falconer may take passage age raptors from the wild only during the seasons specified for taking passage age raptors in Subsection (12).

(12) Periods for Allowable Take Of Raptors From the Wild.

(a) Eyas or passage age raptors of any allowable Strigiform species may be taken from March 1 through November 30.

(b) Eyas or passage age raptors of any allowable Accipitriform and Falconiform species except peregrine falcon (*Falco peregrinus*) and golden eagle (*Aquila chrysaetos*) may be taken January 1 through December 31.

(i) The peregrine falcon take season begins annually on May 1st and ends on August 31st.

(ii) Notwithstanding Subsection (12)(b):

(A) Passage age raptors that fledged from the prior year may not be taken after March 1st; and

(B) Passage age gyrfalcons (*Falco rusticolus*) may be taken at any time.

(c) Licensed falconers may take any raptor from the wild that is authorized under this rule for take for their class level.

(i) A wild caught raptor that is banded with a Federal Bird Banding Laboratory aluminum band may be taken, provided the Federal Bird Banding Laboratory is notified of the removal of the banded raptor from the wild;

(ii) The Federal Bird Banding Laboratory aluminum band

may be removed if the raptor is to be retained, after notifying the Federal Bird Banding Laboratory.

(iii) Capture of any raptor that is marked with a seamless metal band, a transmitter, or any other item identifying it as a falconry bird must be reported to the Division no more than 5 business days after the capture.

(iv) Capture of any raptor that is marked with any other band, research marking, or attached research transmitter attached to it must be promptly reported to the Federal Bird Banding Laboratory at 1-800-327-2263.

(13) Nonresident Take of Wild Raptors

(a) A nonresident falconer may not take any raptor from the wild without first obtaining a Nonresident Raptor Capture Permit from the Division.

(b) Nonresidents must show proof of a valid federal falconry permit or falconry license issued by their state of residency to purchase a Nonresident Raptor Capture Permit.

(c) Nonresident take of raptors is subject to all other applicable regulations set forth in this rule.

(14) Special provisions for take of wild peregrine falcons.

(a) Only General and Master Class falconers only may take wild eyas or passage age peregrine falcons as provided in this rule.

(b) The areas open for taking eyas and passage age peregrine falcons will be designated annually by the Falconry Program Coordinator.

(c) A peregrine falcon that is marked with a with a Federal Bird Banding Laboratory aluminum band and/or a research band such as a colored band with alphanumeric codes or some other research marking attached must be immediately released.

(i) Research band numbers and location and date of capture must be reported to the Division and the Federal Bird Banding Laboratory (1-800-327-2263) within 5 business days of the date of capture.

(15) Special provisions for take of wild golden eagles

(a) A Master Class falconer with a COR to take golden eagles may take no more than three from the wild, subject to the requirements in federal statute 50 CFR 21 and Section R657-20-12(2)(c).

(i) A Master Class Falconer that is authorized to take golden eagles may take no more than two golden eagles from the wild in any calendar year and only in a livestock depredation area during the time the depredation area declaration is in effect.

(A) The establishment, boundaries, and duration of a livestock depredation area in Utah are declared by U.S.D.A. Wildlife Services and the U. S. Fish and Wildlife Service in Lakewood, CO.

(ii) A Master Class falconer authorized to take golden eagles for use in falconry may capture an immature or subadult golden eagle only in a livestock depredation area during the time the depredation area is in effect in Utah.

(A) A Master Class Falconer may capture a nesting adult golden eagle, or take an eyas from its nest, in a livestock depredation area if a biologist representing the agency responsible for declaring the depredation area has determined that the parent adult eagle is preying on livestock.

(B) A government employee who has trapped a golden eagle under Federal, State, or tribal permit may transfer the eagle to a Master Class falconer that is authorized to possess golden eagles if the eagle cannot be released in an appropriate location.

(iii) A Master Class Falconer authorized to take a golden eagle for falconry must contact USDA, Wildlife Services or the U. S. Fish and Wildlife Service in Lakewood, CO to determine the establishment and location of a livestock depredation area in Utah

(A) The Division does not provide livestock depredation area information.

(B) The Master Class falconer must have permission from the private landowner to capture a golden eagle on private lands.

(16) Other special provisions for obtaining raptors for falconry

(a) A permittee may receive assistance from another individual in capturing a wild raptor, but the permittee must be present at the capture site

(b) Regardless of the assistance of another person in capturing a wild raptor:

(i) The permittee is always considered to be the individual who removes the bird from the wild; and

(ii) the permittee is legally responsible for complying with the reporting requirements for capturing a raptor from the wild, as provided in Subsection (1).

(c) A permittee with a long-term or permanent physical impairment that prevents their attendance at the capture of a raptor for use in falconry, or is otherwise unable to be present at the immediate location where the raptor is taken from the wild, may contact a General or Master Class falconer only to capture a raptor on their behalf.

(i) The impaired permittee is legally responsible for complying with the reporting requirements for capturing a raptor from the wild, as provided in Subsection (1).

(ii) The raptor will count against the take of wild raptors that the impaired permittee is allowed in any year.

(iii) The raptor will not count as one of the two replacement raptors the General or Master Class falconer who offers assistance is allowed to capture in any year.

(iv) The raptor will not count as being taken from the wild by the permittee acting on behalf of the impaired permittee.

(d) Individuals authorized to do so may sell, purchase, or barter, or offer to sell, purchase, or barter captive-bred raptors marked with seamless bands to other permittees who are legally authorized to possess the raptor.

(e) A permittee may transfer a raptor to another permittee who is legally authorized to possess the raptor, provided there is no pecuniary consideration for the transfer.

(i) The number of wild caught or captive-bred raptors transferred to a permittee may not exceed the established possession limit for each permit class.

(f) A licensed falconer may acquire directly from a rehabilitator a raptor of any age or species that the falconer is permitted to possess.

(i) A wild raptor acquired for falconry from a rehabilitator will count as one of the raptors the falconer is allowed to take from the wild that calendar year.

#### **R657-20-14. Raptors Injured Due to Falconer Trapping Efforts.**

(1) Falconers that injure a raptor during trapping efforts are responsible for the costs of care and rehabilitation of the injured raptor.

(a) An injured raptor retained by the permittee must be placed on the permittee's falconry permit.

(b) The injured raptor must be treated by a veterinarian or a permitted wildlife rehabilitator.

(c) The injured raptor must be immediately transported to a veterinarian, a permitted wildlife rehabilitator, or an appropriate wildlife agency employee.

(d) The injured raptor will not count against the permittee's allowed take or the permittee's possession limit.

#### **R657-20-15. Recapture of Falconry Raptors.**

(1) A falconry raptor that has been lost may be recaptured at any time without the need to purchase a Raptor Capture Permit.

(2) Recapture of a lost or escaped "wild" raptor is not considered to be the taking of a raptor from the wild.

(3) A raptor wearing falconry equipment or a lost or

escaped captive-bred raptor may be recaptured at any time by any other permitted falconer - even if the permittee performing the recapture is not allowed to possess the species.

(4) A recaptured raptor will not count against a permitted falconer's possession limit, nor will its recapture from the wild count against the permitted falconer's replacement limit.

(a) A recaptured falconry raptor must be returned to the permittee who lost it if that individual may legally take possession.

(i) Disposition of a recaptured falconry raptor where the permittee's legal authority to possess the bird is in question will be determined by the Division.

(ii) A recaptured falconry raptor temporarily held for return to the permittee who lost it will not count against the possession or replacement limit on take of raptors from the wild if the individual temporarily holding the raptor has reported the recapture to the Division.

#### **R657-20-16. Flying a Hybrid Raptor in Falconry.**

(1) When flown free, a hybrid raptor must have at least two attached radio transmitters for tracking.

#### **R657-20-17. Hacking of Falconry Raptors and other Training Techniques.**

(1) A General or Master Class Falconer only may hack a falconry raptor or raptors.

(2) Raptors at hack count against possession limits and must be a species authorized for possession.

(3) Hybrid raptors at hack must have two attached and functioning radio transmitters.

(4) Raptors are not to be released at hack near the nesting area of a federally threatened or endangered bird species or in any other location where the raptor is likely to harm a federally listed threatened or endangered animal species that might be disturbed or taken by the raptor at hack.

(a) The Division must be notified prior to hacking a falconry raptor.

(b) Information on federally-listed species can be obtained from the Service.

(5) Use of other falconry training or conditioning techniques.

(a) Other acceptable falconry practices may be used, such as the use of tethered flying, lures, balloons, or kites in training or conditioning raptors for falconry.

(b) Falconry raptors may be flown at pen-raised animals or at bird species not protected under this rule or the Migratory Bird Treaty Act.

#### **R657-20-18. Permission to Conduct Falconry Activities on Public or Private lands.**

(1) A falconer must comply with all applicable Federal, State, local, or tribal laws regarding falconry activities, including hunting, on private, public, and tribal lands.

(a) All falconry activities shall be conducted consistent with the trespass requirements in Section 23-20-14.

(b) A person may not engage in any falconry activity on Tribal trust lands without authorization.

(2) Raptor training is not allowed on state waterfowl and wildlife management areas without authorization.

(3) Practicing the sport of falconry without permission is prohibited on all National Parks in Utah

(4) Practicing the sport of falconry without permission is prohibited on all Utah state Parks.

#### **R657-20-19. Practicing Falconry in the Vicinity of a Federally Listed Threatened or Endangered Animal Species.**

(1) Individuals practicing falconry must ensure that such activities do not result in the take of federally listed threatened or endangered wildlife.

(2) Under the federal Endangered Species Act:

(a) "Take" means "to harass, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct".

(b) "Harass" means any act that may injure wildlife by disrupting normal behavior, including breeding, feeding, or sheltering; and

(c) "Harm" means an act that actually kills or injures wildlife

(3) Information about threatened or endangered species that may occur in Utah is available by contacting the Service or the Division.

#### **R657-20-20. Releasing a Falconry Raptor to the Wild.**

(1) A raptor that is non-native to the State of Utah or that is a hybrid of any kind, may not be permanently released into the wild.

(a) A raptor that is non-native to the State of Utah or that is a hybrid of any kind, may be transferred to another falconry permittee authorized for possession.

(2) A raptor that is native to the State of Utah and captive-bred may not be permanently released into the wild without prior authorization from the Division.

(a) Once authorization for release of a captive-bred native raptor is received, the raptor must be hacked (allow it to adjust) to the wild at an appropriate time of year and at an appropriate location as determined by the falconer.

(b) The falconry or captive-bred band must be removed and release of the bird reported to the Division in accordance with Section R657-20-21.

(3) If the species to be released is native to the State of Utah and was taken from the wild, the raptor may be released only at an appropriate time of year and at an appropriate location as determined by the falconer.

(a) If the raptor is banded, the band must be removed and release of the bird reported to the Division in accordance with Section R657-20-21.

#### **R657-20-21. Reporting Requirements.**

(1) All activities, including wild take, acquisition, transfer, exchange, band/reband or microchip implant, loss (if not recovered within 30 days), recapture, injuries, and theft of any falconry raptor must be reported to the Division within 10 business days of the date of the event, as follows:

(a) Submit to the Division a completed paper Form 3-186a by mail or email; and

(b) Enter the required information in the electronic database located at <http://permits.fws.gov/186A>

(2) A permittee must retain copies of all electronic database submissions documenting take, transfer, loss, rebanding or micro chipping or any other transaction for each falconry raptor for up to 5 years after the given transaction or event has taken place.

(3) Date of capture, sex of the raptor, and location of the capture must be recorded on the Raptor Capture Permit for all species.

(a) Nest locations are held for use by the Division's sensitive species biologists and will not be made available to the public.

(4) All Resident falconers holding a valid falconry COR must submit a completed falconry Annual Report to the Division by January 31 of each year, as follows:

(a) By December 31 of each year, the Division will provide each resident falconer with an annual report form.

(b) Each resident falconer must complete the annual report and return the report to the Division by the following January 31.

#### **R657-20-22. Unintentional Take of Protected Wildlife by a**

#### **Falconry Raptor.**

(1) A falconry raptor may be allowed to feed on a prey animal taken unintentionally, provided the prey animal is not taken into the falconer's possession.

(2) Unintentional take of any federally listed threatened or endangered species must be reported to the Division and the U. S. Fish and Wildlife Ecological Services Field Office in Salt Lake City within 48 hours of the take event.

(3) Unintentional take of any Utah protected wildlife must be reported to the Division within 48 hours of the take event.

#### **R657-20-23. Banding or Tagging Raptors Used in Falconry.**

(1) A falconer who has captured or acquired a wild northern goshawk, wild Harris's hawk (*Parabuteo unicinctus*), wild peregrine falcon, or wild gyrfalcon must band the raptor with a permanent, nonreusable, black-colored numbered Service leg band.

(a) A falconer must contact the Division for information on obtaining and disposing of bands.

(b) In addition to banding the raptor, a falconer may also purchase and implant an ISO (International Organization for Standardization)-compliant (1234.2 kHz) implantable microchip.

(2) Raptors bred in captivity must be banded with a Service seamless metal band described in 50 CFR 21 Section 21.30, or plastic, numbered Service yellow band.

(a) Unbanded raptors, or black, or yellow banded raptors may not be sold, traded or bartered in any way.

(b) In addition to banding the raptor, a falconer may also purchase and implant an ISO (International Organization for Standardization)-compliant (1234.2 kHz) implantable microchip.

(c) Removal or loss of a seamless band must be reported to the Division within 10 business days of the event and a replacement non-reusable band attached to the raptor.

(d) New and replacement band or microchip information must be reported to the Division pursuant to Section R657-20-24.

(3) In the event a non-reusable band is removed or lost from a banded raptor, the removal or loss of the band must be reported to the Division pursuant to Section R657-20-21 and a replacement band requested.

(a) Immediately upon rebanding the raptor, the required information must be submitted to the Division pursuant to Section R657-20-21

(4) A band may not be altered, defaced, or counterfeited.

(5) Exemptions for banding of raptors will be considered on a case-by-case basis, as follows:

(a) Documented health or injury problems for a raptor that are caused by the band

(b) A copy of the exemption paperwork must be kept by the permittee when transporting or flying the raptor.

(c) If the raptor is a wild northern goshawk, wild Harris's hawk, wild peregrine falcon, or wild gyrfalcon, the band must be replaced with an ISO-compliant microchip.

(i) Substituting a microchip for a band on a wild goshawk, wild Harris's hawk, wild peregrine falcon, or wild gyrfalcon will not be authorized unless it has been demonstrated that a band causes an injury or a health problem for the raptor.

#### **R657-20-24. Importation Requirements for Residents and Nonresidents.**

(1) A person is not required to obtain a special COR from the Division to import a raptor brought into Utah from another state when the raptor is imported and used for falconry purposes.

(a) Importation of a raptor used for any purposes other than falconry is governed by Rule R657-3.

(b) A raptor imported into Utah is required to have:

(i) A certificate of veterinary inspection from the state, tribe, or territory of origin; and

(ii) An entry permit number issued through the Utah Department of Agriculture, Animal Health Office pursuant to R58-1-4.

(2) Any raptor brought into the state on a permanent basis must be reported to the Division pursuant to Section R657-20-24

**R657-20-25. Falconry Meets or Trials.**

(1) Falconers participating in falconry meets or trials must possess a valid falconry license and federal falconry permit, if applicable.

(2) A falconry meet license is not required for participation in a falconry trial.

(3) A falconry meet or trial may not be held on state waterfowl and wildlife management areas from April 1 through August 15, except in those areas approved by the Division.

(4) An organizer of a falconry meet must obtain prior approval from the Wildlife Board for non-residents to purchase a 5-day non-resident meet license.

(5) A nonresident entering Utah to participate in the sport of falconry at an organized meet must be 12 years of age or older and must obtain a nonresident falconry meet license if hunting protected wildlife.

(6) A falconry meet license may be obtained by completing an application and submitting the application and appropriate fees to the Division.

(7) A falconry meet license is valid only for nonresidents and only for five (5) consecutive calendar days as designated on the license.

(8) The holder of a nonresident falconry meet license may engage in the sport of falconry on protected wildlife during the specified five-day period in accordance with the applicable proclamations of the Wildlife Board.

(9) A nonresident participating in an organized meet must provide a health certificate and an entry permit number obtained from the Utah Department of Agriculture, Animal Health Section, on each raptor brought into the state.

**R657-20-26. Use of Pen-Reared Game Birds for Meets, Trials and Training.**

(1) Any falconer using pen-reared game birds for meets, trials or training must have an invoice or bill of sale or a copy thereof in their possession showing lawful personal possession or ownership of such birds.

(2) Pen-reared game birds may be held in possession no longer than 60 calendar days unless the person possessing the pen-reared game birds first obtains a private aviculture COR as provided in Rule R657-4.

(3) Each pen-reared game bird must be marked with an aluminum leg band or other permanent marking before being released except as provided in Subsection (c).

(a) Aluminum leg bands may be purchased at any Division office.

(b) The aluminum leg band or other permanent marking must remain attached to the pen-reared game bird.

(c) Each pen-reared game bird used on a commercial hunting area may be released without marking.

(4) Pen-reared game birds used for a meet may be released only on the property specified and only during the dates approved for the falconry meet.

(5) Released pen-reared game birds may be taken using falconry raptors, as follows:

(a) By the individual who released the pen-reared game birds, or by any individual participating in the meet; and

(b) Only during the approved dates of the meet.

(6) Once released, any pen-reared game birds that leave the property where the meet is held or are not retrieved at the

conclusion of the meet become the property of the State of Utah and may not be recaptured or taken, except as prescribed in the Upland Game or Waterfowl proclamations of the Wildlife Board.

(7) Pen-reared game birds used for training raptors, or for a trial that escape or are not recovered on the day of the training, or pen-reared game birds that escape, become property of the State of Utah and may not be recaptured or taken, except as prescribed in the Upland Game and Waterfowl proclamations of the Wildlife Board and elsewhere in this rule.

**R657-20-27. Use of Feathers and Carcasses.**

(1) Feathers that a falconry bird or birds molt may be used for imping.

(a) Flight feathers for each species of raptor currently in possession or previously held may be kept for imping for as long as needed by a falconer with a valid falconry COR.

(i) Feathers for imping purposes may be received from or provided to other licensed falconers, wildlife rehabilitators, or propagators in the United states.

(ii) Licensed falconers may not buy, sell, or barter molted raptor feathers.

(b) Molted feathers from a falconry bird, except golden eagle feathers, may be donated to any person or institution with a valid permit for possession.

(c) Except for primary or secondary wing feathers or rectrix (tail) feathers from a golden eagle, a falconer is not required to gather feathers that are molted or otherwise lost by a falconry bird held under a valid COR.

(i) Molted feathers may be left where they fall, stored for imping, or destroyed.

(ii) A licensed falconer possessing a golden eagle must collect any molted flight feathers and rectrices.

(iii) Collected golden eagle feathers that are not to be retained for imping must be sent to the National Eagle Repository at U.S. Fish and Wildlife Service, National Eagle Repository, Rocky Mountain Arsenal, Building 128, Commerce City, Colorado 80022 (303-287-2110).

(d) Once a falconry COR expires and is not renewed or is revoked, the falconer must donate molted feathers of any species of falconry raptor to any person or institution authorized by permit to acquire and possess the feathers.

(i) Molted feathers that are not donated must be burned, buried, or otherwise destroyed.

(2) Disposition of carcasses of falconry birds that die.

(a) The entire carcass of a golden eagle held for falconry that dies, including all feathers, talons, and other parts, must be sent to the National Eagle Repository at U.S. Fish and Wildlife Service, National Eagle Repository, Rocky Mountain Arsenal, Building 128, Commerce City, Colorado 80022 (303-287-2110).

(b) The body or feathers of any other species of falconry raptor may be donated to any person or institution authorized by permit to acquire and possess raptor parts or raptor feathers.

(c) A falconry raptor, except a golden eagle, that was either banded or micro chipped prior to its death may be retained by the licensed falconer.

(i) The body of the raptor may be kept so that the feathers are available for imping, or the body may be mounted by a taxidermist.

(A) The mounted raptor may be used in conservation education programs.

(B) If the falconry raptor was banded, the band must be left in place on the mounted raptor body.

(C) If the falconry raptor has an implanted microchip, the microchip must be left in place on the mounted raptor body.

(d) The body and feathers of a deceased falconry raptor that are not donated or retained must be burned, buried, or otherwise destroyed within 10 calendar days of the death of the

bird or after final examination by a veterinarian to determine cause of death.

(e) A licensed falconer that does not wish to donate or destroy the flight feathers of a deceased raptor or have the body mounted by a taxidermist, may possess the flight feathers for as long as they possess a valid falconry COR, provided:

- (i) The feathers are not be bought, sold, or bartered; and
- (ii) The paperwork documenting lawful possession of the deceased raptor is retained.

#### **R657-20-28. Other Uses of Raptors.**

(1) Transfer of wild raptors captured for falconry to other permitted uses.

(a) A wild-caught falconry raptor may be transferred to a person authorized to possess raptors for propagation purposes only after the raptor has been used in falconry for at least:

- (i) 12 months from the date of capture for a sharp-shinned hawk, Cooper's hawk, merlin, or American kestrel; and
- (ii) 24 months from the date of capture for all other falconry raptors.

(b) The time periods imposed in Subsection (1)(a) for transferring a wild-caught falconry raptor to a person authorized to possess raptors for propagation purposes may be waived by the Division if the raptor has been injured and a veterinarian or permitted wildlife rehabilitator has determined that the raptor can no longer be flown for falconry.

(i) In order to permanently transfer an injured raptor to a propagation permit, the falconer must provide the Division and the Federal migratory bird permits office that administers propagation permits a certification from the treating veterinarian or rehabilitator stating that the raptor is injured and cannot be used in falconry.

(c) Upon transfer of a wild raptor to a propagation permit, the falconer must provide a copy of the 3-186A form documenting acquisition of the raptor by the propagator to the Division and the Federal migratory bird permit office that administers propagation permits.

(2) Transfer of captive-bred falconry raptors to other permitted uses.

(a) Captive-bred falconry raptors may be transferred to another person if the recipient is authorized for possession.

(3) Use of raptors possessed for falconry in captive propagation

(a) Raptors possessed for falconry may be bred in captivity if the falconer or the person overseeing the propagation has the necessary permits.

(b) Formal transfer of a raptor from a falconry permit to a captive propagation permit is required if the raptor is to be permanently used for propagation.

(c) Formal transfer of a raptor from a falconry permit to a captive propagation permit is not required if the raptor is used for propagation less than 8 months in a year.

(i) The licensed propagator must have a signed and dated statement from the falconer authorizing the temporary possession, plus a copy of the falconer's original FWS Form 3-186A for that raptor.

(4) Use of falconry raptors in conservation education programs.

(a) A General or Master Class falconer may use a falconry raptor in conservation education programs presented in public venues.

(i) A Federal education permit is not required to conduct conservation education activities using a falconry raptor held under a Utah falconry COR.

(ii) In order to permanently transfer an injured raptor to an education permit, the falconer must provide the Division and the Federal migratory bird permits office that administers education permits a certification from the treating veterinarian or rehabilitator stating that the raptor is injured and cannot be used

in falconry.

(b) Conservation programs may be presented by an Apprentice Falconer who is accompanied by their General or Master Class sponsor.

(c) Raptors used to present conservation programs must primarily be used for falconry.

(d) A falconer may charge a fee for presentation of a conservation education program.

(i) The fee charged may not exceed the amount required to recoup costs of presenting the conservation education program.

(e) When presenting conservation education programs, the falconer must provide information about the biology, ecological roles, and conservation needs of raptors and other migratory birds, although not all of these topics must be addressed in every presentation.

(f) A falconer may not give presentations using a falconry raptor that do not address falconry and conservation education.

(g) The falconer is responsible for all liability associated with conservation education activities undertaken.

(5) Other educational uses of falconry raptors.

(a) A falconer may allow photography, filming, or other similar uses of falconry raptors to make movies or other sources of information on the practice of falconry or on the biology, ecological roles, and conservation needs of raptors and other migratory birds.

(i) A falconer may not be paid or otherwise compensated for such activities.

(b) A falconer may not use falconry raptors or permit the use of falconry raptors to make movies, commercials, or in other commercial ventures that are not related to the practice of falconry or the biology, ecological roles, and conservation needs of raptors and other migratory birds.

(c) Falconry raptors may not be used for:

- (i) Commercial entertainment for advertisements;
- (ii) promoting or endorsing any business, company, corporation, or other organization; or
- (iii) promoting or endorsing any product, merchandise, good, service, meeting, or fair, except for products related directly to falconry, such as hoods, telemetry equipment, giant hoods, perches, and materials for raptor facilities.

(6) Assisting in rehabilitation of raptors in preparation for release.

(a) A General or Master Class Falconer may assist a permitted migratory bird rehabilitator in conditioning raptors in preparation for their release to the wild.

(i) The falconer may keep the raptor being rehabilitated in their facilities up to 180 calendar days.

(ii) The rehabilitator must provide the falconer with a letter or form that identifies the raptor and explains that the falconer is assisting in the rehabilitation of the raptor to be released.

(iii) Facilities where the raptor will be temporarily housed must adhere to standards outlined in Sections R657-20-6 of this rule.

(iv) The falconer is not required to add any raptor possessed for rehabilitation to their COR; the raptor will remain under the permit of the rehabilitator.

(v) The falconer must permanently release any raptor capable of sustaining itself in the wild or return it to the rehabilitator within the 180-day timeframe in which the rehabilitator is authorized to possess the raptor, unless the Division authorizes the falconer to retain the bird for longer than 180 calendar days.

(7) Using a falconry raptors in abatement activities.

(a) Abatement activities may only be conducted with captive bred raptors.

(b) A Master Class falconer may conduct abatement activities with raptors possessed for falconry and receive compensation for such activities, if the falconer is in possession of a Special Purpose Abatement permit issued by the Service.

(c) A General Class falconer may conduct abatement activities only as a subpermittee of a Master Class falconer that possesses an abatement permit.

(d) An Apprentice Class falconer may not conduct abatement activities.

(8) A person who possesses a raptor for any purpose other than falconry, including raptor propagation, educational uses, and rehabilitation, shall obtain the appropriate authorization from the Division as provided in Rule R657-3 and the appropriate authorization from the Service.

**KEY: wildlife, birds, falconry**

**April 23, 2013**

**Notice of Continuation December 12, 2011**

**23-17-7**

**50 CFR 21**

**R657. Natural Resources, Wildlife Resources.****R657-34. Procedures for Confirmation of Ordinances on Hunting Closures.****R657-34-1. Purpose and Authority.**

(1) Under the authority of Sections 23-14-1, 23-14-18, and 23-14-19, this rule provides the standards and procedures for a political subdivision within a community to obtain confirmation from the Wildlife Board to close an area to hunting for reasons of safety.

(2) If a political subdivision of the state adopts an ordinance or policy concerning hunting, fishing, or trapping that conflicts with Title 23, Wildlife Resources Code of Utah, or rules promulgated pursuant thereto, state law shall prevail.

**R657-34-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition, "Political subdivision" means any municipality, city, county, or other governmental entity which is legally separate and distinct from the state.

**R657-34-3. Information Gathering.**

(1) Prior to making a request to the Wildlife Board to close an area to hunting, the political subdivision shall hold a public hearing within its boundaries for the purpose of disclosing the proposed ordinance or policy and gathering public comment.

(2) The political subdivision shall compile a written summary of the hearing, including the date of the hearing, number of persons in attendance, and public comment.

(3) At least 45 days prior to the Wildlife Board meeting in which the request for a hunting closure shall be made, the political subdivision shall submit the following information to the director of the division:

- (a) a draft copy of the proposed ordinance or policy;
- (b) a plat map showing the boundaries of the area in which the political subdivision is requesting the closure and the boundaries of the political subdivision;
- (c) the safety reasons for the proposed closure; and
- (d) the written summary of the public hearing as required in Subsection (2).

(4) The purpose of this section is to provide sufficient information to allow the division to conduct a technical evaluation of the impacts the closure may have on division objectives, administrative rules, game depredation, wildlife management, and public interests.

(5) As the division conducts a technical evaluation of the impacts the closure may have regarding public interests, the division shall gather information and broad input from the appropriate regional advisory councils and the officials of the pertinent political subdivision.

**R657-34-4. Wildlife Board Confirmation.**

(1) At least 20 days prior to the Wildlife Board meeting in which the request for closure is to be made, the director of the division shall submit the following information to the chairman of the Wildlife Board:

(a) a copy of any information received from the political subdivision, including the information provided in Subsection R657-34-3(3);

(b) the technical evaluation prepared by the division; and

(c) the division's recommendations regarding the closure.

(2) The Wildlife Board shall consider the request for closure in an open public meeting.

(3)(a) At or within a reasonable time after the hearing, the chairman of the Wildlife Board shall notify the political subdivision in writing that the requested closure is confirmed or denied.

(b) If the Wildlife Board denies the requested closure, the notification shall include the reasons for the decision.

(4) If the requested closure is denied, the political

subdivision may submit a request for reconsideration of the decision by following the procedures provided in Sections R657-2-16 or R657-2-22. The request for reconsideration is not a prerequisite for judicial review.

(5) The closure shall become effective concurrently with the proposed ordinance or policy.

**KEY: wildlife, hunting closures, game laws  
July 2, 2003**

**Notice of Continuation May 6, 2013**

**23-14-1**

**23-14-18**



**R657. Natural Resources, Wildlife Resources.****R657-37. Cooperative Wildlife Management Units for Big Game or Turkey.****R657-37-1. Purpose and Authority.**

(1) Under authority of Section 23-23-3, this rule provides the standards and procedures applicable to Cooperative Wildlife Management units organized for the hunting of big game or turkey.

(2) Cooperative Wildlife Management units are established to:

- (a) increase wildlife resources;
- (b) provide income to landowners;
- (c) provide the general public access to private and public lands for hunting big game or turkey within a Cooperative Wildlife Management Unit;
- (d) create satisfying hunting opportunities; and
- (e) provide adequate protection to landowners who open their lands for hunting;
- (f) provide landowners an incentive to manage lands to protect and sustain wildlife habitat and benefit wildlife.

**R657-37-2. Definitions.**

(1) Terms used in this rule are defined in Sections 23-13-2 and 23-23-2.

(2) In addition:

- (a) "CWMU" means Cooperative Wildlife Management Unit.
- (b) "CWMU agent" means a person appointed by the landowner association member or the landowner association operator to protect private property within the CWMU.
- (c) "General public" means all persons except landowner association members, landowner association operators and their spouse or dependant children.
- (d) "Landowner association" means a landowner or group of landowners of private land organized as a single entity for the purpose of applying for, becoming and operating a CWMU.
- (e) "Landowner association member" means an individual landowner participating in the landowner association.
- (f) "Landowner association operator" means a person designated by the landowner association to operate the CWMU.
- (g) "Voucher" means a document issued by the division to a landowner association member or landowner association operator, allowing a landowner association member or landowner association operator, to designate who may purchase a CWMU big game or turkey hunting permit from a division office.

**R657-37-3. Requirements for the Establishment of a Cooperative Wildlife Management Unit.**

(1)(a) The minimum allowable acreage for a CWMU is 10,000 contiguous acres, except as provided in Subsection (3).

(b) The land comprising Domesticated Elk Facilities and Domesticated Elk Hunting Parks, as defined in Section 4-39-102(2) and Rules R58-18 and R58-20, shall not be included as part of any big game or turkey CWMU.

(2)(a) No land parcel shall be included in more than one CWMU.

(b) Separate hunt boundaries by species on a CWMU are not permitted.

(3)(a) The Wildlife Board may renew a CWMU that is less than 10,000 acres with land parcels that adjoin corner-to-corner or containing noncontiguous parcels provided the CWMU legally possessed a CWMU Certificate of Registration during the previous year, allowing for acreage less than 10,000 contiguous acres, corner-to-corner land parcels, or noncontiguous land parcels.

(b) The Wildlife Board may approve a new CWMU for deer, pronghorn or turkey that is at least 5,000 contiguous acres provided:

(i) the property is capable of independently maintaining the presence of the respective species and harboring them during the period of hunting;

(ii) the property is capable of accommodating the anticipated number of hunters and providing a reasonable hunting opportunity;

(iii) the property exhibits enforceable boundaries clearly identifiable to both the public and private hunters; and

(iv) the CWMU contributes to meeting division wildlife management objectives.

(c) The Wildlife Board may renew or approve a new CWMU for deer, pronghorn, elk or moose that fails to meet the acreage or parcel configuration requirements in Subsection (1), or the exceptions in Subsection (3)(a) and(b), provided the following procedures are satisfied.

(i) the applicant submits a written request for special considerations to the CWMU Advisory Committee on or before August 1st annually;

(ii) the applicant submits to a one year waiting period while the CWMU Advisory Committee, Division and Wildlife Board consider, verify and decide the merits of the request for special considerations.

(iii) upon receipt of a request for special considerations, the CWMU Advisory Committee will immediately forward the request to DWR for review and recommendations.

(iv) the DWR will review the request for special considerations and make recommendations to the CWMU Advisory Committee within 180 days of receipt.

(v) the CWMU Advisory Committee will consider the request for special considerations and the Division's recommendations, and make recommendations to the Wildlife Board on the advisability of granting the CWMU application.

(4)(a) Cooperative Wildlife Management Units organized for hunting big game or turkey, shall consist of private land to the extent practicable.

(b) The Wildlife Board may approve a CWMU containing public land only if:

(i) the public land is completely surrounded by private land or is otherwise inaccessible to the general public;

(ii) the public land is necessary to establish an enforceable boundary clearly identifiable to both the general public and public and private permit holders; or

(iii) the public land is necessary to achieve statewide and unit management objectives.

(c) If any public land is included within a CWMU, the landowner association must meet applicable federal and state land use requirements on the public land.

(d) The Wildlife Board shall increase the number of permits or hunting opportunities made available to the general public to reflect the proportional habitat on public land to private land within the CWMU pursuant to Subsection R657-37-4(3)(a)(iv).

(5) Land parcels that adjoin corner-to-corner shall not be considered contiguous for the purpose of meeting minimum acreage requirements for new CWMU's except as specifically authorized by the Wildlife Board pursuant to Subsection (3)(c)).

(6) The intent is to establish CWMUs consisting of blocks of land that function well as hunting units. The Wildlife Board may deny a CWMU that meets technical requirements but does not constitute a good hunting unit.

**R657-37-4. Cooperative Wildlife Management Unit Management Plan.**

(1) The landowner association member must manage the CWMU in compliance with a CWMU Management Plan consistent with statewide and unit management objectives for the respective big game or turkey management unit and approved by the Wildlife Board.

(2)(a) The CWMU Management Plan may be approved by

the Wildlife Board for a period of three years, concurrent with the CWMU Certificate of Registration.

(b) The CWMU Management Plan may be amended as requested by the Wildlife Board, the division or the CWMU landowner association member or operator.

(3)(a) The CWMU Management Plan must include:

(i) species management objectives for the CWMU that are consistent with statewide and unit management objectives for the respective big game or turkey management unit;

(ii) antlerless harvest objectives;

(iii)(1) dates that the general public with buck or bull CWMU permits will be allowed to hunt in accordance with R657-37-7(3)(a); or

(2) a detailed explanation of how comparable hunting opportunities will be provided to both the private and public permit holders on the CWMU as required in Section 23-23-7.5;

(iv) a clear explanation of the purpose for including public land within the CWMU boundaries, if public land is included;

(v) an explanation of how the public is compensated by the CWMU when public land is included;

(vi) rules and guidelines used to regulate a permit holder's conduct as a guest on the CWMU;

(vii) County Recorder Plat Maps or equivalent maps, dated by receipt of purchase within 30 days of the initial or renewal application deadline for a certificate of registration, depicting boundaries and ownership for all property within the CWMU;

(viii) two original 1:100,000 USGS maps, which must be filed in the appropriate regional division office and the Salt Lake office, depicting all interior and exterior boundaries of the proposed CWMU;

(ix) strategies and methods that avoid adverse impacts to adjacent landowners resulting from the operation of the CWMU, including the provisions provided in Section R657-37-7(6); and

(x) any request for reciprocal agreements.

(b) The division shall, review all CWMU Management Plans and make recommendations to the Wildlife Board.

#### **R657-37-5. Application for Certificate of Registration.**

(1) An application for a CWMU Certificate of Registration must be completed and returned to the regional division office where the proposed CWMU is located no later than August 1.

(2) The application must be accompanied by:

(a) the CWMU Management Plan as described in R657-37-4(3), including all maps;

(b)(i) a petition containing the signature and acreage of each participating landowner agreeing to establish and operate the CWMU as provided in this rule and Title 23, Chapter 23 of the Wildlife Resources Code; or

(ii) a copy of a legal contract or agreement identifying:

(A) the private land;

(B) the duration of the contract or agreement; and

(C) the names and signatures of landowners conveying the hunting rights to the CWMU landowner association member or landowner association operator.

(c) the name of the designated landowner association operator; and

(d) the nonrefundable handling fee.

(3) The division may reject any application that is incomplete or completed incorrectly.

(4) The division shall forward the complete and correct application and required documentation to the Regional Advisory Councils and Wildlife Board for consideration.

(5) Upon receiving the application and recommendation from the division, the Wildlife Board may:

(a) authorize the issuance of a certificate of registration, for three years, allowing the landowner association member to operate a CWMU; or

(b) deny the application and provide the landowner association member with reasons for the decision.

(6) The Wildlife Board shall consider any violation of the provisions of Title 23, Wildlife Resources Code and any information provided by the division, landowners, and the public in determining whether to authorize the issuance of a certificate of registration for a CWMU.

(7) A CWMU Certificate of Registration is issued on a three year basis and shall expire on January 31, providing:

(a) no changes in CWMU boundaries occur; and

(b) the certificate of registration is not suspended or revoked prior to the expiration date.

(8) The CWMU application/agreement is binding upon the landowner association members, landowner association operators and all successors in interest to the CWMU property or the hunting rights thereon as it pertains to allowing public permit holders reasonable access to all CWMU property during the applicable hunting seasons for purposes of filling the permit.

#### **R657-37-5a. Amendments to a Certificate of Registration.**

(1) A request for an amendment to a certificate of registration must be made in writing and submitted to the appropriate regional division office where the CWMU is located for any change in:

(a) permit numbers or allocation;

(b) season dates;

(c) landownership;

(d) operator; or

(e) any other matter related to the management and operation of the CWMU not originally included in the certificate of registration.

(2) Requests for amendments dealing with permit numbers, permit allocation or season dates:

(a) may be initiated by the CWMU or the division;

(b) are due on August 1 of the year prior to when hunting is to occur; and

(c) shall be forwarded to the Regional Advisory Councils and Wildlife Board for consideration and upon approval by the Wildlife Board, an amendment to the original certificate of registration shall be issued in writing.

(3) All other requests for amendments shall be reviewed by the region and Wildlife Section and upon approval by the director, an amendment to the original certificate of registration shall be issued in writing.

#### **R657-37-6. Renewal of a Certificate of Registration.**

(1)(a) A CWMU Certificate of Registration must be renewed every three years if no changes in CWMU boundaries occur, or annually if boundary changes occur and may be approved by the division, except as provided in Subsections (b) and (c).

(b) If any changes occur in the activities or information authorized in the current certificate of registration or CWMU Management Plan, the renewal must be considered for approval by the Wildlife Board.

(c)(i) A CWMU Certificate of Registration shall not be renewed if:

(A) thirty-four percent or more of the private lands included in the renewal application were not included in the previous certificate of registration; or

(B) thirty-four percent or more of the private land within the CWMU is under new ownership.

(ii) If a CWMU Certificate of Registration is not renewable under this Subsection, an application for a new CWMU Certificate of Registration must be completed as provided in Section R657-37-5.

(2) An application for renewal of a certificate of registration must be completed and returned to the regional division office where the CWMU is established no later than August 1.

(3) The renewal application must identify all changes from

the previous CWMU Certificate of Registration or CWMU Management Plan.

(4) The renewal application must be accompanied by:

(a) the CWMU Management Plan as described in Section R657-37-4(3); and

(b) all maps as described in Section R657-37-4(3) if the CWMU boundaries have changed; and

(c)(i) a petition containing the signature and acreage of each participating landowner agreeing to establish and operate the CWMU as provided in this rule and Title 23, Chapter 23 of the Wildlife Resources Code; or

(ii) a copy of a legal contract or agreement identifying:

(A) the private land;

(B) the duration of the contract or agreement; and

(C) the names and signatures of landowners conveying the hunting rights to the CWMU agent or landowner association operator;

(d) the name of the designated landowner association operator; and

(e) the nonrefundable handling fee.

(5) The division may reject any application that is incomplete or completed incorrectly.

(6) The division shall consider:

(a) the previous performance of the CWMU, including the actions of the landowner association member or landowner association operator when reviewing renewal of the certificate of registration; and

(b) any violation of Title 23, Wildlife Resources Code, this rule, stipulations contained in the certificate of registration and all other relevant information provided from any source related to the applicant's fitness to operate a CWMU.

(7) The division shall:

(a) approve the renewal Certificate of Registration and forward the permit recommendations to the Regional Advisory Councils and Wildlife Board; or

(b) deny the renewal Certificate of Registration and state the reasons for denial in writing to the applicant; and

(i) forward the application, reason for denial and recommendation to the Regional Advisory Councils and Wildlife Board; and

(iii) provide the applicant with information for seeking Wildlife Board review of the denial.

(8) Upon receiving the division's recommendation as provided in Subsection (b)(i), the Wildlife Board may consider:

(a) the previous performance of the CWMU, including the actions of the landowner association member or landowner association operator when reviewing renewal of the certificate of registration; and

(b) any violation of Title 23, Wildlife Resources Code, this rule, stipulations contained in the certificate of registration and all other relevant information provided from any source related to the applicant's fitness to operate a CWMU.

(9) A CWMU Certificate of Registration for renewal is authorized for three years and shall expire on January 31, providing the certificate of registration is not revoked or suspended prior to the expiration date.

#### **R657-37-7. Operation by Landowner Association.**

(1)(a) A CWMU must be operated by a landowner association member who owns land within the CWMU or a landowner association operator who leases or otherwise controls hunting on land within the CWMU.

(b) A landowner association member or landowner association operator may appoint CWMU agents to protect private property within the CWMU; however, the landowner association member or landowner association operator must assume ultimate responsibility for the operation of the CWMU.

(2)(a) A landowner association member or landowner association operator may enter into reciprocal agreements with

other landowner association members or landowner association operators to allow hunters who have obtained a CWMU permit to hunt within each other's CWMUs as provided in Subsections R657-37-4(3)(a)(x).

(b) Reciprocal hunting agreements may be approved only to:

(i) raise funds to address joint habitat improvement projects;

(ii) address emergency situations limiting hunting opportunity on a CWMU; or

(iii) raise funds to aid in essential management practices for the benefit of CWMU species, including obtaining age or species population data as recommended by regional division personnel and approved by the division's wildlife section chief.

(c) If a person is authorized to hunt in one or more CWMUs as provided in Subsection (a), written permission from the landowner association member or landowner association operator and written authorization from the division must be in the person's possession while hunting.

(3)(a) A landowner association member or landowner association operator must provide general public CWMU permittees a minimum of:

(i) five days to hunt with buck, bull or turkey permits; and

(ii) two days to hunt with antlerless permits.

(b) General public CWMU permittees shall be allowed to hunt the entire CWMU except areas that are excluded from hunting to all permittees.

(i) a landowner association may identify in the management plan areas within the CWMU boundary that are open to specific species only. These areas must be open to all permit holders for that species.

(c) A person who has obtained a CWMU permit may hunt only in the CWMU for which the permit is issued, except as provided under Subsection (2).

(4)(a) Each landowner association member or landowner association operator must

(i) clearly post all boundaries of the CWMU at all corners, fishing streams crossing property lines, road, gates, and rights-of-way entering the land with signs that are a minimum of 8 1/2 by 11 inches on a bright yellow background with black lettering, and that contain the language provided in Subsection (b); and

(ii) if a CWMU uses public land for the purpose of making a definable boundary for the CWMU then that boundary shall be posted every three hundred yards.

(b) A CWMU is created under an agreement between private landowners and the division, and approved by the Wildlife Board. Only persons with a valid CWMU permit for the CWMU may hunt moose, deer, elk, pronghorn or turkey within the boundaries of the CWMU. The general public may use accessible public land portions of the CWMU for all legal purposes, other than hunting big game or turkey for which the CWMU is authorized.

(5) A landowner association member or landowner association operator must provide a written copy of its guidelines used to regulate a permit holder's conduct as a guest on the CWMU to each permit holder.

(6)(a) A CWMU and the division shall cooperatively address the needs of landowners who are negatively impacted by big game animals or turkeys associated with the CWMU.

(b) The CWMU and the division shall cooperatively seek methods to prevent or mitigate agricultural depredation caused by big game animals or turkeys associated with the CWMU.

#### **R657-37-8. Cooperative Wildlife Management Unit Agents.**

(1) A landowner association member may appoint CWMU agents to monitor access and protect the private property of the CWMU.

(2) Each CWMU agent must wear or have in possession a form of identification prescribed by the Wildlife Board which

indicates the agent is a CWMU agent.

(3) A CWMU agent may refuse entry into the private land portions of a CWMU to any person, except owners of land within the unit and their employees, who:

- (a) does not have in their possession a CWMU permit;
- (b) endangers or has endangered human safety;
- (c) damages or has damaged private property within a CWMU; or
- (d) fails or has failed to comply with reasonable rules of a landowner association.

(4) A CWMU agent may not refuse entry to the general public onto any public land within the boundaries of a CWMU that is otherwise accessible to the public for purposes other than hunting big game or turkey for which the CWMU is authorized.

(5) In performing the functions described in this section, a CWMU agent must comply with the relevant laws of this state.

**R657-37-9. Permit Allocation.**

(1) The division shall issue CWMU permits for hunting big game or turkey to permittees:

- (a) qualifying through a drawing conducted for the general public as defined in Subsection R657-37-2(2)(c); or
- (b) named by the landowner association member or landowner association operator.

(2) A landowner association member or landowner association operator shall be issued vouchers that may be used to purchase hunting permits from division offices.

(3) The division and the landowner association member must, in accordance with Subsection (4), determine:

- (a) the total number of permits to be issued for the CWMU; and
- (b) the number of permits that may be offered by the landowner association member to the general public as defined in Subsection R657-37-2(2)(c).

(4)(a) Big game permits may be allocated using an option from:

- (i) table one for moose and pronghorn; or
- (ii) table two for elk and deer.

(b) During a three year management plan period, permit allocations for moose permits available in the public draw will not drop below 40% for bull moose and 60% for antlerless moose.

(c) At least one buck or bull permit or at least 10% of the bucks or bulls permits, whichever is greater, must be made available to the general public through the big game drawing process.

(d) Permits shall not be issued for spike bull elk.

(e) Turkey permits shall be allocated in a ratio of fifty percent to the CWMU and fifty percent to the general public, with the public receiving the extra permit when there is an odd number of total permits.

TABLE 1

MOOSE AND PRONGHORN		
Cooperative Wildlife Management Option	Bucks/Bulls	Unit's Share Does/Antlerless
1	60%	40%
Public's Share		
Option	Bucks/Bulls	Does/Antlerless
1	40%	60%

TABLE 2

ELK AND DEER			
Cooperative Wildlife Management Option	Bucks/Bulls	Unit's Share	Antlerless
1	90%	0%	
2	85%	25%	
3	80%	40%	

Public's Share Option	Bucks/Bulls	Antlerless
1	10%	100%
2	15%	75%
3	20%	60%
4	25%	50%

(5)(a) The landowner association member or landowner association operator must meet antlerless harvest objectives established in the CWMU management plan under subsection R657-37-4(3)(a)(ii).

(b) Failure to meet antlerless harvest objectives based on a three year average may result in discipline under section R657-37-14.

(6) A landowner association member or landowner association operator must provide access free of charge to any person who has received a CWMU permit through the general public big game or turkey drawings, except as provided in Section 23-23-11.

(7) If the division and the landowner association member disagree on the number of permits to be issued, the number of permits allocated, or the method of take, the Wildlife Board shall make the determination based on the biological needs of the big game or turkey populations, including available forage, degradation, and other mitigating factors.

(8) A CWMU permit entitles the holder to hunt the species and sex of big game or turkey specified on the permit and only in accordance with the certificate of registration and the rules and proclamations of the Wildlife Board.

(9) Vouchers for antlerless permits may be designated by a landowner association member to any eligible person as provided in Rule R657-5 and the proclamation of the Wildlife Board for taking big game, and Rule R657-42.

(10)(a) If a landowner association has a CWMU voucher that is not redeemed during the previous year, a landowner association may donate that voucher to a 501(c)(3) tax exempt organization, provided the following conditions are satisfied:

- (i) The voucher donation is approved by the Wildlife Board prior to transfer;
- (ii) No more than one voucher is donated per year by a landowner association;
- (iii) The voucher is donated for a charitable cause, and the landowner association does not receive compensation or consideration of any kind other than tax benefit; and
- (iv) The recipient of the voucher is identified prior to obtaining the Wildlife Board's approval for the donation.

(b) A CWMU voucher approved for donation under this section may be extended no more than one year.

(c) The division must be notified in writing and the donation completed before April 1st the year the CWMU voucher is to be redeemed.

(11)(a) A complete list of the current CWMUs, and number of big game or turkey permits available for public drawing shall be published in the respective proclamations of the Wildlife Board for taking big game or turkey.

(b) The division reserves the exclusive right to list approved CWMUs in the proclamations of the Wildlife Board for taking big game or turkey. The division may unilaterally decline to list a CWMU in the proclamation where the unit is under investigation for wildlife violations, a portion of the property comprising the CWMU is transferred to a new owner, or any other condition or circumstance that calls into question the CWMUs ability or willingness to allow a meaningful hunting opportunity to all the public permit holders that would otherwise draw out on the public permits.

**R657-37-10. Permit Cost.**

The fee for permits allocated to any CWMU is the same as the applicable:

- (a) limited entry permit fee for elk and pronghorn;
- (b) general season, limited entry or premium limited entry permit fee for deer or turkey; and
- (c) once-in-a-lifetime permit fee for moose.

**R657-37-11. Possession of Permits and License by Hunters - Restrictions.**

(1) A person may not hunt in a CWMU without having in his possession:

- (a) a valid CWMU permit; and
  - (b) the necessary hunting licenses, permits and tags.
- (2) A CWMU permit:

(a) entitles the holder to hunt only on the CWMU specified on the permit pursuant to the rules of the Wildlife Board and does not entitle the holder to hunt on any other public or private land, except as provided under Subsection R657-37-7(2)(a); and

(b) constitutes written permission for trespass as required under Section 23-20-14.

(3) Prior to hunting on a CWMU each permittee must:

- (a) contact the relevant landowner association member or landowner association operator and request the CWMU rules and requirements; and
- (b) make arrangements with the landowner association member or landowner association operator for the hunt.

**R657-37-12. Season Lengths.**

(1) A landowner association member or landowner association operator may arrange for permittees to hunt on the CWMU during the following dates:

(a) an archery buck deer season may be established beginning with the opening of the general archery deer season through August 31 and during the sixty-one consecutive day buck deer season;

(b) an archery bull elk season may be established beginning with the opening of the general archery elk season through October 31 and during a bull elk season variance;

(c) general season bull elk, pronghorn, and moose seasons may be established September 1 through October 31, or the closing date of the general season for the respective species, whichever is later;

(d)(i) general buck deer seasons may be established for no longer than sixty-one consecutive days from September 1 through November 10;

(ii) a landowner association member or landowner association operator electing to establish buck deer hunting in November must:

- (A) meet the CWMU management plan objectives;
- (B) not exceed average hunter density exhibited on the surrounding deer wildlife management units;
- (C) provide positive hunter satisfaction; and
- (D) maintain a harvest success rate at least equal to the surrounding deer wildlife management units;
- (E) designate the CWMU's sixty-one consecutive day season in the application, or if the sixty-one day consecutive season is not designated the season shall begin September 1;
- (F) allow all public hunters the option to hunt in November;

(e) muzzleloader bull elk seasons may be established September 1 through the end of the general muzzleloader elk season and during a bull elk season variance;

(f) antlerless elk seasons may be established August 15 through January 31;

(g) antlerless deer seasons may be established August 15 through December 31; and

(h) turkey seasons may be established the second Saturday in April through May 31.

(2) The Wildlife Board may authorize bull elk hunting season variances only if the CWMU landowner association member or landowner association operator clearly demonstrates

that November hunting is necessary on the CWMU.

(3) Notwithstanding the season length provisions in this section, any season described in Subsection (1) that begins on a Sunday will default to and commence the Saturday before.

**R657-37-13. Rights-of-Way.**

A landowner association member may not restrict established public access to public land enclosed by the CWMU.

**R657-37-14. Discipline or Violation.**

(1) The Wildlife Board may refuse to issue a certificate of registration to an applicant, and may refuse to renew or may revoke, restrict, place on probation, change permits or allocations or otherwise act upon a certificate of registration where the landowner association member or landowner association operator has:

(a) violated any provision of this rule, the Wildlife Resources Code, the certificate of registration, or the CWMU application/agreement; or

(b) engaged in conduct that results in the conviction of, a plea of no contest to, or a plea held in abeyance to a crime of moral turpitude, or any other crime that when considered with the functions and responsibilities of a CWMU operator bears a reasonable relationship to the operator's or applicant's ability to safely and responsibly operate a CWMU.

(2) The procedures and rules governing any adverse action taken by the division or the Wildlife Board against a certificate of registration or an application for certificate of registration are set forth in Rule R657-2.

**R657-37-15. Cooperative Wildlife Management Unit Advisory Committee.**

(1) A CWMU Advisory Committee shall be created consisting of seven members nominated by the director and approved by the Wildlife Board.

(2) The committee shall include:

- (a) two sportsmen representatives;
- (b) two CWMU representatives;
- (c) one agricultural representative;
- (d) one at-large public representative;
- (e) one elected official; and
- (f) one Regional Advisory Committee chairperson or Regional Advisory Committee member.

(3) The committee shall be chaired by the Wildlife Section Chief, who shall be a non-voting member.

(4) The committee shall:

- (a) hear complaints dealing with fair and equitable treatment of hunters on CWMUs;
- (b) review the operation of the CWMU program;
- (c) review failure to meet antlerless objectives;
- (d) hear complaints from adjacent landowners; and
- (e) make advisory recommendations to the director and Wildlife Board on the matters in Subsections (a) (b) (c) and (d).

(5) The Wildlife Section Chief shall determine the agenda, and time and location of the meetings.

(6) The director shall set staggered terms of appointment of members in order to assure that all committee members' terms shall expire after four years, and at least three members shall expire after the initial two years.

**KEY: wildlife, cooperative wildlife management unit**

**February 7, 2013**

**23-23-3**

**Notice of Continuation May 6, 2013**

**R657. Natural Resources, Wildlife Resources.****R657-42. Fees, Exchanges, Surrenders, Refunds and Reallocation of Wildlife Documents.****R657-42-1. Purpose and Authority.**

(1) Under the authority of Sections 23-19-1 and 23-19-38 the division may issue wildlife documents in accordance with the rules of the Wildlife Board.

(2) This rule provides the standards and procedures for the:

- (a) exchange of permits;
- (b) surrender of wildlife documents;
- (c) refund of wildlife documents;
- (d) reallocation of permits; and
- (e) assessment of late fees.

**R657-42-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2 and the applicable rules and guidebooks of the Wildlife Board.

(2) In addition:

(a) "Alternate drawing lists" 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) "CWMU" means cooperative wildlife management unit.

(c) "Deployed or mobilized" means that a person provides military or emergency services in the interest of national defense or national emergency pursuant to the demand, request or order of their employer.

(d) "General season permit" means any:

(i) bull elk, buck deer, or turkey permit identified in the guidebooks of the Wildlife Board as a general season permit;

(ii) antlerless permit for elk, deer, or pronghorn antelope;

or

(iii) harvest objective cougar permit.

(e) "Landowner association operator" for purposes of this rule, means:

(i) a landowner association or any of its members eligible to receive limited entry landowner permits as provided in Rule R657-43; or

(ii) CWMU - landowner association or its designated operator as provided in Rule R657-37.

(f) "Limited entry permit" means any permit, including a CWMU, conservation, convention, sportsman, or limited entry landowner permit, identified in the guidebooks of the Wildlife Board as limited entry or premium limited entry for the following:

(i) bull elk, buck deer, buck pronghorn, bear, cougar, or turkey; and

(ii) antlerless moose.

(g) "Once-in-a-lifetime permit" means any permit, including a CWMU, conservation, convention, sportsman, or limited entry landowner permit, identified in the guidebooks of the Wildlife Board as once-in-a-lifetime for the following:

(i) bison, bull moose, Rocky Mountain goat, desert bighorn sheep, and Rocky Mountain bighorn sheep.

(h) "Wildlife document" means any license, permit, tag, or certificate of registration issued by the division.

**R657-42-3. Exchanges.**

(1)(a) Any person who has obtained a general buck deer or a general bull elk permit may exchange that permit for any other available general permit if both permits are for the same species and sex.

(b) A person must make general buck deer and general bull elk permit exchanges at any division office prior to the season opening date of the permit to be exchanged.

(2) Any person who has obtained a cougar harvest objective unit permit may exchange that permit for any other available cougar harvest objective unit permit as provided in

Rule R657-10.

(3) Any person who has obtained a limited entry bear any weapon or limited entry bear archery permit may exchange that permit for a limited entry bear archery or limited entry bear any weapon permit, respectively.

(4) The division may charge a handling fee for the exchange of a permit.

**R657-42-4. Surrenders.**

(1) Any person who has obtained a wildlife document and decides not to use it, may surrender the wildlife document to any division office.

(2) Any person who has obtained a wildlife document may surrender the wildlife document prior to the season opening date of the wildlife document for the purpose of:

(a) waiving the waiting period normally assessed and reinstating the number of bonus points, including a bonus point for the current year as if a permit had not been drawn, if applicable;

(b) reinstating the number of preference points, including a preference point for the current year as if a permit had not been drawn, if applicable;

(c) purchasing a reallocated permit or any other permit available for which the person is eligible; or

(d) receiving a refund as provided in R657-42-5.

(3) A CWMU permit must be surrendered prior to the applicable season opening date provided by the CWMU operator, except as provided in Section R657-42-11.

(4) Dedicated hunter participants must surrender their permits prior to the general archery deer season, except as provided in Section R657-38-6.

(5) A person may surrender a limited-entry, or once-in-a-lifetime permit received through a group application in the Big Game drawing and have their bonus points for that permit species reinstated, provided;

(a) all group members surrender their permits; and

(b) all permits are surrendered to the division more than 30 days before the start of the season for which the permit is valid.

(6) A person may surrender a general season permit received through a group application in the Big Game drawing and have their preference points reinstated, provided;

(a) all members of the group surrender their permits to the division prior to the start of the season for which the permit is valid.

(7) Notwithstanding Subsections (5)(b) and (6)(a), a person who obtains a permit through a group application in the Big Game drawing may surrender that permit after the opening date of the applicable hunting season and have the bonus points for the permit species restored, provided the person;

(a) is a member of United States Armed Forces or public health or public safety organization and is deployed or mobilized in the interest of national defense or national emergency;

(b) surrenders the permit to the division, with the tag attached and intact, or signs an affidavit verifying the permit is no longer in their possession within one year of the end of hunting season authorized by the permit; and

(c) satisfies the requirements for receiving a refund in R657-42-5(3)(c) and (d).

(8) The division may not issue a refund, except as provided in Sections 23-19-38, 23-19-38.2, and R657-42-5.

**R657-42-5. Refunds.**

(1) The refund of a license, certificate of registration or permit shall be made in accordance with:

(a) Section 23-19-38 and Rule R657-50;

(b) Section 23-19-38.2 and Subsection (3); or

(c) Section 23-19-38 and this section.

(2)(a) An application for a refund may be obtained from

any division office.

(b) All refunds must be processed through the Salt Lake Division office.

(3) A person may receive a refund for a wildlife document if that person was deployed or mobilized on or after September 11, 2001, in the interest of national defense or national emergency and is thereby completely precluded from participating in the hunting or fishing activity authorized by the wildlife document, provided:

(a) the refund request is made to the division within one year of the end of the hunting or fishing season authorized by the wildlife document;

(b) the person surrenders the wildlife document to the division, or signs an affidavit stating the wildlife document is no longer in the person's possession; and

(c) the person verifies that the deployment or mobilization completely precluded them from participating in the activity authorized by the wildlife document; and

(d) the person provides military orders, or a letter from an employment supervisor on official public health or public safety organization letterhead stating:

(i) the branch of the United States Armed Forces, or name of the public health organization or public safety organization from which they were deployed or mobilized; and

(ii) the nature and length of their duty while deployed or mobilized.

(4) The division may issue a refund for a wildlife document if the person to whom it was issued dies prior to participating in the hunting or fishing activity authorized by the wildlife document, provided:

(a) The person legally entitled to administer the decedent's estate provides the division with:

(i) picture identification;

(ii) letters testamentary, letters of administration, or such other evidence establishing the person is legally entitled to administer the affairs of the decedent's estate;

(iii) a photocopy of the decedent's certified death certificate; and

(iv) the wildlife document for which a refund is requested.

(5)(a)(i) A person may receive a refund for a once-in-a-lifetime or limited-entry permit provided the permit is surrendered to the division no less than 30 days prior to the season opening date identified on the permit

(ii) A person may receive a refund for a general season permit that must be surrendered in order to accept a reallocated limited entry permit for the same species.

(b)(i) The established wildlife document refund fee shall be deducted from all refunds under subsection (5)(a).

(ii) A refund will not be issued where the wildlife document purchase price is equal to or less than the wildlife document refund fee.

(6) The director may determine that a person did not have the opportunity to participate in an activity authorized by the wildlife document.

(7) The division may reinstate a bonus point or preference point, whichever is applicable, and waive waiting periods, if applicable, when issuing a refund in accordance with this Section.

#### **R657-42-6. Reallocation of Permits.**

(1)(a) The division may reallocate surrendered limited entry and once-in-a-lifetime permits.

(b) The division shall not reallocate general season permits for big game and turkey, but the number of permits surrendered may be added to the appropriate permit quota the following year.

(2) Permits shall be reallocated through the Salt Lake Division office.

(3)(a) Any limited entry, once-in-a-lifetime or public

CWMU permit surrendered to the division shall be reallocated through the drawing process by contacting the next person listed on the alternate drawing list or as provided in Subsection (b).

(b) A person who is denied a permit due to an error in issuing permits may be placed on the alternate drawing list to address the error, if applicable, in accordance with the Rule R657-50.

(c) The alternate drawing lists are classified as private and therefore, protected under the Government Records Access Management Act.

(d) The division shall make a reasonable effort to contact the next person on the alternate list by telephone or mail.

(e) If the next person, who would have drawn the limited entry, once-in-a-lifetime or public CWMU permit, does not accept the permit or the division is unable to contact that person, the reallocation process will continue until the division has reallocated the permit or the season closes for that permit.

(4) If the next person, who would have drawn the limited entry, once-in-a-lifetime or public CWMU permit has obtained a permit, that person may be required to surrender the previously obtained permit in accordance with Section R657-42-4(2) and any other applicable rules and guidebooks of the Wildlife Board.

(5) Any private CWMU permit surrendered to the division will be reallocated by the landowner through a voucher, issued to the landowner by the division in accordance with Rule R657-37.

#### **R657-42-7. Reallocated Permit Cost.**

(1) Any person who accepts the offered reallocated permit must pay the applicable permit fee.

(2) The division may not issue a refund, except as provided in Section R657-42-5.

#### **R657-42-8. Accepted Payment of Fees.**

(1) Personal checks, business checks, money orders, cashier's checks, and credit or debit cards are accepted for payment of wildlife documents.

(2) Personal or business checks drawn on an out-of-state account are not accepted.

(3) Third-party checks are not accepted.

(4) All payments must be made payable to the Utah Division of Wildlife Resources.

(5)(a) Credit or debit cards must be valid at least 30 days after any drawing results are posted.

(b) Checks, and credit or debit cards will not be accepted as combined payment on single or group applications.

(c) If applicants are applying as a group, all fees for all applicants in that group charged to a credit or debit card must be charged to a single card.

(d) Handling fees and donations are charged to the credit or debit card when the application is processed.

(e) Application amendment fees must be paid by credit or debit card.

(f) Permit fees may be charged to the credit or debit card prior to the posting date of the drawings, if successful.

(g) The division shall not be held responsible for bank charges incurred for the use of credit or debit cards.

(6)(a) An application is voidable if the check is returned unpaid from the bank or the credit or debit card is invalid or refused.

(b) The division charges a returned check collection fee for any check returned unpaid.

(7)(a) A license or permit is voidable if the check is returned unpaid from the bank or the credit or debit card is invalid or refused.

(b) The Division may make attempt to contact the successful applicant by phone or mail to collect payment prior to voiding the license or permit.

(8)(a) A license or permit received by a person shall be deemed invalid if payment for that license or permit is not received, or a check is returned unpaid from the bank, or the credit or debit card is invalid or refused.

(b) A person must notify the division of any change of credit or debit card numbers if the credit or debit card is invalid or refused.

(9) Hunting with a permit where payment has not been received for that permit constitutes a violation of hunting without a valid permit.

(10) The division may require a money order or cashier's check to correct payment for a license, permit, or certificate of registration.

(11) Any person who fails to pay the required fee for any wildlife document, shall be ineligible to obtain any other wildlife document until the delinquent fees and associated collection costs are paid.

(12) The Division may take any of the following actions when a wildlife document is voided for nonpayment or remains unissued and unpaid;

(a) reissue the wildlife document using the alternate drawing list for that document;

(b) reissue the wildlife document over-the-counter; or

(c) elect to withhold the wildlife document from reissuance.

(13) The Division may reinstate the applicant's bonus points or preference points and waive waiting periods, where applicable, when:

(a) voiding a permit in accordance with this section and the permit is reallocated;

(b) withholding a wildlife document from a successful applicant for nonpayment and the permit is reallocated; or

(c) full payment is received by the successful applicant on a voided or withheld wildlife document that is not reallocated.

#### **R657-42-9. Assessment of Late Fees.**

(1) Any wildlife application submitted under the Utah Administrative Code Rules provided in Subsection (a) through (e), within 30 days of the applicable application deadline established in such rules, in the guidebooks of the Wildlife Board, or by the division may be processed only upon payment of a late fee as provided by the approved fee schedule.

(a) R657-52, Commercial Harvesting of Brine Shrimp and Brine Shrimp Eggs;

(b) R657-21, Cooperative Wildlife Management Units for Small Game;

(c) R657-22, Commercial Hunting Areas;

(d) R657-37, Cooperative Wildlife Management Units for Big Game; or

(e) R657-43, Landowner Permits.

(2) Any person who fails to report their Big Game hunt information pursuant to R657-5 Taking Big Game, within 30 calendar days of the ending season date for their once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit hunt may apply for a Big Game permit or bonus point in the following year provided:

(a) the survey is completed and submitted to the division at least 5 days prior to the close of the Big Game application period established in the guidebook of the Wildlife Board for taking big game.

(b) the late fee established in the approved fee schedule is paid to the Division through the 1-800 number listed in the guidebooks of the Wildlife Board for taking big game.

(c) The accepted method of payment of fee is only a credit or debit card.

(3) Any person who fails to report their Swan hunt information pursuant to R657-9-7, within 30 calendar days of the ending season date for their Swan hunt may apply for a Swan permit in the following year provided:

(a) the survey is completed and submitted to the division at least 5 days prior to the close of the Swan application period established in the guidebook of the Wildlife Board for taking waterfowl.

(b) the late fee established in the approved fee schedule is paid to the Division through the 1-800 number listed in the guidebook of the Wildlife Board for taking waterfowl or through the division website.

(c) The accepted method of payment of fee is only a credit or debit card.

#### **R657-42-10. Duplicates.**

(1) If an unexpired wildlife document is destroyed, lost or stolen, a person may obtain a duplicate from a division office or online license agent, for a duplicate fee as provided in the fee schedule.

(2) The division may waive the fee for a duplicate unexpired wildlife document provided the person did not receive the original wildlife document.

(3) To obtain the duplicate wildlife document, the applicant may be required to complete an affidavit testifying to such loss, destruction or theft.

#### **R657-42-11. Surrender of Cooperative Wildlife Management Unit or Limited Entry Landowner Permits.**

(1) A person who has obtained a CWMU or limited entry landowner permit may surrender the permit after the deadline provided in Subsection R657-42-4(3) for CWMU permits and after the season opening date for limited entry landowner permits for the purpose of:

(a) death in accordance with Section 23-19-38, Subsection (2) and Section R657-42-5(4);

(b) injury or illness in accordance with Section 23-19-38 and Subsection (2);

(c) deployment or mobilization in the interest of national defense or national emergency in accordance with Section 23-19-38.2 and Subsection (2); or

(d) an error occurring in issuing the permit in accordance with Subsection (2) and Rule R657-50.

(2)(a) The permittee and the landowner association operator must sign an affidavit stating that the permittee has not participated in any hunting activity.

(b) The permittee and landowner association operator signatures must be notarized.

(c) The affidavit and unused permit must be submitted to the division.

(3)(a) The division may reissue a voucher to a landowner association operator, or reallocate a surrendered permit in accordance with Section 23-19-38 and as provided in Subsections (b) and (c).

(b) The division may reallocate a surrendered permit:

(i) originally issued by the division through the big game drawing process in accordance with Section R657-42-6; or

(ii) originally issued by the division through a voucher redemption in the form of a new voucher issued to the landowner association operator.

(c) Reissuance of vouchers or reallocation of permits under this section may only occur in the year in which the surrendered permit was valid.

#### **KEY: wildlife, permits**

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**23-19-1**

**23-19-38**

**23-19-38.2**



**R657. Natural Resources, Wildlife Resources.****R657-45. Wildlife License, Permit, and Certificate of Registration Forms.****R657-45-1. Purpose and Authority.**

Under authority of Sections 23-14-19 and 23-19-2 the Wildlife Board has established this rule for prescribing the forms of a Wildlife License, Permit, and Certificate of Registration.

**R657-45-2. Information Listed on the License, Permit, and Certificate of Registration Forms.**

(1) A License, Permit, and Certificate of Registration issued for hunting or fishing shall be made upon forms and in the manner prescribed by the Wildlife Board.

(2) The License, Permit, and Certificate of Registration forms shall include the licensee's customer identification number, name, date of birth, address, and any other information the Division of Wildlife may request.

**KEY: license, permit, certificate of registration**

**May 8, 2008**

**23-19-2**

**Notice of Continuation May 6, 2013**

**R657. Natural Resources, Wildlife Resources.****R657-53. Amphibian and Reptile Collection, Importation, Transportation and Possession.****R657-53-1. Purpose and Authority.**

(1) Under Title 23, Wildlife Resources Code of Utah, this rule governs the collection, importation, transportation, possession, and propagation of amphibians and reptiles.

(2) Nothing in this rule shall be construed as superseding the provisions set forth in Title 23, Wildlife Resources Code of Utah. Any provision of this rule setting forth a criminal violation that overlaps a section of that title is provided in this rule only as a clarification or to provide greater specificity needed for the administration of the provisions of this rule.

(3) In addition to this rule, additional regulation is provided in R657-40. Where a more specific provision has been adopted, that provision shall control.

(4) Specific dates, species, areas, number of pre-authorized certificates of registration, limits and other administrative details which may change annually are published in the proclamation of the Wildlife Board for amphibians and reptiles.

(5) Amphibians and reptiles lawfully collected from wild populations in Utah and thereafter possessed remain the property of the state for the life of the animal pursuant to Section 23-13-3. The state does not assert ownership interest in lawfully possessed, captive-bred amphibians and reptiles, but does retain jurisdiction to regulate the importation, possession, propagation and use of such animals pursuant to Title 23 of the Utah Code and this rule.

(6) This rule does not apply to division employees acting within the scope of their assigned duties.

**R657-53-2. Definitions.**

(1) Terms used in this rule are defined in Section 23-13-2 and Subsection (2) through Subsection (29).

(2) "Amphibian" means animals from the Class of Amphibia, including hybrid species or subspecies of amphibians and viable embryos or gametes of species or subspecies of amphibians.

(3) "Captive-bred" means any legally-obtained amphibian or reptile, for which fertilization and birth occurred in captivity, has spent its entire life in captivity, and is the offspring of legally obtained progenitors.

(4) "Certificate of registration" means a document issued under the Wildlife Resources Code, or any other rule or proclamation of the Wildlife Board granting authority to engage in activities not covered by a license, permit or tag.

(5) "Certificate of veterinary inspection" means an official health authorization issued by an accredited veterinarian required for the importation of an amphibian or reptile, as provided in Rule R58-1.

(6) "Collect" means to take, catch, capture, salvage, or kill any free-roaming amphibian or reptile within Utah.

(7) "Commercial use" means any activity through which a person in possession of an amphibian or reptile:

(a) receives any consideration for the amphibian or reptile or for a use of the amphibian or reptile, including nuisance control; or

(b) expects to recover all or any part of the cost of keeping the amphibian or reptile through selling, bartering, trading, exchanging, breeding, or other use, including displaying the amphibian or reptile for entertainment, advertisement, or business promotion.

(8) "Controlled species" means a species or subspecies of amphibian or reptile that if taken from the wild, introduced into the wild, or held in captivity, poses a possible significant detrimental impact to wild populations, the environment, or human health or safety, and for which a certificate of registration is required.

(9) "Den" means any place where reptiles congregate for

winter hibernation or brumation.

(10) "Educational use" means the possession and use of an amphibian or reptile for conducting educational activities concerning wildlife and wildlife-related activities.

(11) "Entry permit number" means a number issued by the state veterinarian's office to a veterinarian signing a certificate of veterinary inspection authorizing the importation of an amphibian or reptile into Utah.

(12) "Export" means to move or cause to move any amphibian or reptile from Utah by any means.

(13) "Import" means to bring or cause an amphibian or reptile to be brought into Utah by any means.

(14) "Legally obtained" means to acquire through collection, trade, barter, propagation or purchase with supporting written documentation, such as applicable certificate of registration, collection permit, license, or sales receipt in accordance with applicable laws. Documentation must include the date of the transaction; the name, address and phone number of the person or organization relinquishing the animal; the name, address and phone number of the person or organization obtaining the animal; the scientific name of the animal acquired; and a description of the animal.

(15) "Native species" means any species or subspecies of amphibian or reptile that historically occurred in Utah and has not been introduced by humans or migrated into Utah as a result of human activity.

(16) "Naturalized species" means any species or subspecies of amphibian or reptile that is not native to Utah but has established a wild, self-sustaining population in Utah.

(17) "Noncontrolled species" means a species or subspecies of amphibian or reptile that if taken from the wild, introduced into the wild, or held in captivity, poses no significant detrimental impact to wild populations, the environment, or human health or safety, and for which a certificate of registration is not required, unless otherwise specified.

(18) "Nonnative species" means a species or subspecies of amphibian or reptile that is not native to Utah and has not established a wild, self-sustaining population in Utah.

(19) "Personal use" means the possession and use of an amphibian or reptile for a hobby or for its intrinsic pleasure and where no consideration for the possession or use of the animal is received by selling, bartering, trading, exchanging, breeding, or any other use.

(20) "Possession" means to physically retain or to exercise dominion or control over an amphibian or reptile.

(21) "Pre-authorized certificate of registration" means a certificate of registration that:

(a) meets the criteria established in Subsection R657-53-11(1)

(b) has been approved by the division; and

(c) is available for issuance.

(22) "Prohibited species" means a species or subspecies of amphibian or reptile that if taken from the wild, introduced into the wild, or held in captivity, poses a significant detrimental impact to wild populations, the environment, or human health or safety, and for which a certificate of registration shall only be issued in accordance with Sections R657-53-23(1)(a) or R657-53-19.

(23) "Propagation" means the mating of a male and female amphibian or reptile in captivity.

(24) "Reptile" means animals from the Class of Reptilia, including hybrid species or subspecies of reptiles and viable embryos or gametes of species or subspecies of reptiles.

(25) "Scientific use" means the possession and use of an amphibian or reptile for conducting bona fide scientific research that is directly or indirectly beneficial to wildlife or the general public.

(26) "Transport" means to be moved or cause to be moved,

any amphibian or reptile within Utah by any means.

(27) "Turtle" means all animals commonly known as turtles, tortoises and terrapins, and all other animals of the Order Testudinata, Class Reptilia.

(28) "Wild population" means native or naturalized amphibians or reptiles living in nature including progeny from a gravid female where fertilization occurred in the wild and birth occurred within six months of collection.

(29) "Wildlife Registration Office" means the division office in Salt Lake City responsible for processing applications and issuing certificates of registration.

#### **R657-53-3. Liability.**

(1)(a) Any person who accepts a certificate of registration assumes all liability and responsibility for the collection, importation, transportation, and possession of the authorized amphibian or reptile and for any other activity authorized by the certificate of registration.

(b) To the extent provided under the Utah Governmental Immunity Act, the division shall not be liable in any civil action for:

(i) any injury, disease, or damage caused by or to any animal, person, or property as a result of any activity authorized under this rule or a certificate of registration; or

(ii) the issuance, denial, suspension, or revocation of or by the failure or refusal to issue, deny, suspend, or revoke any certificate of registration or similar authorization.

(2) It is the responsibility of any person who obtains a certificate of registration to read, understand and comply with this rule and all other applicable federal, state, county, city, or other municipality laws, regulations, and ordinances governing amphibians or reptiles.

#### **R657-53-4. Animal Welfare.**

(1) Any amphibian or reptile held in possession under the authority of a certificate of registration shall be maintained under humane and healthy conditions, including humane handling, care, confinement, transportation, and feeding of the amphibian or reptile.

(2) Adequate measures must be taken for the protection of the public when handling, confining, or transporting any amphibian or reptile.

#### **R657-53-5. Collection, Importation, and Possession of Threatened and Endangered Species.**

(1) Any amphibian or reptile listed by the U.S. Fish and Wildlife Service as endangered or threatened pursuant to the federal Endangered Species Act is prohibited from collection, importation, possession, or propagation except:

(a) The division may authorize the collection, importation, possession, or propagation of a threatened or endangered species under the criteria set forth in this rule for controlled species where the U.S. Fish and Wildlife Service has issued a permit or otherwise authorized the particular activity; or

(b) A person may import, possess, transfer, or propagate captive-bred eastern indigo snakes (*Drymarchon couperi*) without a certificate of registration where the U.S. Fish and Wildlife Service has issued a permit or otherwise authorized the particular activity.

#### **R657-53-6. Release of an Amphibian or Reptile to the Wild -- Capture or Disposal of Escaped Wildlife.**

(1) Pursuant to Section 23-13-14, a person may not release from captivity any amphibian or reptile without first obtaining authorization from the division.

(2)(a) Any peace officer, division representative, or authorized animal control officer may seize or dispose of any live amphibian or reptile that escapes from captivity.

(b) The division may retain custody of any recaptured

amphibian or reptile until the costs of recapture or care have been paid by its owner or keeper.

#### **R657-53-7. Inspection of Documentation.**

A conservation officer or any other peace officer may require any person engaged in activities covered by this rule to exhibit any documentation related to activities covered by this rule, including certificates of registration, permits, certificates of veterinary inspection, certification, bills of sale, or proof of ownership or legal possession.

#### **R657-53-8. Certificate of Registration Required.**

(1)(a) A person shall obtain a certificate of registration before collecting, importing, transporting, possessing, or propagating any amphibian or reptile or their parts as provided in rule and the proclamations of the Wildlife Board for amphibians and reptiles, except as otherwise provided by the Wildlife Board or rules of the Wildlife Board.

(b) A certificate of registration is not required:

(i) to collect, import, transport, or possess any amphibian or reptile classified as noncontrolled, except as provided in Subsections R657-53-26(1)(c), R657-53-27(5) and R657-53-28(7); or

(ii) to export any species or subspecies of amphibian or reptile from Utah, provided that the amphibian or reptile is held in legal possession and importation into the destination state is lawful.

(c) An application for an amphibian or reptile classified as prohibited shall not be accepted by the division without providing written justification describing how the applicant's proposed collection, importation, or possession of the amphibian or reptile meets the criteria provided in Subsections R657-53-23(1)(a), R657-53-24(c)(i) or R657-53-19.

(d) Pre-authorized certificates of registration may be issued for collection and the resulting possession of amphibians and reptiles classified as controlled for collection pursuant to R657-53-13.

(2)(a) Certificates of registration expire as designated on the certificate of registration.

(b) Certificates of registration are not transferable.

(c) If the holder of a certificate of registration is a representative of an institution, organization, business, or agency, the certificate of registration shall end upon the representative's discontinuation of association with that entity.

(d) Certificates of registration do not provide the holder with any rights of succession and any certificate of registration issued to a business or organization shall be void upon the termination of the business or organization or upon bankruptcy or transfer.

(3) The issuance of a certificate of registration automatically incorporates within its terms the conditions and requirements of this rule specifically governing the activity for which the certificate of registration is issued.

(4) In addition to this rule, the division may impose specific requirements on the holder of the certificate of registration necessary for the safe and humane handling and care of the amphibian or reptile.

(5)(a) Upon or before the expiration date of a certificate of registration, the holder must renew an existing or apply for a new certificate of registration to continue the activity.

(b) The division shall use the criteria provided in Section R657-53-11 in determining whether to issue a certificate of registration.

(c) If an application is not made by the expiration date, a live or dead amphibian or reptile held in possession under the expired certificate of registration shall be considered unlawfully held.

(d) If an application for a new certificate of registration is submitted before the expiration date, the existing certificate of

registration shall remain valid while the application is pending.

(6) Failure to submit timely, accurate, or valid reports as required under this rule or the certificate of registration may disqualify a person from obtaining a new certificate of registration.

(7) A certificate of registration may be suspended as provided in Section 23-19-9 and Rule R657-26.

**R657-53-9. Application Procedures -- Fees.**

(1)(a) Applications for certificates of registration are available from, and must be submitted to, the Wildlife Registration Office in Salt Lake City or any regional division office.

(b) The application may require up to 45 days for review and processing.

(c) Applications that are incomplete, completed incorrectly, or submitted without the appropriate fee or other required information may be returned to the applicant.

(2)(a) Legal tender in the correct amount must accompany the application.

(b) The certificate of registration fee includes a nonrefundable handling fee.

(c) Fees may be waived for wildlife rehabilitation, educational or scientific activities, or for state or federal agencies upon request if, in the opinion of the division, the activity is significantly beneficial to the division, wildlife, or wildlife management.

**R657-53-10. Retroactive Effect on Possession.**

(1) A person lawfully possessing an amphibian or reptile prior to the effective date of any species reclassification may receive a certificate of registration from the division for the continued possession of that amphibian or reptile where the amphibian or reptile's classification has changed hereunder from noncontrolled to controlled or prohibited, or from controlled to prohibited.

(2) The certificate of registration shall be obtained within six months of the reclassification, or possession of the amphibian or reptile thereafter shall be unlawful.

(3) The certificate of registration for a species where the classification has changed from noncontrolled to controlled shall be issued for the life of the animal.

(4) The certificate of registration for a species where the classification has changed from noncontrolled or controlled to prohibited shall be renewed annually for the life of the animal.

(5) The division may require annual reporting.

**R657-53-11. Issuance Criteria.**

(1) The following factors shall be considered before the division may issue a certificate of registration:

(a) the health, welfare, and safety of the public;

(b) the health, welfare, safety, and genetic integrity of wildlife and other animals; and

(c) ecological and environmental impacts.

(2) In addition to the criteria provided in Subsection (1), the division shall use the following criteria for the issuance of a certificate of registration for a scientific use of an amphibian or reptile:

(a) the validity of the objectives and design;

(b) the likelihood the project will fulfill the stated objectives;

(c) the applicant's qualifications to conduct the research, including the requisite education or experience;

(d) the adequacy of the applicant's resources to conduct the study; and

(e) whether the scientific use is in the best interest of the amphibian or reptile, wildlife management, education, or the advancement of science without unnecessarily duplicating previously documented scientific research.

(3) In addition to the criteria provided in Subsection (1), the division may use the following criteria for the issuance of a certificate of registration for an educational use of an amphibian or reptile:

(a) the objectives and structure of the educational program; and

(b) whether the applicant has written approval from the appropriate official if the activity is conducted in a school or other educational facility.

(4) The division may deny issuing or reissuing a certificate of registration to any applicant, if:

(a) the applicant has violated any provision of Title 23, Utah Wildlife Resources Code, Administrative Code R657, a certificate of registration, an order of the Wildlife Board or any other law that, when considered with the functions and responsibilities of collecting, importing, possessing or propagating an amphibian or reptile, bears a reasonable relationship to the applicant's ability to safely and responsibly carry out such activities;

(b) the applicant has previously been issued a certificate of registration and failed to submit any report or information required by this rule, the division, or the Wildlife Board; or

(c) the applicant misrepresented or failed to disclose material information required in connection with the application.

(d) The division may deny issuing or renewing a certificate of registration to an applicant where holding the amphibian or reptile at the proposed location violates federal, state or local laws.

(5) If an application is denied, the division shall provide the applicant with written notice of the reasons for denial.

(6) An appeal of the denial of an application may be made as provided in Section R657-53-20.

**R657-53-12. Amendment to Certificate of Registration.**

(1)(a) If material circumstances change, requiring a modification of the terms of the certificate of registration, the holder may request an amendment by submitting written justification and supporting information.

(b) The division may amend the certificate of registration or deny the request based on the criteria for initial applications provided in Section R657-53-11, and, if the request for an amendment is denied, shall provide the applicant with written notice of the reasons for denial.

(c) The division may charge a fee for amending the certificate of registration.

(d) An appeal of a request for an amendment may be made as provided in Section R657-53-20.

(2) The division reserves the right to amend any certificate of registration for good cause upon notification to the holder and written findings of necessity.

(3)(a) Each holder of a certificate of registration shall notify the division within 30 days of any change in mailing address.

(b) An amphibian or reptile or activities authorized by a certificate of registration may not be held at any location not specified on the certificate of registration without prior written permission from the division.

**R657-53-13. Pre-authorized Certificates of Registration for Personal Use.**

(1) Pre-authorized certificates of registration may only be issued for collection and the resulting possession for personal use of amphibians and reptiles classified as controlled for collection, as provided in this rule and the proclamation of the Wildlife Board.

(2) Pre-authorized certificates of registration shall be held to all conditions established in R657-53-8.

(3)(a) The criteria established in R657-53-11(1) shall be

utilized to determine if pre-authorized certificates of registration shall be approved and issued.

(b) The criteria shall be applied to all amphibians and reptiles classified as controlled for collection.

(c) Pre-authorized certificates of registration shall be approved and issued only when the R657-53-11(1) criteria have been evaluated by the division and issuance found consistent with the criteria.

(4)(a) Applications for pre-authorized certificates of registration are available from, and must be submitted to, the Wildlife Registration Office in Salt Lake City.

(i) Applications for pre-authorized certificates of registration shall be accepted during the second full week of January and must be received by the Salt Lake Office by 5 p.m. Friday of that week.

(ii) Applications received before the second full week in January will not be accepted.

(iii) If necessary, a drawing will be held for those species that have more applications than available pre-authorized certificates of registration.

(iv) Remaining pre-authorized certificates of registration will be available after the second full week of January on a first-come, first-served basis.

(v) A person may not apply for or obtain more than one pre-authorized certificate of registration for each available species in a calendar year.

(vi) If available, pre-authorized certificates of registration shall be issued within five business days beginning the Monday after the second full week in January.

(vii) Applications that are incomplete, completed incorrectly, or submitted without the appropriate fee or other required information may be rejected.

(b)(i) Legal tender in the correct amount must accompany the application.

(ii) The pre-authorized certificate of registration fee includes a nonrefundable handling fee.

(c) Applications for pre-authorized certificates of registration may be denied as provided in R657-53-11(4).

(5)(a) Pre-authorized certificates of registration are not transferable, nor may they be amended to change collection area, species, bag limits, or dates.

(b) A holder of a pre-authorized certificate of registration shall notify the division within 30 days of any change in mailing address.

(c) An amphibian or reptile, or activities authorized by a certificate of registration may not be held or conducted at any location not specified on the certificate of registration without prior written permission from the division.

(6) Specific dates, species, areas, number of pre-authorized certificates of registration approved, and bag limits shall be published in the proclamation of the Wildlife Board for amphibians and reptiles.

(7)(a) Holders of a pre-authorized certificate of registration must report collection success or lack thereof to the division before the expiration date of the pre-authorized certificate of registration.

(b) The division shall issue a possession certificate of registration for the amphibian or reptile collected under the pre-authorized certification of registration for the life of the animal.

(c) Annual reporting to the division on the status of the animal is required or the possession certificate of registration becomes invalid.

#### **R657-53-14. Records and Reports.**

(1)(a) From the date of issuance of the certificate of registration, the holder shall maintain complete and accurate records of any taking, possession, transportation, propagation, sale, purchase, barter, or importation pursuant to applicable sections of this rule or the certificate of registration.

(b) Records must be kept current and shall include the names, phone numbers, and addresses of persons with whom any amphibian or reptile has been sold, bartered, or otherwise transferred or received, and the dates of the transactions.

(c) The records required under this section must be maintained for five years from the expiration date of the certificate of registration.

(2) Reports of activity must be submitted to the Wildlife Registration Office as specified on the certificate of registration.

#### **R657-53-15. Transfer of Possession.**

(1) Any person who lawfully possesses an amphibian or reptile classified as prohibited or controlled may transfer possession of that amphibian or reptile only to a person who has first applied for and obtained a certificate of registration for that amphibian or reptile from the division, except as provided in Subsection (3).

(2) The division may issue a certificate of registration granting the transfer and possession of an amphibian or reptile only if the applicant/transferee meets the issuance criteria provided in Section R657-53-11.

(3) Upon the death of a certificate of registration holder, a legally-obtained and possessed amphibian or reptile may pass to a successor, and a certificate of registration will be issued to the successor provided the amphibian or reptile poses no detrimental impact to community safety and the successor is qualified to handle the amphibian or reptile.

#### **R657-53-16. Violations.**

(1) Any violation of this rule is a class C misdemeanor, as provided in Section 23-13-11.

(2) Nothing in this rule shall be construed to supersede any provision of Title 23, Wildlife Resources Code of Utah which establishes a penalty greater than a class C misdemeanor. Any provision of this rule which overlaps a provision of that title is intended only as a clarification or to provide greater specificity needed for the administration of the provisions of this rule.

#### **R657-53-17. Certification Review Committee.**

(1) The division shall establish a Certification Review Committee which shall be responsible for:

(a) reviewing:

(i) petitions to reclassify species and subspecies of amphibians or reptiles;

(ii) appeals of certificates of registration; and

(iii) requests for variances to this rule; and

(b) making recommendations to the Wildlife Board.

(2) The committee shall consist of the following individuals:

(a) the director or the director's designee who shall represent the director's office and shall act as chair of the committee;

(b) the chief of the Aquatic Section;

(c) the chief of the Wildlife Section;

(d) the chief of the Administrative Services Section;

(e) the chief of the Law Enforcement Section;

(f) the state veterinarian or his designee; and

(g) a person designated by the Department of Health.

(3) The division shall require a fee for the submission of a request provided in Section R657-53-18 and R657-53-19.

#### **R657-53-18. Request for Species Reclassification.**

(1) A person may make a request to change the classification of a species or subspecies of amphibian or reptile provided in this rule.

(2) A request for reclassification must be made to the Certification Review Committee by submitting an application for reclassification.

- (3)(a) The application shall include:
- (i) the petitioner's name, address, and phone number;
  - (ii) the species or subspecies for which the application is made;
  - (iii) the name of all interested parties known by the petitioner;
  - (iv) the current classification of the species or subspecies;
  - (v) a statement of the facts and reasons forming the basis for the reclassification; and
  - (vi) copies of scientific literature or other evidence supporting the change in classification.

(b) In addition to the information required under Subsection (a), the petitioner must provide any information requested by the committee necessary to formulate a recommendation to the Wildlife Board.

(4)(a) The committee shall, within a reasonable time, consider the request for reclassification and shall submit its recommendation to the Wildlife Board.

(b) The committee shall send a copy of its recommendation to the petitioner and other interested parties specified on the application.

(5)(a) At the next available Wildlife Board meeting the Wildlife Board shall:

- (i) consider the committee recommendation; and
- (ii) any information provided by the petitioner or other interested parties.

(b) The Wildlife Board shall approve or deny the request for reclassification based on the issuance criteria provided in Section R657-53-11(1).

(6) A change in species classification shall be made in accordance with Title 63G, Chapter 4, Administrative Rulemaking Act.

(7) A request for species reclassification shall be considered a request for agency action as provided in Subsection 63G-4-201(3) and Rule R657-2.

#### **R657-53-19. Request for Variance.**

(1) A person may make a request for a variance to this rule for the collection, importation, propagation, or possession of an amphibian or reptile classified as prohibited under this rule by submitting a request for variance to the Certification Review Committee.

(2)(a) A request for variance shall include the following:

- (i) the name, address, and phone number of the person making the request;
- (ii) the species or subspecies of the amphibian or reptile and associated activities for which the request is made; and
- (iii) a statement of the facts and reasons forming the basis for the variance.

(b) In addition to the information required under Subsection (a), the person making the request must provide any information requested by the committee necessary to formulate a recommendation to the Wildlife Board.

(3) The committee shall, within a reasonable time, consider the request and shall submit its recommendation to the Wildlife Board.

(4) At the next available Wildlife Board meeting the Wildlife Board shall:

- (a) consider the committee recommendation; and
- (b) any information provided by the person making the request.

(5)(a) The Wildlife Board shall approve or deny the request based on the issuance criteria provided in Section R657-53-11.

(b) If the request applies to a broad class of persons and not to unique circumstances of the applicant, the Wildlife Board shall consider changing the species classification before issuing a variance to this rule.

(6)(a) If the request is approved, the Wildlife Board may

impose any restrictions on the person making the request considered necessary for that person to maintain the standards upon which the variance is made.

(b) Any restrictions imposed on the person making the request shall be included in writing on the certificate of registration which shall be signed by the person making the request.

(7) A request for variance shall be considered a request for agency action as provided in Subsection 63G-4-201(3) and Rule R657-2.

#### **R657-53-20. Appeal of Certificate of Registration Denial.**

(1) A person may appeal the division's denial of a certificate of registration by submitting an appeal request to the Certification Review Committee.

(2) The request must be made within 30 days after the date of the denial.

(3) The request shall include:

- (a) the name, address, and phone number of the petitioner;
- (b) the date the request was mailed;
- (c) the species or subspecies of the amphibian or reptile and the activity for which the application was made; and
- (d) supporting facts and other evidence applicable to resolving the issue.

(4) The committee shall review the request within a reasonable time after it is received.

(5) Upon reviewing the application and the reasons for its denial, the committee may:

- (a) overturn the denial and approve the application; or
  - (b) uphold the denial.
- (6) The committee may overturn a denial if the denial was:
- (a) based on insufficient information;
  - (b) inconsistent with prior action of the division or the Wildlife Board;
  - (c) arbitrary or capricious; or
  - (d) contrary to law.

(7)(a) Within a reasonable time after making its decision, the committee shall mail a notice to the petitioner specifying the reasons for its decision.

(b) The notice shall include information that a person may seek Wildlife Board review of that decision.

(8)(a) If the committee upholds the denial, the petitioner may seek Wildlife Board review of the decision by submitting a request for Wildlife Board review within 30 days after its issuance.

(b) The request must include the information provided in Subsection (3).

(9)(a) Upon receiving a request for Wildlife Board review, the Wildlife Board shall, within a reasonable time, hold a hearing to consider the request.

- (b) The Wildlife Board may:
  - (i) overturn the denial and approve the application; or
  - (ii) uphold the denial.
- (c) The Wildlife Board shall provide the petitioner with a written decision within a reasonable time after making its decision.

(10) An appeal contesting initial division determination of eligibility for a certificate of registration shall be considered a request for agency action as provided in Subsection 63G-4-201(3) and Rule R657-2.

#### **R657-53-21. Prohibited Collection Methods.**

(1) Amphibians and reptiles may not be collected using any method prohibited in this rule and the proclamations of the Wildlife Board except as provided by a certificate of registration or the Wildlife Board.

(a) Lethal methods of collection are prohibited except as provided in Subsections R657-53-27(6) and R657-53-28(6), (8), and (9).

(b) The destruction of habitats such as breaking apart of rocks, logs or other shelters in or under which amphibians or reptiles may be found is prohibited.

(c) The use of winches, auto jacks, hydraulic jacks, crowbars and pry bars are prohibited.

(d) The use of gasoline or other potentially toxic substance is prohibited.

(e) The use of firearms, airguns or explosives is prohibited.

(f) The use of electrical or mechanical devices, or smokers is prohibited except as provided in Subsection (2)(b).

(g) The use of traps including pit fall traps, can traps, or funnel traps is prohibited.

(h) The use of fykes, seines, weirs, or nets of any description are prohibited except as provided in Subsection (2)(b).

(2)(a) Any logs, rocks, or other objects turned over or moved must be replaced in their original position.

(b) Dip nets less than 24 inches in diameter, snake sticks, and lizard nooses may be used.

**R657-53-22. Personal Use: Collection and Possession or Importation and Possession of a Live or Dead Amphibian or Reptile.**

(1) A person may collect and possess a live amphibian or reptile for personal use only as provided in Subsection (a), (b) or (c).

(a) Certificates of registration are not issued for the collection and possession of any live amphibian or reptile classified as prohibited for collection and possession, except as provided in R657-53-19.

(b) A certificate of registration is required for collection and possession of any live amphibian or reptile classified as controlled for collection and possession, except as otherwise provided by the Wildlife Board.

(c) A certificate of registration is not required for collection and possession of any live amphibian or reptile classified as noncontrolled for collection and possession, except as provided in Subsections R657-53-27(5) and (6) and R657-53-28(7) and (8).

(2) A person may collect and possess a dead amphibian or reptile or its parts for personal use only as provided in Subsections (a), (b) or (c).

(a) A person may collect and possess a dead amphibian or reptile or its parts classified as controlled for collection and possession without a certificate of registration as provided in Subsections (i) and (ii).

(i) The specimen must be frozen and submitted to the division by appointment within 30 days of collection; and

(ii) The specimen must be labeled with the species name, salvage date, salvage location, Universal Transverse Mercator (UTM) location coordinates and name of person collecting the dead amphibian or reptile.

(b) A certificate of registration is required for collection and possession of a dead amphibian or reptile or its parts classified as controlled for collection and possession where the dead amphibian or reptile or its parts remains in personal possession, except as otherwise provided by the Wildlife Board.

(i) A certificate of registration is not required for collection and possession of any dead amphibian or reptile classified as noncontrolled for collection and possession, except as provided in Subsections R657-53-27(5) and (6) and R657-53-28(7) and (8).

(ii) Collection and possession of any dead amphibian or reptile or its parts classified as noncontrolled for collection and possession, which remain in personal possession will count against collection and possession limits.

(c) A dead amphibian or reptile or its parts classified as prohibited for collection and possession may not be collected and possessed without a certificate of registration issued by the

division for collection and possession of the specimen.

(3) A person may temporarily handle for personal use live amphibians or reptiles classified as noncontrolled and controlled for collection and possession without a certificate of registration only as provided in Subsections (a) through (d).

(a) An amphibian or reptile may be held for up to 15 minutes in a non-harmful way for the purpose of photography, noninvasive data collection and moving out of harm's way;

(i) For the purposes of this Subsection, noninvasive data collection means the collection of external measurements, specimen weights, external meristics, and sex determination which does not involve the use of probes or other instruments which enter the body of the animal;

(b) The amphibian or reptile cannot be moved more than 60 feet from the location found;

(c) The amphibian or reptile can be placed in any container, bag or device which confines the animal so it may be transported; and

(d) The amphibian or reptile must be released immediately when directed to do so by a division employee.

(4) A certificate of registration is required for a person to handle live amphibians or reptiles classified as prohibited for collection and possession.

(5) A person may import and possess a live or dead amphibian or reptile or its parts for personal use only as provided in subsection (b), (c) and (d).

(a) Certificates of registration are not issued for the importation and possession of any live or dead amphibian or reptile or its parts classified as prohibited for importation and possession, except as provided in Subsection (d) and R657-53-19.

(b) A certificate of registration is required for importation and possession of any live or dead amphibian or reptile or its parts classified as controlled for importation and possession, except as otherwise provided by the Wildlife Board and subsection (i).

(i) Prior to importation, a certificate of registration shall be issued for the importation and the resulting possession of any live amphibian or reptile for personal use that is legally obtained from outside the state of Utah, is a species native to Utah, and is classified as controlled for importation and possession.

(ii) Legal documentation of the acquisition of the amphibian or reptile shall be maintained as determined in the certificate of registration.

(iii) As provided in Rule R58-1, the Department of Agriculture and Food requires a valid certificate of veterinary inspection and an entry permit number to import any amphibian or reptile into Utah.

(iv) Imported native and naturalized species shall not count toward the possession limit.

(c) A certificate of registration is not required for importation and possession of any live or dead amphibian or reptile or its parts classified as noncontrolled for importation and possession.

(i) Legal documentation of the acquisition of the amphibian or reptile shall be maintained for the life of the animal or the time the animal is in possession.

(ii) As provided in Rule R58-1, the Department of Agriculture and Food requires a valid certificate of veterinary inspection and an entry permit number to import any amphibian or reptile into Utah.

(iii) Imported native and naturalized species shall not count toward the possession limit.

(d) Notwithstanding subsection (5)(a) or (b), a person may import and possess any dead amphibian or reptile or its parts classified as prohibited or controlled, except as provided in Section R657-53-5, for personal use without obtaining a certificate of registration, provided the animal was legally taken, is held in legal possession, and a valid license, permit, tag,

certificate of registration, bill of sale, or invoice is available for inspection upon request.

**R657-53-23. Scientific, or Educational Use: Collection and Possession or Importation and Possession of a Live or Dead Amphibian or Reptile.**

(1) A person may collect and possess or import and possess a live or dead amphibian or reptile or its parts for scientific or educational use only as provided in Subsections (a), (b) and (c) and R657-53-19.

(a) The division may issue a certificate of registration to a university, college, governmental agency, bona fide nonprofit educational or scientific institution, or a person involved in wildlife research through an eligible institution to collect and possess or import and possess a live or dead amphibian or reptile classified as prohibited for collection and possession or importation and possession if, in the opinion of the division, the scientific or educational use is beneficial to wildlife and significantly benefits the general public without material detriment to wildlife.

(b) A certificate of registration is required for the collection and possession or importation and possession of any live or dead amphibian or reptile or its parts classified as controlled for collection and possession or importation and possession for scientific or educational use, except as otherwise provided by the Wildlife Board.

(i) Prior to importation, a certificate of registration shall be issued for the importation and resulting possession of any live amphibian or reptile for scientific or educational use that is legally obtained from outside the state of Utah, is a species native to Utah, and is classified as controlled for importation and possession.

(ii) As provided in Rule R58-1, the Department of Agriculture and Food requires a valid certificate of veterinary inspection and an entry permit number to import any amphibian or reptile into Utah.

(iii) Imported native and naturalized species shall not count toward the possession limit.

(c)(i) A certificate of registration is not required for the collection and possession or importation and possession of any live or dead amphibian or reptile or its parts classified as noncontrolled for collection and possession or importation and possession for scientific or educational use, except as provided in Subsections R657-53-27(5) and (6) and R657-53-28(7) and (8).

(ii) As provided in Rule R58-1, the Department of Agriculture and Food requires a valid certificate of veterinary inspection and an entry permit number to import any amphibian or reptile into Utah.

(iii) Imported native and naturalized species shall not count toward the possession limit.

**R657-53-24. Commercial Use: Collection and Possession or Importation and Possession of a Live or Dead Amphibian or Reptile.**

(1) Pursuant to Sections 23-13-13 and 23-20-3, a person may not collect and possess a live amphibian or reptile for a commercial use or commercial venture for pecuniary gain, unless otherwise provided in this rule or a certificate of registration.

(2) A person may collect and possess or import and possess a live or dead amphibian or reptile or its parts for commercial use only as provided in Subsections (a), (b) and (c) and R657-53-19.

(a)(i) A person may import and possess a live amphibian or reptile classified as non-controlled for importation and possession for a commercial use or a commercial venture, except as provided in subsection (ii)

(ii) A native or naturalized species or subspecies of

amphibian or reptile may not be sold or traded unless it originated from a captive-bred population.

(iii) Complete and accurate records for native or naturalized species must be maintained and available for inspection for five years from the date of the transaction, documenting the date, name, address, and telephone number of the person from whom the amphibian or reptile has been obtained.

(iv) Complete and accurate records must be maintained and available for inspection for five years from the date of the transfer, documenting the date, name, address and certificate of registration number if applicable of the person receiving the amphibian or reptile.

(b)(i) A person may not import and possess a live amphibian or reptile classified as controlled for importation and possession for a commercial use or commercial venture without first obtaining a certificate of registration.

(ii) A certificate of registration will not be issued to sell or trade a native or naturalized species of amphibian or reptile unless it originates from a captive-bred population.

(iii) It is unlawful to transfer a live amphibian or reptile classified as controlled for collection and possession or importation and possession to a person who does not have a certificate of registration to possess the amphibian or reptile, except as follows:

(A) the amphibian or reptile is captive-bred;

(B) the transferee is not domiciled in Utah;

(C) the transferee is exporting the amphibian or reptile out of Utah; and

(D) the transferee follows the transport provisions in Section R657-53-25.

(iv) Complete and accurate records must be maintained by the buyer and the seller for five years from the date of the transaction or transfer, documenting the date, and the name, address, and telephone number of the person from whom the amphibian or reptile has been obtained and the person receiving the amphibian or reptile.

(v) The records indicated in Subsection (iv) must be made available for inspection upon request of the division.

(c)(i) A certificate of registration will not be issued for importation and possession of a live amphibian or reptile, classified as prohibited for importation and possession for a commercial use or commercial venture, except as provided in Subsection (ii) or R657-53-19.

(ii) The division may issue a certificate of registration to a zoo, circus, amusement park, aviary, or film company to import and possess a live amphibian or reptile classified as prohibited for importation and possession if, in the opinion of the division, the importation and possession for a commercial use is beneficial to wildlife or significantly benefits the general public without material detriment to wildlife.

(iii) The division's authority to issue a certificate of registration to a zoo, circus, amusement park, or aviary under this Subsection is restricted to those facilities that keep the prohibited amphibian or reptile in a park, building, cage, enclosure or other structure for the primary purpose of public exhibition or viewing.

(3) It is unlawful to sell or trade any turtle, including tortoises, less than 4" in carapace length (Referenced Federal Register 21 CFR 1240.62).

(4)(a) Pursuant to Sections 23-13-13 and 23-20-3, a person may not collect and possess or import and possess any dead amphibian or reptile or its parts for a commercial use or commercial venture for pecuniary gain, unless otherwise provided in the rules and proclamations of the Wildlife Board, or a memorandum of understanding with the division.

(b) The restrictions in Subsection (a) do not apply to importation and possession of a dead amphibian or reptile sold or traded for educational use.



**R657-53-25. Transporting a Live Amphibian or Reptile Through Utah.**

A certificate of veterinary inspection is required from the state of origin as provided in Utah Department of Agriculture Rule R58-1 and proof of legal possession must accompany the zoological animal

(1) Any controlled or prohibited amphibian or reptile may be transported through Utah without a certificate of registration if:

(a) the amphibian or reptile remains in Utah no more than 72 hours; and

(b) the amphibian or reptile is not sold, transferred, exhibited, displayed, or used for a commercial venture while in Utah.

(2) Proof of legal possession must accompany the amphibian or reptile.

(3) If delays in transportation arise, an extension of the 72 hours may be requested by contacting the Wildlife Registration Office in Salt Lake City.

**R657-53-26. Propagation of Amphibians or Reptiles.**

(1) A person may propagate native amphibians or reptiles that are legally collected in Utah and possessed only as provided in Subsection (a) through (c).

(a) Certificates of registration are not issued for the propagation of any native amphibian or reptile collected in Utah and classified as prohibited for propagation except as provided in R657-53-19.

(b) A certificate of registration is required for propagating any native amphibian or reptile collected in Utah and classified as controlled for propagation, except as otherwise provided by the Wildlife Board.

(i) All progeny shall be marked as determined in the certificate of registration;

(ii) A report shall be submitted yearly as specified in the certificate of registration;

(iii) Records of the progeny as determined in the certificate of registration shall be kept for the life of the animal or time in possession; and

(iv) Progeny shall not count toward possession limits.

(c) A certificate of registration is required for propagating native amphibians or reptiles collected in Utah and classified as noncontrolled for propagation.

(i) A report shall be submitted yearly as specified in the certificate of registration;

(ii) Records of the progeny as determined in the certificate of registration shall be kept for the life of the animal or time in possession; and

(iii) Progeny shall not count toward possession limits.

(2) A person may propagate naturalized amphibians or reptiles that are legally collected in Utah and possessed only as provided in Subsection (a) through (d).

(a) Certificates of registration are not issued for the propagation of any naturalized amphibian or reptile collected in Utah and classified as prohibited for propagation except as provided in R657-53-19.

(b) A certificate of registration is required for propagating any naturalized amphibian or reptile legally collected in Utah and classified as controlled for propagation.

(i) Records of the progeny shall be kept for the life of the animal or time in possession.

(c) A certificate of registration is not required for propagating any naturalized amphibian or reptile collected in Utah and classified as controlled for possession but classified as noncontrolled for propagation.

(i) Records of the progeny shall be kept for the life of the animal or time in possession; and

(ii) Progeny shall not count toward possession limits.

(d) A certificate of registration is not required for

propagating naturalized amphibians or reptiles collected in Utah and classified as noncontrolled for propagation.

(i) Progeny shall not count toward possession limits.

(3) A person may propagate native amphibians or reptiles that are legally obtained from an instate captive source or imported into Utah and possessed only as provided in Subsection (a) through (d).

(a) Certificates of registration are not issued for the propagation of any native amphibian or reptile imported into Utah and classified as prohibited for propagation except as provided in R657-53-19.

(b) A certificate of registration is required for propagating any native amphibian or reptile legally obtained from an instate captive source or imported into Utah and classified as controlled for propagation.

(i) Records of the progeny shall be kept for the life of the animal or time in possession.

(c) A certificate of registration is not required for propagating any native amphibian or reptile imported into Utah and classified as controlled for possession but classified as noncontrolled for propagation.

(i) Records of the progeny shall be kept for the life of the animal or time in possession; and

(ii) Progeny shall not count toward possession limits.

(d) A certificate of registration is not required for propagating native amphibians or reptiles imported into Utah and classified as noncontrolled for propagation.

(i) Records of the progeny shall be kept for the life of the animal or time in possession; and

(ii) Progeny shall not count toward possession limits.

(4) A person may propagate nonnative or naturalized amphibians or reptiles that are legally obtained from an instate captive source or imported into Utah and possessed only as provided in Subsections (a) through (d).

(a) Certificates of registration are not issued for the propagation of any nonnative or naturalized amphibian or reptile imported into Utah and classified as prohibited for propagation except as provided in R657-53-19.

(b) A certificate of registration is required for propagating any nonnative or naturalized amphibian or reptile legally obtained from an instate captive source or imported into Utah and classified as controlled for propagation.

(i) Records of the progeny shall be kept for the life of the animal or time in possession.

(c) A certificate of registration is not required for propagating nonnative or naturalized amphibian or reptile imported into Utah and classified as controlled for possession but classified as noncontrolled for propagation.

(i) Records of the progeny shall be kept for the life of the animal or time in possession; and

(ii) Progeny shall not count toward possession limits.

(d) A certificate of registration is not required for propagating nonnative or naturalized amphibians or reptiles imported into Utah and classified as noncontrolled for propagation.

(i) Progeny shall not count toward possession limits.

(5) Certificates of registration may be denied to an applicant who:

(a) is a non-resident of Utah;

(b) fails to provide and maintain suitable, disease-free facilities and to humanely hold and maintain amphibians or reptiles in good condition;

(c) has been judicially or administratively found guilty of violating the provisions of this rule;

(d) has been convicted of, pleaded no contest to, or entered into a plea in abeyance to any criminal offense that bears a reasonable relationship to the applicant's ability to safely and responsibly collect, import, transport or possess amphibians or reptiles; or

(e) fails to maintain the propagation records and file the annual reports required in this section.

(6) Legally-obtained amphibians or reptiles and their progeny and descendants born in captivity, which are held in possession under the authority of a certificate of registration, remain property of the holder, but are subject to regulation by the division in accordance with the needs for public health, welfare, and safety, and impacts on wildlife.

**R657-53-27. Classification and Specific Rules for Amphibians.**

(1) Common and scientific nomenclature recognized and adopted by the Society for the Study of Amphibians and Reptiles (2003) will be utilized in Subsection (2).

(2) Amphibians are classified as follows:

(a) Frogs are classified as follows:

(i) American bullfrog, Ranidae Family (*Rana catesbeiana*)

is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (6);

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Canyon treefrog, Hylidae Family (*Hyla arenicolor*) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(iii) Clawed frog, Pipidae Family (*Xenopus*) (All species)

is

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(iv) Columbia spotted frog, Ranidae Family (*Rana luteiventris*) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(v) Green frog, Ranidae Family (*Rana clamitans*) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (7);

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(vi) Lowland leopard frog, Ranidae Family (*Rana yavapaiensis*) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(vii) Northern leopard frog, Ranidae Family (*Rana pipiens*)

is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(viii) Pacific treefrog, Hylidae Family (*Pseudacris regilla*)

is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(ix) Relict leopard frog, Ranidae Family (*Rana onca*) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(x) Western chorus frog, Hylidae Family (*Pseudacris*

*triseriata*) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(b) Spadefoots are classified as follows:

(i) Great basin spadefoot, Pelobatidae Family (*Spea intermontana*) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Mexican spadefoot, Pelobatidae Family (*Spea multiplicata*) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(iii) Plains spadefoot, Pelobatidae Family (*Spea bombifrons*) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(c) Salamanders are classified as follows:

(i) Tiger salamander, Ambystomatidae Family (*Ambystoma tigrinum*) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah.

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(d) Toads are classified as follows:

(i) Arizona toad, Bufonidae Family (*Bufo microscaphus*)

is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Cane (marine) toad, Bufonidae Family (*Bufo marinus*)

is

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(iii) Great Plains toad, Bufonidae Family (*Bufo cognatus*)

is

(A) controlled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(iv) Red-spotted toad, Bufonidae Family (*Bufo punctatus*)

is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(v) Western toad, Bufonidae Family (*Bufo boreas*) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(t) Woodhouse's toad, Bufonidae Family (*Bufo woodhousii*) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations

in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah.

(3)(a) Amphibians classified at the genus or family taxonomic level include all species and subspecies.

(b) Amphibians classified at the species taxonomic level include all subspecies.

(c) Amphibians classified at the subspecies taxonomic level do not include any other related subspecies.

(4) All species or subspecies of amphibians not listed in Subsection (2) are classified as noncontrolled for collection, importation, possession and propagation.

(5)(a) A person must obtain a certificate of registration to collect and possess more than three amphibians of each species or subspecies classified as noncontrolled for collection and possession within a calendar year, except as provided in Subsection (6).

(b) A person must obtain a certificate of registration to possess more than nine amphibians in aggregate classified as noncontrolled for collection and possession and collected within Utah, except as provided in Subsection (6).

(6) A person may collect and possess any number of American bullfrogs (*Rana catesbeiana*) or Green frogs (*Rana clamitans*) without a certificate of registration provided they are either killed or released immediately. A person may not transport a live bullfrog or green frog from the point of capture without first obtaining a certificate of registration.

#### **R657-53-28. Classification and Specific Rules for Reptiles.**

(1)(i) Common and scientific nomenclature recognized and adopted by the Society for the Study of Amphibians and Reptiles (2003) shall be utilized in Subsection (2) for North American species found north of Mexico.

(ii) Common and scientific nomenclature recognized and adopted by C. Mattison in *The Encyclopedia of Snakes* (1999) shall be utilized for all other snakes found in Subsection (2).

(iii) Common and scientific nomenclature recognized and adopted by O'Shea and Halliday in *Smithsonian Handbooks: Reptiles and Amphibians* (2002) shall be utilized for the Gharial found in subsection (2).

(2) Reptiles are classified as follows:

(a) Crocodiles are classified as follows:

(i) Alligators and caimans, Alligatoridae Family (All species) are

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Crocodiles, Crocodylidae Family (All species) are

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah; and

(iii) Gharial, Gavialidae Family (*Gavialis gangeticus*) is

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah.

(b) Lizards are classified as follows:

(i) Beaded lizard, Helodermatidae Family, (*Heloderma horridum*) is

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Chuckwalla, Iguanidae Family (*Sauromalus*) (All species) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation and possession and prohibited for propagation of individuals legally obtained outside of Utah;

(iii) Common lesser earless lizard, Phrynosomatidae Family (*Holbrookia maculata*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and

propagation of individuals legally obtained outside of Utah;

(iv) Common side-blotched lizard, Phrynosomatidae Family (*Uta stansburiana*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (8);

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(v) Desert horned lizard, Phrynosomatidae Family (*Phrynosoma platyrhinos*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(vi) Desert iguana, Iguanidae Family (*Dipsosaurus dorsalis*) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation and possession, and prohibited for propagation of individuals legally obtained outside of Utah;

(vii) Desert spiny lizard, Phrynosomatidae Family (*Sceloporus magister*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(viii) Eastern collared lizard, Crotophytidae Family (*Crotaphytus collaris*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(ix) Gila monster, Helodermatidae Family (*Heloderma suspectum*) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(x) Great Basin collared lizard, Crotophytidae Family (*Crotaphytus bicinctores*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xi) Great Basin fence lizard, Phrynosomatidae Family (*Sceloporus occidentalis longipes*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xii) Great Basin skink, Scincidae Family (*Eumeces skiltonianus utahensis*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xiii) Great Basin Whiptail, Teiidae Family (*Aspidoscelis tigris tigris*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xiv) Greater short-horned lizard, Phrynosomatidae Family (*Phrynosoma hernandesi*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xv) Long-nosed leopard lizard, Crotaphytidae Family (*Gambelia wislizenii*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xvi) Northern plateau lizard, Phrynosomatidae Family (*Sceloporus undulatus elongatus*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xvii) Northern sagebrush lizard, Phrynosomatidae Family (*Sceloporus graciosus graciosus*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (5);

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xviii) Ornate tree lizard, Phrynosomatidae Family (*Urosaurus ornatus*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xix) Plateau striped whiptail, Teiidae Family (*Aspidoscelis velox*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xx) Plateau tiger whiptail, Teiidae Family (*Aspidoscelis tigris septentrionalis*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxi) Southern plateau lizard, Phrynosomatidae Family (*Sceloporus undulatus tristichus*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxii) Utah banded gecko, Gekkonidae Family (*Coleonyx variegatus utahensis*) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxiii) Utah night lizard, Xantusiidae Family (*Xantusia vigilis utahensis*) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxiv) Variable (many-lined) skink, Scincidae Family (*Eumeces multivirgatus epipleurotus*)

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxv) Western zebra-tailed lizard, Phrynosomatidae Family (*Callisaurus draconoides rhodostictus*) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah; and

(xxvi) Yucca night lizard, Xantusiidae Family (*Xantusia vigilis vigilis*) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah.

(c) Snakes are classified as follows:

(i) Bird Snake, Colubridae Family (*Thelotornis*) (All species) are

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Boomslang, Colubridae Family (*Dispholidus typus*) is

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(iii) Burrowing asps, Atractaspidae Family (All species) are

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(iv) California kingsnake, Colubridae Family (*Lampropeltis getula californiae*) is

(A) controlled for collection, possession and noncontrolled for propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(v) Desert glossy snake, Colubridae Family (*Arizona elegans eburnata*) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(vi) Desert nightsnake, Colubridae Family (*Hypsiglena torquata deserticola*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(vii) Desert striped whipsnake, Colubridae Family (*Masticophis taeniatus taeniatus*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(viii) Desert gophersnake, Colubridae Family (*Pituophis catenifer deserticola*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(ix) Great Basin rattlesnake, Viperidae Family (*Crotalus oreganus lutosus*) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (6);

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(x) Great Plains ratsnake, Colubridae Family (*Elaphe emoryi*) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xi) Groundsnake, Colubridae Family (*Sonora semiannulata*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xii) Keelback, Colubridae Family (*Rhabdophis*) (All species) are

(A) prohibited for importation, possession and propagation

of individuals legally obtained outside of Utah;

(xiii) Midget faded rattlesnake, Viperidae Family (*Crotalus oreganus concolor*) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xiv) Mojave rattlesnake, Viperidae Family (*Crotalus scutulatus*) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xv) Mojave patch-nosed snake, Colubridae Family (*Salvadora hexalepis mojavensis*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xvi) Painted desert glossy snake, Colubridae Family (*Arizona elegans philipi*) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xvii) Pit vipers, Viperidae Family (All species) are

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xviii) Prairie rattlesnake, Viperidae Family (*Crotalus viridis*) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xix) Proteroglyphous snakes, Australian spp., cobras, coral snakes, kraits, and their allies, Elapidae Family (All species) are

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xx) Red racer (Coachwhip), Colubridae Family (*Masticophis flagellum piceus*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxi) Regal ring-necked snake, Colubridae Family (*Diadophis punctatus regalis*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxii) Rubber boa, Boidae Family (*Charina bottae*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxiii) Sidewinder, Viperidae Family (*Crotalus cerastes*) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxiv) Smith's black-headed snake, Colubridae Family (*Tantilla hobartsmithi*) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation

of individuals legally obtained outside of Utah;

(xxv) Smooth greensnake, Colubridae Family (*Opheodrys vernalis*) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxvi) Sonoran lyresnake, Colubridae Family (*Trimorphodon biscutatus lambda*) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxvii) Speckled rattlesnake, Viperidae Family (*Crotalus mitchellii*) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxviii) Spotted leaf-nosed snake, Colubridae Family (*Phyllorhynchus decurtatus*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxix) Utah milksnake, Colubridae Family (*Lampropeltis triangulum taylori*) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxx) Utah mountain kingsnake, Colubridae Family (*Lampropeltis pyromelana infralabialis*) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxxi) Utah threadsnake, Leptotyphlopidae Family (*Leptotyphlops humilis utahensis*) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxxii) Valley gartersnake, Colubridae Family (*Thamnophis sirtalis fitchi*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxxiii) Wandering gartersnake, Colubridae Family (*Thamnophis elegans vagrans*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah,

except as provided in Subsection (8);

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxxiv) Western black-necked gartersnake, Colubridae Family (*Thamnophis cyrtopsis cyrtopsis*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxxv) Western long-nosed snake, Colubridae Family (*Rhinocheilus lecontei lecontei*) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah; and

(xxxvi) Western yellow-bellied racer, Colubridae Family

(Coluber constrictor mormon) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah.

(d) Turtles are classified as follows:

(i) Alligator snapping turtle, Chelydridae Family (Macrochelys temminckii) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (9);

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Common snapping turtle, Chelydridae Family (Chelydra serpentina) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (9);

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(iii) Desert tortoise, Testudinidae Family (Gopherus agassizii) is

(A) prohibited for collection, and propagation and controlled for possession of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(iv) Painted turtle, Emydidae Family (Chrysemys picta) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah.

(v) Red-eared slider, Emydidae Family (Trachemys scripta elegans) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah.

(vi) Spiny softshell, Trionychidae Family (Apalone spinifera) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (9);

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(3)(a) Reptiles classified at the genus or family taxonomic level include all species and subspecies.

(b) Reptiles classified at the species taxonomic level include all subspecies.

(c) Reptiles classified at the subspecies taxonomic level do not include any other related subspecies.

(4) All species or subspecies of reptiles not listed in Subsection (2) are classified as noncontrolled for collection, importation, possession and propagation.

(5) A person may not:

(a) knowingly disturb the den of any reptile or kill, capture, or harass any reptile within 100 yards of a reptile den without first obtaining a certificate of registration from the division; or

(b) indiscriminately kill any reptile.

(6)(a) Great Basin rattlesnakes, Crotalus oreganus lutosus, may be killed without a certificate of registration only for reasons of human safety.

(b) The carcass or its parts of a Great Basin rattlesnake killed pursuant to Subsection (a) may be retained for personal use or possessed.

(7)(a) A person must obtain a certificate of registration to collect more than three reptiles of each species or subspecies classified as noncontrolled for collection and possession within

a calendar year, except as provided in Subsection (8).

(b) A person must obtain a certificate of registration to possess more than nine reptiles of each species or more than 56 in aggregate which are classified as noncontrolled for collection and possession and collected within Utah, except as provided in Subsection (8).

(8) In a calendar year, a person may collect and possess for personal use 25 common side-blotched lizards (Uta stansburiana), 25 northern sagebrush lizards (Sceloporus graciosus), and 25 wandering gartersnakes (Thamnophis elegans vagrans), without obtaining a certificate of registration or counting against the aggregate possession limit.

(9)(a) A person may collect and possess any number of common snapping turtles (Chelydra serpentina), alligator turtles (Macrochelys temminckii) or spiny softshell (Apalone spinifera) turtles without a certificate of registration provided they are either killed or released immediately upon removing them from the point of capture.

(b) A person may not transport a live common snapping turtle, alligator turtle or spiny softshell turtle from the point of capture from which it was collected without first obtaining a certificate of registration.

**KEY: wildlife, import restrictions, amphibians, reptiles**  
**May 10, 2010** 23-14-18  
**Notice of Continuation May 30, 2013** 23-14-19  
 23-20-3  
 23-13-14

**R671. Pardons (Board of), Administration.**  
**R671-312. Commutation Hearings for Death Penalty Cases.**  
**R671-312-1. General Applicability.**

77-27-4  
77-27-5  
77-27-5.5  
77-27-8  
77-27-9  
77-27-9.5.

The provisions and procedures set forth below are of general applicability to all petitions filed with the Utah Board of Pardons and Parole (Board) seeking the commutation of a death sentence.

(1) Any person, individually or through counsel, who has been sentenced to death by a court in this state may petition the Board for commutation of the death sentence.

(2) No person has a right, privilege, or entitlement to commutation or clemency; nor to the scheduling of a commutation hearing. Nothing in this rule may be interpreted to convey any right or expectation of commutation, clemency, or to a commutation hearing. The decision to schedule a commutation hearing is within the exclusive power and authority of the Board.

(3) Petitions for commutation of a death sentence shall be governed by applicable state constitutional provisions, statutes, this rule, and other Board administrative rules as applicable.

(4) Any document, pleading, notice, attachment or other item submitted as part of the commutation petition, response, or subsequent pleadings shall be delivered to and filed with the Board's Administrative Coordinator at the Board's offices.

(5) Upon the filing of a commutation petition, and throughout the duration of all commutation proceedings, any communication to the Board by any party or party's counsel should be directed to the Board's Administrative Coordinator. Any communication from the Board to any party or counsel will be directed through the Board's Administrative Coordinator. This section does not apply to Board communications with its own legal counsel as assigned by the Attorney General.

(6) A commutation petition, any response thereto, and any subsequent pleading, or document submitted to the Board for consideration in relation to a commutation petition is considered a public document, unless the document is determined by the Board to be controlled, protected, or private, pursuant to any other statute, law, rule, or prior case law.

(7) Any order issued by the Board relating to a commutation petition is a public document.

(8) If the petitioner's execution is stayed by any court, after a commutation petition has been filed with the Board, but prior to commencement of any commutation hearing, all commutation proceedings before the Board shall cease.

(9) If the petitioner's execution is stayed by any court after a commutation hearing has commenced, the hearing may continue, and the Board may render its decision.

(10) As used in this rule, "day" means a regular calendar day, including weekends and holidays.

(11) As used in this rule, "Petitioner" means the person whose death sentence is sought to be commuted by the filing of a commutation petition with the Board.

(12) The Board may summarily deny, with or without a response or objection from the State, any commutation petition without a hearing.

(13) Procedures applicable to commutation petitions for any person sentenced to death by a court in this state prior to April 26, 1992, are governed by Rule R671-312A. Procedures applicable to commutation petitions for any person sentenced to death by a court in this state after April 26, 1992, are governed by Rule R671-312B.

(14) If the Board deems necessary and appropriate, the Board may temporarily stay an execution to fully hear a petition for commutation.

**KEY: capital punishment**  
**May 22, 2013**  
**Notice of Continuation February 15, 2013**

**Art VII, Sec 12**  
**77-19-8**  
**77-27-2**

**R671. Pardons (Board of), Administration.**  
**R671-312A. Commutation Procedures Applicable to Persons Sentenced to Death Before April 26, 1992.**  
**R671-312A-1. Scope of Rule.**

Board of Pardons and Parole Administrative Rule R671-312 governs all petitions and proceedings when a petition for commutation of a death sentence is filed by or on behalf of a person sentenced to death for a capital felony in this state. In addition to the rules of general applicability set forth in Rule R671-312, this rule R671-312A governs commutation petitions and proceedings when a death sentence commutation petition concerns a person who was sentenced to death before April 26, 1992.

**R671-312A-2. Eligibility.**

(1) A person sentenced to death, or that person's counsel, may file a petition for commutation of a death sentence no later than seven days after the sentencing court has issued a judgment of death or a warrant of execution.

(2) If any appeal of the petitioner's conviction or sentence is filed or litigated on behalf of the petitioner, including any collateral challenges or lawsuits, the commutation petition shall be filed within seven days after completion of all such appeals of the conviction or sentence and collateral challenges or lawsuits, including, but not limited to all proceedings seeking post-conviction relief, habeas corpus relief, or other proceedings for extraordinary relief.

(3) Failure of any petitioner or counsel to comply with this rule, all other Board rules, or any Board directive or order may result in the summary denial of the petition and cancellation of any scheduled hearing.

(4) Any act, omission, pleading, or other filing by a petitioner or counsel that the Board determines is meant to delay, hinder, or disrupt the Board's commutation process or proceedings may result in the summary denial of the petition and cancellation of any scheduled hearing.

**R671-312A-3. Petition Requirements.**

(1)(a) The commutation petition shall be signed by the petitioner, under oath, and filed with the Board's Administrative Coordinator at the offices of the Board no later than seven days after the sentencing court signs a warrant setting an execution date.

(b) If the petitioner is represented by counsel, the petitioner's counsel shall also sign the petition.

(c) If the petitioner is represented by counsel, counsel shall comply in all respects with Rule R671-103, Attorneys.

(d) The petitioner or counsel shall hand-deliver a copy of the petition to the Utah Attorney General or designee. Additional copies of the petition may be served in any manner calculated to accomplish actual notice to the state, and may include facsimile transmission, electronic mail, or other electronic transmission.

(2) The commutation petition shall include:

(a) the petitioner's name, date of birth, and Department of Corrections offender number;

(b) the name, address, telephone number, and e-mail address of any counsel representing the petitioner in the commutation proceeding;

(c) a certified copy of the Judgment, Conviction and Sentence for which commutation is petitioned;

(d) a certified copy of the Warrant setting the execution date applicable to the petitioner and for which commutation is petitioned;

(e) a statement specifying whether or not the conviction and sentence for which commutation is petitioned was appealed; and if so, a copy of any applicable appellate decision;

(f) a statement specifying whether or not the conviction and sentence for which commutation is petitioned was the

subject of any complaint, petition, or other court filing or litigation seeking collateral remedies, post-conviction relief, a writ of habeas corpus, or any other extraordinary relief; and if so, a copy of all applicable final orders, rulings, determinations and appellate decisions regarding such litigation;

(g) a statement of the reasons or grounds which the petitioner believes support the commutation of the death sentence; and

(h) copies of all written evidence upon which the petitioner intends to rely at the hearing along with the names of all witnesses the petitioner intends to call and a summary of their anticipated testimony.

(3) If the petitioner previously received a commutation hearing, the petition shall include a statement reciting what, if any, new, significant, and previously unavailable information exists which supports commutation and the reasons the petitioner believes this information supports a second, subsequent, or new hearing.

(4) Within seven days of receiving the petition, the State of Utah, by and through the Attorney General or designee, shall file a response to the petition. The State shall file its response to the commutation petition with the Board and hand deliver a copy of the response to the petitioner and counsel, if represented.

(a) The state's response shall include copies of all written evidence, the names of any witnesses, and a summary of the anticipated testimony upon which the State intends to rely to rebut the petitioner's claim that the sentence of death should be commuted.

(b) The Board may request either the petitioner or the state to provide additional information.

**R671-312A-4. Preliminary Determinations and Procedures.**

(1) The Board, after considering the original commutation petition and the state's response, may grant a commutation hearing or may deny the petition without further pleadings, response, hearing, or submissions.

(2) The Board shall issue an order either granting or denying a commutation hearing. The Board's order shall be delivered to the petitioner, counsel, and the state's counsel, either by mail or electronic mail.

(3) If the Board grants a commutation hearing, the Board Chair or a Board Member designated by the Chair, will:

(a) schedule and hold a pre-hearing conference with the petitioner's counsel and the state's counsel in order to schedule the commutation hearing;

(b) identify the witnesses to be called;

(c) clarify the issues to be addressed; and

(d) take any other action deemed necessary and appropriate to conduct the commutation hearing and proceedings.

**R671-312A-5. Commutation Hearing Procedures.**

(1) Pursuant to Utah Constitution, Art. VII, Section 12, and Utah Code Ann., Section 77-27-5, a commutation hearing must be held before the full Board.

(2) Notice of the commutation hearing shall be sent to:

(a) the victim's representatives;

(b) the police agency which investigated the offenses for which commutation has been petitioned;

(c) the office or agency responsible for the prosecution of the offenses for which commutation has been petitioned; and

(d) the court which originally imposed the sentence for the offenses for which commutation has been petitioned.

(3) Public notice of the commutation hearing will also be made via the Board's internet website, and the State of Utah Public Meeting and Notice website.

(4) If not otherwise called as a witness, a victim representative, as defined by Section R671-203-1, shall be



afforded the opportunity to attend the commutation hearing and to present testimony regarding the commutation petition, in accordance with, and subject to the provisions of Subsections R671-203-4 A through C, and F.

(5) A commutation hearing is not adversarial and neither party is allowed to cross-examine the other party's witnesses. However, the Board may ask questions freely of any witness, the petitioner, the petitioner's counsel, or the state's counsel.

(6) The Utah Rules of Evidence do not apply to a commutation hearing. However, all evidence and testimony sought to be introduced by the parties must be relevant to the issues to be decided by the Board. The Board, through the Board Chair, will make all final determinations regarding evidence or testimony admissibility, relevance, or exclusion.

(7) In conducting the commutation hearing:

(a) The Board Chair or designee will place all witnesses under oath and may impose a time limit on each party for presenting its case.

(b) The Board will record the commutation hearing in accordance with Subsection 77-27-8(2).

(c) Rule R671-302, News Media and Public Access to Hearings, will govern media and public access to the hearings.

(d) The Board may take any action it considers necessary and appropriate to maintain the order, decorum, and dignity of the hearing.

(e) During the commutation hearing, no person, including either party, the petitioner, any witness, either party's counsel, or any other person associated with or employed by a party or counsel, may approach any member of the Board without leave from the Chair.

**R671-312A-6. Commutation Decision.**

(1) The Board shall determine by majority decision whether to grant or deny the commutation petition.

(2) The decision of the Board granting or denying commutation following a hearing shall be delivered by mail or electronic mail to the parties and published by the Board in the same manner as other Board decisions.

(3) The decision of the Board will also be filed with the court that entered the sentence or conviction that is the subject of the commutation petition.

**KEY: capital punishment, commutation  
May 22, 2013**

**Art VII, Sec 12**

**77-19-8**

**77-27-2**

**77-27-4**

**77-27-5**

**77-27-5.5**

**77-27-8**

**77-27-9**

**77-27-9.5.**

**R671. Pardons (Board of), Administration.**  
**R671-312B. Commutation Procedures Applicable to Persons Sentenced to Death After April 26, 1992.**

**R671-312B-1. Scope of Rule.**

Board of Pardons and Parole Administrative Rule R671-312 governs all petitions and proceedings when a petition for commutation of a death sentence is filed by or on behalf of a person sentenced to death for a capital felony in this state. In addition to the rules of general applicability set forth in Rule R671-312, this rule R671-312B governs commutation petitions and proceedings when a death sentence commutation petition concerns a person who was sentenced to death after April 26, 1992.

**R671-312B-2. Eligibility.**

(1) A person sentenced to death, or that person's counsel, may file a petition for commutation of a death sentence no later than seven days after the sentencing court has issued a judgment of death or a warrant of execution.

(2) If any appeal of the petitioner's conviction or sentence is filed or litigated on behalf of the petitioner, including any collateral challenges or lawsuits, the commutation petition shall be filed within seven days after completion of all such appeals of the conviction or sentence and collateral challenges or lawsuits, including, but not limited to all proceedings seeking post-conviction relief, habeas corpus relief, or other proceedings for extraordinary relief.

(3) Failure of any petitioner or counsel to comply with this rule, all other Board rules, or any Board directive or order may result in the summary denial of the petition and cancellation of any scheduled hearing.

(4) Any act, omission, pleading, or other filing by a petitioner or counsel that the Board determines is meant to delay, hinder, or disrupt the Board's commutation process or proceedings may result in the summary denial of the petition and cancellation of any scheduled hearing.

**R671-312B-3. Petition Requirements.**

(1)(a) The commutation petition shall be signed by the petitioner, under oath, and filed with the Board's Administrative Coordinator at the offices of the Board no later than seven days after the sentencing court signs a warrant setting an execution date.

(b) If the petitioner is represented by counsel, the petitioner's counsel shall also sign the petition.

(c) If the petitioner is represented by counsel, counsel shall comply in all respects with Rule R671-103, Attorneys.

(d) The petitioner or counsel shall hand-deliver a copy of the petition to the Utah Attorney General or designee. Additional copies of the petition may be served in any manner calculated to accomplish actual notice to the state, and may include facsimile transmission, electronic mail, or other electronic transmission.

(2) The commutation petition shall include:

(a) the petitioner's name, date of birth, and Department of Corrections offender number;

(b) the name, address, telephone number, and e-mail address of any counsel representing the petitioner in the commutation proceeding;

(c) a certified copy of the Judgment, Conviction and Sentence for which commutation is petitioned;

(d) a certified copy of the Warrant setting the execution date applicable to the petitioner and for which commutation is petitioned;

(e) a statement specifying whether or not the conviction and sentence for which commutation is petitioned was appealed; and if so, a copy of any applicable appellate decision;

(f) a statement specifying whether or not the conviction and sentence for which commutation is petitioned was the

subject of any complaint, petition, or other court filing or litigation seeking collateral remedies, post-conviction relief, a writ of habeas corpus, or any other extraordinary relief; and if so, a copy of all applicable final orders, rulings, determinations, and appellate decisions regarding such litigation;

(g) a statement of the reasons or grounds which the petitioner believes support the commutation of the death sentence;

(h) a statement certifying whether any of the reasons stated as reasons or grounds for commutation have been reviewed by a court or courts of competent jurisdiction, and if reviewed by any court, a citation to the record indicating such review;

(i) a statement, if new information is alleged, explaining why the information is considered new, why the information was not or could not have been reviewed during the judicial process, and why the information is not still subject to judicial review;

(j) a statement, if legal or constitutional reasons for commutation are claimed, setting forth the reasons that the provisions of Utah Code Ann. Section 77-27-5.5(6) do not prohibit the Board from considering the purported legal or constitutional issues; and

(k) copies of all written evidence upon which the petitioner intends to rely at the hearing along with the names of all witnesses the petitioner intends to call and a summary of their anticipated testimony.

(3) If the petitioner previously received a commutation hearing, the petition shall include a statement reciting what, if any, new, significant, and previously unavailable information exists which supports commutation and the reasons the petitioner believes this information supports a second, subsequent, or new hearing.

(4) Within seven days of receiving the petition, the State of Utah, by and through the Attorney General or designee, shall file a response to the petition. The State shall file its response to the commutation petition with the Board and hand deliver a copy of the response to the petitioner and counsel, if represented.

(a) The state's response shall include copies of all written evidence, the names of any witnesses, and a summary of the anticipated testimony upon which the State intends to rely to rebut the petitioner's claim that the sentence of death should be commuted.

(b) The Board may request either the petitioner or the state to provide additional information.

**R671-312B-4. Preliminary Determinations and Procedures.**

(1) If the Board believes that it cannot consider the claims pursuant to Utah Code Ann. Section 77-27-5.5, it shall deny the petition.

(2) If the Board determines the petition does not present a substantial issue for commutation, it shall deny the petition.

(3) If the Board determines the petition presents a substantial issue for commutation, which has not, or could not have been reviewed by the judicial process, the Board may grant a commutation hearing or deny the petition without further pleadings, response, hearing, or submissions.

(4) The Board shall issue an order either granting or denying a commutation hearing. The Board's order shall be delivered to the petitioner, counsel, and the state's counsel, either by mail or electronic mail.

(5) If the Board grants a commutation hearing, the Board Chair or a Board Member designated by the Chair, will:

(a) schedule and hold a pre-hearing conference with the petitioner's counsel and the state's counsel in order to schedule the commutation hearing;

(b) identify the witnesses to be called;

(c) clarify the issues to be addressed; and

(d) take any other action deemed necessary and

appropriate to conduct the commutation hearing and proceedings.

77-27-8  
77-27-9  
77-27-9.5.

**R671-312B-5. Commutation Hearing Procedures.**

(1) Pursuant to Utah Constitution, Art. VII, Section 12, and Utah Code Ann., Section 77-27-5, a commutation hearing must be held before the full Board.

(2) Notice of the commutation hearing shall be sent to:

- (a) the victim's representatives;
- (b) the police agency which investigated the offenses for which commutation has been petitioned;
- (c) the office or agency responsible for the prosecution of the offenses for which commutation has been petitioned; and
- (d) the court which originally imposed the sentence for the offenses for which commutation has been petitioned.

(3) Notice of the commutation hearing will be provided to the public via the Board's internet website, and the State of Utah Public Meeting and Notice website.

(4) If not otherwise called as a witness, a victim representative, as defined by Rule R671-203-1, shall be afforded the opportunity to attend the commutation hearing, and to present testimony regarding the commutation of the death sentence, in accordance with, and subject to the provisions of Subsections R671-203-4 A through C, and F.

(5) A commutation hearing is not adversarial and neither party is allowed to cross-examine the other party's witnesses. However, the Board may ask questions freely of any witness, the petitioner, the petitioner's counsel, or the state's counsel.

(6) The Utah Rules of Evidence do not apply to a commutation hearing. However, all evidence and testimony sought to be introduced by the parties must be relevant to the issues to be decided by the Board. The Board, through the Board Chair, will make all final determinations regarding evidence or testimony admissibility, relevance, or exclusion.

(7) In conducting the commutation hearing:

(a) The Board Chair or designee will place all witnesses under oath and may impose a time limit on each side for presenting its case.

(b) The Board will record the commutation hearing in accordance with Subsection 77-27-8(2).

(c) Rule R671-302, News Media and Public Access to Hearings, will govern media and public access to the hearings.

(d) The Board may take any action it considers necessary and appropriate to maintain the order, decorum, and dignity of the hearing.

(e) During the commutation hearing, no person, including either party, the petitioner, any witness, either party's counsel or any other person associated with or employed by a party or counsel, may approach any member of the Board without leave from the Chair.

**R671-312B-6. Commutation Decision.**

(1) The Board shall determine by majority decision whether to grant or deny the commutation petition.

(2) The decision of the Board granting or denying commutation following a hearing shall be delivered by mail or electronic mail to the parties and published by the Board in the same manner as other Board decisions.

(3) The decision of the Board will also be filed with the court that entered the sentence or conviction that is the subject of the commutation petition.

**KEY: capital punishment, commutation**  
May 22, 2013

Art VII, Sec 12  
77-19-8  
77-27-2  
77-27-4  
77-27-5  
77-27-5.5

**R671. Pardons (Board of), Administration.****R671-315. Pardons.**77-27-9  
Art VII Sec 12**R671-315-1. Pardons.**

A pardon is an act of grace that forgives a criminal conviction and restores the rights and privileges forfeited by or because of the criminal conviction. A pardon releases an offender from the entire punishment prescribed for a criminal offense and from disabilities that are a consequence of the criminal conviction. A pardon reinstates any civil rights lost as a consequence of conviction or punishment for a criminal offense.

A. The Board may consider an application for a pardon from any individual who has been convicted of an offense in the state of Utah, after the applicant has exhausted all judicial remedies, including expungement, in an effort to ameliorate the effects of the conviction. The Board generally will accept and consider a pardon application only after at least five years has passed since the sentence for the conviction has been terminated or expired.

1. Any person seeking a pardon from the Board must complete and file, to the Board's satisfaction, an application in a form approved by the Board.

2. In addition to the completed application, Board staff shall obtain and provide relevant information that shall include but not be limited to:

(a) all police reports concerning the conviction for which the applicant is seeking a pardon;

(b) all pre- or post- sentence reports prepared in connection with any sentence served in jail or prison, and for any conviction for which the applicant is seeking a pardon;

(c) the applicant's inmate files;

(d) a recent BCI report, NCIC report, and III report concerning the applicant;

(f) the applicant's employment history;

(g) verification that all imposed restitution, fines, fees, or surcharges have been paid in full; and

(h) verification that the applicant completed therapy programs ordered by any court or by the Board.

2. Board staff shall summarize this information and provide the application and additional information to the Board within 60 days from the date the completed application and all required information and documentation was received. The Board may request additional information from staff or from the applicant.

3. The Board shall consider the pardon application and all available information relevant to it and vote to grant or deny a hearing.

(a) If a pardon hearing is granted the hearing should be held within 60 days, or as soon thereafter as practicable, of the Board's decision to grant a pardon hearing.

4. The Board shall publish notice of the pardon hearing on its web site and on the Utah Public Notice web site.

B. Upon scheduling a pardon hearing, notice shall be given to victims of record if they can be located, the chief law enforcement officer of the arresting agency, the presiding judge where the conviction was entered, and the County, District, or City Attorney where the case was prosecuted.

C. The Board may grant a conditional pardon or an unconditional pardon. The petitioner will be notified in writing of the results as soon as practicable.

D. The Board may grant or deny a pardon by majority vote. Pardon decisions are final and are not subject to judicial review.

E. The Board may dispense with any requirement created by this rule for good cause.

**KEY: pardons**

May 22, 2013

Notice of Continuation January 31, 2012

77-27-1 et seq.

77-27-5

**R671. Pardons (Board of), Administration.****R671-509. Parole Progress / Violation Reports.****R671-509-1. Progress / Violation Reports.**

(1) A parole agent or other representative of the Department of Corrections shall submit a parole progress / violation report to the Board when an incident occurs that may constitute cause to modify the conditions of or revoke parole, including:

- a. an arrest or conviction of any misdemeanor or felony;
- b. significant violations of the general or special conditions of parole; and
- c. an incident which results in the parole agent placing the parolee in jail, under arrest, in detainment, or other conditions or incidents which result in the parolee being denied liberty.

(2) These reported parole violations shall be investigated and all incident reports along with a recommended course of action shall be submitted to the Board within 72 hours of confinement or, if the parolee is not confined, detained or arrested, within seven days from the date of the violation.

(3) The report shall advise the Board of a parolee's adjustment to parole and provide reasons for modification of the parole agreement conditions. Police reports, court orders, and waivers of personal appearance from parolees shall be attached when applicable.

**KEY: parole, incidents**

**May 22, 2013**

**Notice of Continuation February 15, 2013**

**77-27-11**

**R671. Pardons (Board of), Administration.****R671-510. Evidence for Issuance of Warrants.****R671-510-1. Evidence for Issuance of Warrants.**

(1) Board Warrants shall be issued only upon a showing that there is probable cause to believe that a parole violation has occurred.

(2) A certified Warrant Request shall be submitted by the parole agent setting forth facts that establish probable cause to believe that the parolee committed specific parole violations.

(a) The warrant request may be accompanied by supporting documentation such as police reports, incident reports, and judgment or commitment orders.

(3) Upon approval of the request by the Board, a Warrant of Arrest shall be issued to arrest, detain, and return the parolee to custody.

**R671-510-2. Warrant Request.**

Warrant requests shall include:

- a. the name of the parolee, offender number, and date of birth;
- b. the nature of the allegations that justify possible revocation of parole;
- c. the elements substantiating probable cause for each allegation which should include how, when, where, and what occurred;
- d. the condition of the parole agreement that the parolee is alleged to have violated, along with the date and location where the violation occurred;
- e. the legible name, signature, and telephone number of the parole officer and supervisor; and
- f. under separate or additional cover, contact information and phone numbers for the reporting agent.

**R671-510-3. Parole Information.**

The agent shall, on a form approved by the Board, provide the Board with the following information:

- (a) the parolee's risk/need assessment level at the time of the current violation and a summary of the areas of concern;
- (b) the number of prior paroles;
- (c) the parolee's parole violation history;
- (d) the parolee's custody status;
- (e) financial obligation details regarding the parolee;
- (f) the parolee's address or living arrangements;
- (g) the parolee's treatment summary;
- (h) the results of any drug or alcohol tests;
- (i) any new referred offenses or new criminal charges;
- (j) any aggravating factors concerning the parolee;
- (k) any mitigating factors concerning the parolee; and
- (l) a summary of the parolee's current parole performance.

**R671-510-4. Update Information.**

(1) Once the parolee is detained on a Board warrant, the agent shall track the case and keep the Board informed of any changes in status or circumstance of the allegations or parolee.

(2) No less than seven days prior to the hearing, the agent shall send the Board all updated information and any amended allegations and recommendations. The agent shall provide the offender with a copy of the updated information no less than seven days prior to the hearing.

(3) At its discretion, the Board may dismiss the allegations if the updated information is not received in a timely manner.

**KEY: warrants, parole, probable cause**  
**May 22, 2013**  
**Notice of Continuation February 15, 2013**

77-27-11

**R671. Pardons (Board of), Administration.**

**R671-512. Execution of the Warrant.**

**R671-512-1. Execution of the Warrant.**

(1) When an agent executes a Board warrant, the agent shall provide the parolee with copies of the warrant, the warrant request/parole violation report, and a form with which the parolee may challenge the evidence or allegations which were used to show probable cause for the warrant.

(2) If applicable, the agent shall provide an affidavit of waiver and pleas of guilt, along with a time waiver.

(3) If the parolee refuses to accept any of the aforementioned documents, the agent shall document the refusal of service on the Acknowledgement of Receipt form.

**KEY: parole, warrants**

**May 22, 2013**

**Notice of Continuation February 15, 2013**

77-27-11

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77-27-29

77-27-30

**R671. Pardons (Board of), Administration.****R671-513. Expedited Determination of Parolee Challenge to Probable Cause.****R671-513-1. Expedited Determination of Parolee Challenge to Probable Cause.**

1. If a parolee who is returned to custody for a parole violation wishes to challenge the probable cause statements or evidence upon which the warrant request was based, the parolee shall submit the challenge in writing, accompanied by evidence supporting the challenge, within seven days of arrest or detention on the warrant.

2. At least one member of the Board shall review all the evidence in support of the parole violation allegations, as well as the challenge and evidence submitted in support of the challenge, and decide whether probable cause for the violation allegations continues to exist.

3. The parolee also shall inform the Board and the parole agent in writing if any evidence relating to possible defenses to the alleged parole violation exists and must be preserved. The request to preserve evidence shall be in writing and sufficiently detailed so that the parole agent can easily identify and locate the evidence to be preserved.

**R671-513-2. Review of Evidence.**

Review of the parolee's evidence shall occur no later than five days after the parolee has submitted a challenge to probable cause. If the reviewing Board member decides that the original probable cause determination was correct, the Board member shall deny the parolee's challenge, and parole violation proceedings will continue in accordance with applicable rules. If the reviewing Board member decides that the probable cause determination was incorrect, or that probable cause to believe a violation occurred no longer exists, the case shall be routed to the Board for deliberation. If a majority of the Board believes the parolee's evidence negates the finding of probable cause, the warrant shall be withdrawn and the parolee reinstated on parole. Time spent incarcerated pursuant to a warrant which is withdrawn constitutes service of the parolee's sentence and parole term.

**KEY: parole, warrant, hearing****May 22, 2013****Notice of Continuation February 15, 2013**

77-27-9(4)

77-27-11

77-27-27

77-27-28

77-27-29

77-27-30



**R671. Pardons (Board of), Administration.****R671-514. Waiver and Pleas of Guilt.****R671-514-1. Waiver and Pleas of Guilt.**

After executing a Board warrant, the agent shall inform the parolee of the opportunity to plead guilty to any or all of the alleged parole violations and that such a plea waives the right to a further hearing on any allegation admitted in the waiver.

**R671-514-2. Guilty Pleas.**

If a parolee wishes to plead guilty, the agent shall provide the parolee with an Affidavit of Waiver and Plea of Guilt form. If the parolee is functionally illiterate, or suffers from a mental disability, the agent shall explain the contents of the affidavit and waiver. If the agent believes the parolee is unable to understand the affidavit and waiver and appreciate the consequences of signing it for any other reason, the agent shall not execute the waiver. The agent shall promptly inform the Board, which may assign counsel to the parolee or take any other action that will assist the parolee understand the parolee's rights.

**R671-514-3. Multiple Pleas.**

A parolee may plead guilty to some of the allegations and plead not guilty to others. The Board may decide to dismiss the allegations to which the parolee pled not guilty and enter a disposition based solely on the pleas of guilt. If the Board chooses to make a disposition based solely on pleas of guilt, it need not hold either an evidentiary or parole revocation hearing. However, at its discretion, the Board may schedule a hearing to interview the parolee or take victim testimony, if the Board determines that doing so would assist the Board in its decision.

**R671-514-4. Entry of Pleas at Any Time.**

A parolee may enter a plea of guilt at any time. If the parolee pleads guilty at a revocation or evidentiary hearing, the hearing official shall explain to the parolee the rights being waived and shall receive an admission and plea on the record.

**R671-514-5. Acceptance of Pleas.**

If the parolee pleads guilty to all the allegations, the Board may accept the plea(s) and take any action it considers appropriate for disposition. The Board need not hold a parole revocation or evidentiary hearing. However, the Board may schedule a hearing to interview the parolee or take victim testimony if the Board determines that doing so would assist the Board in its decision.

**KEY: parole, allegations, pleas**

**May 22, 2013**

**Notice of Continuation February 15, 2013**

**77-27-9(4)**

**77-27-11**

**R671. Pardons (Board of), Administration.****R671-515. Timeliness of Parole Revocation Hearings.****R671-515-1. Timeliness of Parole Revocation Hearings.**

A Parole Revocation Hearing shall be conducted within 30 days after detention in a state prison, unless the parolee expressly waives the hearing in writing, or unless the Board finds good cause to continue the hearing.

**R671-515-2. Detained in Another State.**

If a parolee is detained in another state on a Utah Board warrant or on a new criminal offense, a parole revocation hearing should be conducted within 30 days after the parolee's return to the State of Utah.

**R671-515-3. Exceed Time Period for Good Cause.**

The Board may for good cause upon a motion by the parolee, the Department of Corrections, or upon its own motion, exceed the time period established by this rule. The time periods established by this rule are discretionary, not mandatory. A motion to dismiss a warrant or revocation proceeding based on failure to meet time limits will be granted only if the failure has substantially prejudiced the parolee's defense.

**KEY: parole, timeliness, good cause**

**May 22, 2013**

**Notice of Continuation February 15, 2013**

**77-27-9(4)**

**77-27-11**

**R671. Pardons (Board of), Administration.****R671-516. Parole Revocation Hearings.****R671-516-1. Allegations.**

At the hearing, the hearing official shall: (a) inform the parolee of the parole violation allegations; (b) review the parolee's rights as to any guilty or no-contest pleas that may be entered; and (c) take the parolee's pleas on the record.

**R671-516-2. Proceedings Upon Plea of Guilt or No-Contest.**

If the parolee pleads guilty or no-contest to any of the allegations, the hearing official may conduct further inquiry or proceedings in order to reach a disposition and recommendation regarding the parole violation. The parolee may present any reasons for mitigation. If present, the parole agent or representative of the Department of Corrections may discuss reasons for aggravation or mitigation and recommend a disposition. If not present, the parole agent or representative of the Department of Corrections may make such submissions and recommendations in writing.

**R671-516-3. Not Guilty Pleas.**

If the parolee pleads not guilty to any allegation, the Board shall either schedule an evidentiary hearing on the allegation or dismiss it as soon as practical. See also Utah Admin. Code R671-514, Waiver and Pleas of Guilt.

**R671-516-4. Insufficient Evidence.**

If, upon receiving a plea of not guilty to a parole violation allegation, the hearing official believes there is insufficient evidence to justify an evidentiary hearing, the matter shall be promptly routed to the Board. If a majority of the Board agrees, the allegation shall be dismissed. If all allegations are dismissed, the Board's warrant shall be vacated and the parolee released from custody and reinstated on parole.

**KEY: parole, revocation, hearings****May 22, 2013****Notice of Continuation February 15, 2013**

77-27-5

77-27-9

77-27-11

**R671. Pardons (Board of), Administration.****R671-517. Evidentiary Hearings and Proceedings.****R671-517-1. Evidentiary Hearings and Proceedings.**

When a parolee has entered a not guilty plea to a parole violation allegation and the Board wishes to consider the allegation, the Board shall hold an evidentiary hearing unless the parolee has been convicted of a criminal charge and revocation is ordered pursuant to Utah R. Admin. P. R671-518.

**R671-517-2. Confidentiality.**

All hearings are open to the public, unless the Board decides that confidential information must be discussed. Only those portions of the hearing during which confidential information is discussed may be closed. See Utah R. Admin. R. R671-520.

**R671-517-3. Notification.**

The Board shall notify all parties of the time, date, and place of the hearing and of the disputed allegations. The parolee shall be notified of the right to be represented by an attorney of choice at the parolee's own expense, or such counsel as may be provided by the Board. The parolee shall also be informed of the right to confront and cross examine witnesses, absent a showing of good cause for not allowing the confrontation, and the right to present rebuttal evidence.

**R671-517-4. Anticipated Witnesses, Documents and Other Evidence.**

At least ten days prior to the hearing, unless otherwise directed by the Board, each party shall provide to the opposing party and to the Board a list of anticipated witnesses, documents, and other evidence to be submitted at the hearing, together with a summary of the relevance of each anticipated piece of evidence. Failure to comply with this rule may result in sanctions including, but not limited to, exclusion of the non-disclosed witnesses and evidence.

**R671-517-5. Single Hearing Official.**

An evidentiary hearing may be presided over by a single Board member or hearing officer as the Board Chair designates. The hearing official may, sua sponte, or upon motion of either party, exclude evidence that is irrelevant, unduly repetitious, or privileged. The hearing official may take judicial notice of undisputed facts and may rule on motions made prior to or during the hearing.

**R671-517-6. Department of Corrections Bears Burden of Proof.**

The Department of Corrections bears the burden of establishing a parole violation by a preponderance of the evidence. All testimony shall be given under oath. The Utah Rules of Evidence do not apply. Hearsay evidence is admissible and shall be given such weight as the hearing official considers appropriate; however, no finding of guilt shall be based solely on hearsay evidence, except where such evidence would be otherwise permitted in a court of law. Exclusionary rules and case law do not apply to parole revocation hearings.

**R671-517-7. Opening Statements.**

At the hearing, each party may make a brief opening statement, beginning with the State. After opening statements, the State has the burden of presenting evidence of parole violation. Upon conclusion of the State's case, the parolee may present evidence in response. If the parolee, as a defense, raises issues not adequately addressed by the State's case in chief, the hearing official may allow the State to present rebuttal evidence in response. Upon conclusion of all evidence, the hearing official may allow each party to make a brief closing argument.

**R671-517-8. Written Submissions.**

Any brief or legal memorandum submitted to the Board as part of an evidentiary hearing shall be filed at least ten calendar days prior to the hearing, and shall include proof of service on the opposing party. The opposing party shall file any written response no later than three calendar days prior to the hearing. Written submissions shall be no longer than ten double-spaced, typed pages, excluding exhibits. Either party may petition the hearing official for permission to exceed these length requirements or shorten these time requirements, and the decision whether to allow this shall rest in the sole discretion of the hearing official.

**R671-517-9. Continuances.**

1. All requests to continue a scheduled evidentiary hearing shall: (a) be submitted to the board in writing, at least seven calendar days prior to the scheduled hearing; and (b) contain either a stipulation of the parties, or a statement of why there is an extraordinary need for continuance and why such a continuance will not prejudice the interests of the other party.

2. The decision to grant or deny a continuance rests in the sole discretion of the hearing official.

3. In the event a continuance is granted, each party shall be responsible for notifying its own witnesses.

**KEY: parole, evidentiary, hearings****May 22, 2013****Notice of Continuation February 15, 2013****77-27-5****77-27-9****77-27-11**

**R671. Pardons (Board of), Administration.****R671-519. Proceedings When Criminal Charges Result in Acquittal.****R671-519-1. Proceedings When Criminal Charges Result in Acquittal.**

1. If the basis for a parole revocation proceeding is a criminal charge of which the parolee is later acquitted, the parole agent or representative of the State may submit as its sole evidence the transcript from the criminal trial, which shall be disclosed to the parolee.

2. The parolee may submit a response to the trial transcript submission or otherwise submit any information to supplement the record.

**R671-519-2. Evidence Explanation.**

Any party may file memoranda explaining whether the evidence provided at the trial was sufficient, under a preponderance standard, for finding a parole violation. Such memoranda shall not exceed ten, double-spaced, typed pages in length (excluding exhibits), except in cases where the Board has granted leave to exceed this limit.

**R671-519-3. Personal Appearance.**

A personal appearance hearing is not required for purposes of arguing the evidence. However, if, after reviewing the transcripts and memoranda, the hearing official concludes that parole has been violated, a personal appearance hearing may be held for purposes of determining disposition and hearing victim testimony.

**KEY: parole, acquit, hearings**

May 22, 2013

Notice of Continuation February 15, 2013

77-27-5

77-27-9

77-27-11

**R671. Pardons (Board of), Administration.****R671-520. Treatment of Confidential Testimony.****R671-520-1. Treatment of Confidential Testimony.**

1. Confidential testimony shall be admitted at an evidentiary hearing on an alleged parole violation.

2. The State shall make a specific, written preliminary showing of good cause for the testimony to be received in camera.

3. Upon a finding of good cause for confidentiality, the Board shall conduct an in-camera inspection of the witness, the proffered testimony, and any supporting testimony to determine:

a. the credibility and veracity of the witness;

b. the overall reliability of the testimony itself; and

c. whether keeping the information confidential will substantially impair the parolee's due process rights to notice of the evidence or to confront and cross-examine adverse witnesses.

4. If the Board is satisfied with the three aspects in Subsection (3), it shall receive the testimony and give it whatever weight it considers appropriate. An electronic record shall be made of this in-camera proceeding.

5. A summary of the testimony taken in-camera shall be prepared for disclosure to the parolee, informing the parolee of the general nature of the testimony received in-camera but without defeating the good cause found by the Board for treating the information confidentially. This summary shall be presented on the record at the public evidentiary hearing and the parolee shall be given an opportunity to respond.

**KEY: parole, confidential testimony, hearings**

**May 22, 2013**

**Notice of Continuation February 15, 2013**

77-27-5

77-27-9

77-27-11

**R686. Professional Practices Advisory Commission, Administration.****R686-101. Alcohol Related Offenses.****R686-101-1. Definitions.**

A. "Commission" means the Professional Practices Advisory Commission.

B. "Alcohol related offense" means:

- (1) driving while intoxicated;
- (2) alcohol-related reckless driving;
- (3) public intoxication;
- (4) driving with an open container;
- (5) unlawful sale or supply of alcohol;
- (6) unlawful purchase, possession, or consumption of alcohol;

(7) unlawful permitting of consumption of alcohol by minors;

- (8) unlawful consumption of alcohol in public places.

C. Certificated educator means an individual issued a certificate by the State Board of Education authorizing the certificate-holder to work in the Utah public school system.

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

**R686-101-2. Authority and Purpose.**

A. This rule is authorized by Section 53A-6-306(1)(a) which directs the Commission to adopt rules to carry out its responsibilities under the law.

B. The purpose of this rule is to establish procedures for disciplining educators regarding alcohol related offenses.

**R686-101-3. Action by the Commission if a Certificated Educator Has Been Convicted of an Alcohol Related Offense.**

A. If as a result of a background check, it is discovered that a certificated educator has been convicted of an alcohol related offense in the previous five years, the following minimum conditions shall apply:

(1) One conviction--a letter shall be sent to the educator informing the educator of the provisions of this rule;

(2) Two convictions--a letter shall be sent to the educator informing the educator of the provisions of this rule and requiring documentation of clinical treatment following the second conviction. If the educator is currently employed, the Commission shall also send a letter of reprimand to the educator regarding the convictions with a copy to the educator's employer.

(3) Three convictions--the Commission shall recommend to the Board suspension of the educator's certificate.

B. This rule does not preclude more serious or additional action by the Commission against an educator for other related or unrelated offenses.

**R686-101-4. Commission Action Towards an Individual Who Does Not Hold Certification.**

If as a result of a background check, it is discovered that an individual inquiring about teacher certification, seeking information about teacher certification, or placed in a public school for a variety of purposes has been convicted of an alcohol related offense within five years of the date of the background check, the following minimum conditions shall apply:

A. One conviction--the individual shall be denied approval for Commission clearance for a period of one year from the date of the arrest;

B. Two convictions--the individual shall be denied approval for Commission clearance for a period of two years from the date of the most recent arrest and the applicant shall present documentation of clinical treatment before Commission clearance shall be considered; and

C. Three convictions--the Commission shall recommend denial of clearance.

**R686-101-5. Previous Clearance.**

If the applicant or certificated educator presents documentation to the Commission that recently discovered conviction(s) have previously been addressed by the Commission, the Commission need not reconsider the conviction(s) absent additional convictions of the applicant or certificated educator.

**KEY: teachers, disciplinary actions**  
**August 15, 1998**  
**Notice of Continuation May 16, 2013**

**53A-6-306(1)(a)**

**R686. Professional Practices Advisory Commission, Administration.****R686-102. Drug Related Offenses.****R686-102-1. Definitions.**

A. "Commission" means the Professional Practices Advisory Commission.

B. "Drug related offense" means any offense designated in Section 58-37 through 37e.

C. "Drug" means any controlled substance designated as such in Section 58-37-4.

D. "Certificated educator" means an individual issued a certificate by the State Board of Education authorizing the certificate-holder to work in the Utah public school system.

E. "Conviction" means the final disposition of a judicial action for a drug related offense defined under 58-37 through 37e. It includes no contest pleas, pleas in abeyance, expunged convictions and drug related offenses that are plead down to lesser convictions.

**R686-102-2. Authority and Purpose.**

A. This rule is authorized by Section 53A-6-306(1)(a) which directs the Commission to adopt rules to carry out its responsibilities under the law.

B. The purpose of this rule is to establish procedures for disciplining educators regarding drug related offenses.

**R686-102-3. Action by the Commission if a Certificated Educator Has Been Convicted of a Drug Related Offense.**

A. If as a result of a background check, it is discovered that a certificated educator has been convicted of a drug related offense in the previous ten years, the following minimum conditions shall apply:

(1) One conviction--a letter shall be sent to the educator informing the educator of the provisions of this rule;

(2) Two convictions--a letter shall be sent to the educator informing the educator of the provisions of this rule and requiring documentation of clinical treatment following the second conviction.

(a) If the most recent conviction was more than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical treatment, the Commission shall send a letter of warning to the educator.

(b) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical treatment, the Commission shall send a letter of reprimand to the educator and a letter to the district with notice of treatment.

(c) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides no documentation of clinical treatment, the Commission shall send a letter of reprimand to the educator and a copy of the letter of reprimand to the educator's employer and the Commission may initiate an investigation of the educator based upon the drug offenses.

(3) Three convictions--a letter shall be sent to the educator informing the educator of the provisions of this rule and requiring documentation of clinical treatment following the third conviction.

(a) If the most recent conviction was more than five years prior to the discovery of the conviction(s) and the educator provides documentation of clinical treatment, the Commission shall send a letter of warning to the educator.

(b) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator provides documentation of clinical treatment, the Commission shall send a letter of reprimand to the educator and send a copy of the letter of reprimand to the educator's employer.

(c) If the most recent conviction was less than three years prior to the discovery of the conviction(s) and the educator

provides no documentation of clinical treatment, the Commission shall recommend suspension of the educator's certificate to the Board.

B. This rule does not preclude more serious or additional action by the Commission against an educator for other related or unrelated offenses.

**R686-102-4. Commission Action Towards an Individual Who Does Not Hold Certification.**

If as a result of a background check, it is discovered that an individual inquiring about teacher certification, seeking information about teacher certification, or placed in a public school for a variety of purposes has been convicted of a drug related offense within ten years of the date of the background check, the following minimum conditions shall apply:

A. One conviction--the individual shall be denied approval of Commission clearance for a period of one year from the date of the arrest.

B. Two convictions--the individual shall be denied approval of Commission clearance for a period of three years from the date of the most recent arrest and the applicant shall present documentation of clinical treatment before Commission clearance shall be considered.

C. Three convictions--the individual shall be denied approval of Commission clearance for a period of five years from the date of the most recent arrest. The Commission shall require the applicant to present documentation of clinical treatment and may recommend denial of clearance.

**R686-102-5. Previous Clearance.**

If the applicant or certificated educator presents documentation to the Commission that recently discovered conviction(s) have previously been addressed by the Commission, the Commission need not reconsider the conviction(s) absent additional convictions of the applicant or certificated educator.

**KEY: teachers, disciplinary actions  
August 15, 1998  
Notice of Continuation May 16, 2013**

**53A-6-306(1)(a)**



**R698. Public Safety, Administration.****R698-7. Emergency Vehicles.****R698-7-1. Purpose.**

This rule explains how vehicles can be designated as "authorized emergency vehicles." Authorized emergency vehicles shall be referred to in this rule as "emergency vehicles."

**R698-7-2. Authority.**

This rule is authorized by Section 41-6a-310 and Subsection 53-1-108(1)(c).

**R698-7-3. Definitions.**

As used in this rule:

(1) "Emergency" or "emergencies" means a situation in which property or human life is in jeopardy and the prompt summoning of aid is essential to the preservation of human life or property and justifies the operator of a vehicle to exercise the driving privileges in Subsection 41-6a-212(2).

(2) "Industrial ambulance" means an ambulance that is owned and operated by a private company for the sole benefit of its employees.

**R698-7-4. Publicly Owned Emergency Vehicles.**

(1) A publicly owned fire department vehicle, or publicly owned police vehicle can be designated as an emergency vehicle if the vehicle:

- (a) responds to emergencies;
- (b) is in compliance with the emergency lights and siren requirements of Title 41, Chapter 6a;
- (c) is properly insured; and
- (d) is approved as an emergency vehicle by the political subdivision that owns it.

**R698-7-5. Privately Owned Emergency Vehicles.**

Privately owned vehicles can be designated as emergency vehicles by meeting the requirements set forth in this rule.

**R698-7-6. Categories of Privately Owned Emergency Vehicles.**

(1) Privately owned emergency vehicles shall be divided into the following categories:

- (a) private fire response vehicles;
- (b) private police vehicles;
- (c) private search and rescue vehicles; and
- (d) private ambulance vehicles.

**R698-7-7. Private Fire Response Vehicles, Private Police Vehicles, and Private Search and Rescue Vehicles.**

(1) A private fire response vehicle, private police vehicle, or private search and rescue vehicle can be designated as an emergency vehicle if:

- (a) the vehicle is used on a part time basis to assist a governmental agency in responding to emergencies;
- (b) the owner of the vehicle receives written authorization to operate the vehicle as an emergency vehicle from the sheriff, chief of police, or fire chief of the governmental agency that the vehicle is authorized to assist;
- (c) the vehicle is in compliance with the emergency lights and siren requirements of Title 41, Chapter 6a;
- (d) the vehicle is licensed and has a current safety inspection certificate; and
- (e) the governmental agency that authorizes the vehicle to operate as an emergency vehicle has adopted written policies regarding the operation of emergency vehicles in their jurisdiction. The policies shall require compliance with the statutory restrictions and requirements of Title 41, Chapter 6a.

**R698-7-8. Ambulance Vehicles.**

- (1) A publicly owned or privately owned ambulance

vehicle can be designated as an emergency vehicle if the vehicle is licensed by the Utah Department of Health, Bureau of Emergency Medical Services to provide emergency and non-emergency ambulance services under Title 26, Chapter 8a.

(2) An industrial ambulance vehicle can be designated as an emergency vehicle if:

- (a) the vehicle is in compliance with the emergency lights and siren requirements of Title 41, Chapter 6a;
- (b) the vehicle is properly insured;
- (c) the vehicle is licensed and has a current safety inspection certificate; and
- (d) the company that owns the vehicle receives written authorization to operate the vehicle as an emergency vehicle from:
  - (i) the sheriff of the county in which the company is located; and
  - (ii) the chief of police of the city, if any, in which the company is located.

**KEY: emergency vehicle**

**September 11, 1997**

**Notice of Continuation April 22, 2013**

**41-6a-310**

**53-1-108(1)(c)**

**R708. Public Safety, Driver License.****R708-30. Motorcycle Rider Training Schools.****R708-30-1. Purpose.**

The purpose of this rule is to assist the Driver License Division in administering the Motorcycle Rider Education Program set forth in Title 53, Chapter 3, Part 9, the Motorcycle Rider Education Act.

**R708-30-2. Authority.**

This rule is authorized by Subsection 53-3-903(1)(b).

**R708-30-3. Definitions.**

(1) "Agreement" means a written agreement between the Driver License Division, and a school, institution, or individual to provide motorcycle rider training courses for beginner and experienced riders and courses for instructors.

(2) "Division" means the Driver License Division.

(3) "Practice riding" means that portion of instruction during which the student actually rides a motorcycle.

(4) "Program coordinator" means the division representative appointed to oversee and direct the Motorcycle Rider Education Program.

(5) "School" means an institution owned and operated by an individual, partnership or corporation, public or private, licensed to do business in the State of Utah, for the purpose of providing classroom and practical motorcycle rider training.

**R708-30-4. Application.**

(1) An application for an original or renewal agreement shall be made on a form furnished by the division and shall include the following:

- (a) name of the school;
- (b) address of the school;
- (c) names of all proposed instructors; and
- (d) addresses of all instruction sites.

(2) Upon receipt of the application, the division shall schedule an inspection of the school sites, equipment, instructional materials, course curriculum, class schedules, and shall determine eligibility of proposed instructors.

(3) Once the application has been completed and approved, the division and the school may enter into an agreement allowing the school to conduct motorcycle rider training.

**R708-30-5. Agreement.**

(1) Once the school has executed an agreement with the division to provide training for beginner and experienced motorcycle riders, the school may begin to conduct motorcycle rider training.

(2) The agreement shall allow the school to provide training and instruction for motorcycle riders, but shall not allow the school to bind or obligate the division in any way to issue a motorcycle endorsement or license.

(3) Upon execution of the agreement, the school and all approved instructors will be placed on a list provided to all driver license offices. A certificate of approval will be mailed to the school and will indicate the expiration date of the agreement.

(4) The agreement shall expire on July 1 of each year. No later than three months prior to expiration of the agreement, the school may submit a renewal application to the division.

**R708-30-6. Standards.**

(1) To be approved, a school shall meet the following standards:

(a) make application to and enter into an agreement with the division;

(b) maintain a place of business with at least one permanent occupied structure within the State;

(c) ensure the place of business meets all requirements of State law and local ordinances;

(d) have at least one qualified and approved instructor;

(e) provide helmets, motorcycles and range equipment for practice riding;

(f) have emergency equipment readily available. The emergency equipment shall include an adequate fire extinguisher and a fully stocked, industrial-quality first-aid kit;

(g) have written procedures for responding to accidents, including emergency telephone numbers, and a telephone within easy access during any range training;

(h) furnish the division with written permission to use any facilities not owned or leased by the school. Specific days of use and intended use of the facilities must be indicated, e.g., days: Thursday, Saturday, Sunday, etc.; and uses: classroom instruction and operation of motorcycles on property;

(i) request approval from the division for any proposed changes in instructor or administrative procedures;

(j) make record of and report to the division within 48 hours any accident or injuries occurring during any instruction;

(k) provide rider training at remote sites only upon approval and/or at the request of the division;

(l) not engage the service of an employee of the division as an instructor, agent or employee of the school; and

(m) maintain for five years, and present upon request of the division, verification that all instructors are certified, and attendance and completion records are accurate.

**R708-30-7. Certificate of Approval.**

Upon approval, the division will issue a certificate of approval to the school, each branch office, and/or mobile team. The certificate will be conspicuously displayed at all times in the school's permanent place of business and will be displayed during instruction at branch offices and mobile training sites.

**R708-30-8. Inspections.**

(1) The division may:

(a) conduct random examinations, inspections, and audits without prior notice during normal business hours; and

(b) conduct on-site inspections annually and at any other time deemed necessary by the division.

(2) A person designated by the school shall accompany the division representative while performing on-site inspections. On-site inspections may include:

(a) ensuring that all requirements specified in this rule are met;

(b) examining school records;

(c) ensuring that practice riding procedures comply with criteria established by the Motorcycle Safety Foundation or another nationally recognized motorcycle safety instructor certifying body and the division; and

(d) reviewing any other items the division may deem necessary to ensure that all requirements specified in the agreement are met.

(3) Random checks may be made by any designated division representative to verify compliance with course instruction standards. Checks by the division may include:

(a) having a division representative take a course administered by the school; and

(b) having the division administer practical skills tests to a sample of riders who have completed the course of instruction presented by the school to determine if the results of the tests administered by the division are comparable to the results submitted by the school.

**R708-30-9. Courses.**

(1) Course curriculum will be conducted in accordance with this rule. The division may provide supplemental instruction as necessary. Such instruction may include

information on course content, practice riding, instructor and administrative procedures and/or changes.

(2) Courses shall be conducted at locations approved by the division.

(3) Courses shall be conducted using division approved content, forms, scoring procedures and equipment.

(4) Courses conducted by mobile teams at remote sites and branches shall be held to the same standards as required at permanent locations.

**R708-30-10. Certificate of Course Completion.**

(1) The school will provide a certificate of course completion to verify rider competency and successful completion of the prescribed course of instruction.

(2) The certificate of course completion shall include the following:

- (a) applicant's name;
- (b) title of the course completed;
- (c) date of course completion; and
- (d) authorized signature from the school.

(3) Upon completion of a beginner class from an approved school, the division may waive the practical skills portion of the application for motorcycle license or endorsement to a current driver license.

(4) Riders must submit to the division the certificate of course completion of a beginner class within six months of the date of course completion to be eligible for waiver of the practical skills test. The rider will be restricted based on the cc size of the motorcycle tested on. The instructor shall write the engine size in cc format on the certificate.

(5) Upon successful completion of the class from an approved school, the division may waive the two month motorcycle learner permit holding period for riders under the age of 19.

**R708-30-11. Insurance Coverage.**

(1) The division shall obtain through a commercial insurance agency the required insurance coverage for all schools involved in providing motorcycle rider training.

(2) Each school shall submit to the division a list identifying all motorcycles used for instruction purposes.

(3) Motorcycles used by the schools for instruction purposes shall be covered by insurance obtained by the division and will be used only in approved rider training courses and only on division approved ranges.

**R708-30-12. Instructors.**

(1) Instructors approved by the division to conduct motorcycle rider training shall:

(a) furnish proof of completed training and certification provided by the Motorcycle Safety Foundation or another nationally recognized motorcycle safety instruction certifying organization;

(b) instruct only those classes which have been approved by the division;

(c) instruct only those students who are at least 16 years of age and have completed an approved driver education course;

(d) except as set forth in paragraph two of this section, have a valid Utah driver license with motorcycle endorsement;

(e) have a high school diploma or its equivalent;

(f) be at least 18 years of age;

(g) have at least two years of recent motorcycle riding experience;

(h) possess valid Red Cross standard first-aid and CPR cards, or their equivalent; and

(i) manifest safe riding habits whenever riding.

(2) The requirement for a Utah driver license may be waived by the division if the instructor is assigned as active duty military to an installation in Utah.

(3) Instructors are encouraged to wear all protective gear every time they ride. Protective gear includes helmet and eye protection, over-the-ankle footwear (not cloth, canvas, etc.), long non-flare denim pants or material of equivalent durability, long-sleeved shirt or jacket, and full-fingered gloves (preferably leather).

(4) The division shall refuse approval or will revoke approval if the applicant/instructor:

(a) no longer meets the requirements of this section;

(b) has had a driver license suspended or revoked during the preceding two years or within the preceding five years if the suspension or revocation was for an alcohol or drug related offense; or

(c) fails to successfully complete an instructor course or required course updates, or fails to teach at least two rider training classes per year, one of which must be as the lead instructor. An exception to this requirement may be granted if written justification for not meeting the teaching requirements is submitted by the instructor and is approved/accepted by the division.

**R708-30-13. Advertisement.**

(1) No school advertisement may:

(a) indicate in any way that a program can issue or guarantee the issuance of a motorcycle license or endorsement;

(b) imply that a program can in any way influence the division in the issuance of a motorcycle license or endorsement; or

(c) imply that preferential or advantageous treatment from the division can be obtained.

(2) No instructor, employee or agent of a school may be permitted to advertise or solicit business or cause business to be solicited in its behalf, or display or distribute any advertising material within 1500 feet of a location rented, leased, or owned by the division.

**R708-30-14. Revocation.**

(1) In accordance with Subsection 63G-4-202(1), the division designates all adjudicative proceedings associated with this rule as informal adjudicative proceedings.

(2) The division shall deny approval of an application for a school or an instructor if the applicant does not qualify for approval under provisions of this rule.

(3) The division may deny approval or revoke approval of a school or instructor for any of the following reasons:

(a) failure to comply with any provision of this rule or the school's agreement;

(b) falsification of any records or information relating to the school's instruction program;

(c) commission of any act which compromises the integrity of the school's instruction program or the instructor;

(d) failure to notify the division within ten days of any change in instructor personnel or testing locations;

(e) notification that an instructor's driver license is suspended, revoked, canceled or disqualified; or

(f) misstatements or misrepresentation on the application.

(4) If the division determines that reasons for revocation exist because of failure to comply with any provision of this rule or the school's agreement, the division may postpone revocation and allow the school or instructor up to thirty (30) days to correct the deficiency.

(5) A school or instructor who receives notice that the division intends to revoke their approval is entitled to a hearing. The hearing will be conducted by a person appointed by the division director.

(a) The party requesting the hearing must file the request for hearing within ten days from the date notice of the division's intent to revoke is received.

(b) The person conducting the hearing will issue a written

decision that complies with Subsection 63G-4-203(1)(i) within ten days following the hearing.

(6) The decision of the person conducting the hearing will be considered final agency action. A party wishing to contest the decision may:

(a) file a request for reconsideration with the division in accordance with Section 63G-4-302; or

(b) seek judicial review in accordance with Section 63G-4-401.

(7) Reinstatement following revocation of approval may take place only after:

(a) a new application for approval is filed;

(b) the division is satisfied that the reason for revocation no longer exists; and

(c) the division is satisfied that approval of the school or instructor is in the best interests of the public and will not jeopardize public safety.

**KEY: motorcycle rider training schools**

**July 11, 2008**

**Notice of Continuation May 13, 2013**

**53-3-903**

**R994. Workforce Services, Unemployment Insurance.****R994-306. Charging Benefit Costs to Employers.****R994-306-101. Reduction in Force Separations.**

When a worker is separated due to a reduction of the workforce, regardless of business conditions requiring the separation, the worker is eligible for benefits and the employer is liable for charges. This is true even if the separation is the end of a temporary assignment or seasonal employment and both parties agreed to the arrangement at the time of hire.

**R994-306-201. Notice to Employers and Time Limitation for Protests.**

All base period employers and all employers for which a claimant worked after the base period but prior to when the claim is filed, shall be notified prior to the payment of benefits that a claim has been filed.

(a) All employers who receive this notice may protest payment of benefits to former employees and all contributing employers may request relief of charges.

(i) All protests and requests must be made in writing to the Department within ten days after the notice is issued and must state in detail the circumstances which are alleged by the employer to justify a denial of benefits to the claimant, or relief of charges to the employer.

(ii) If the employer's request for relief of charges would justify the relief requested but the employer fails to provide separation information within the time limits of the request or to make a timely protest against the payment of benefits, the employer's request to be relieved of those charges will be adjudicated pursuant to R994-306-202.

**R994-306-202. Relief of Charges Decisions.**

When an employer makes a written request for relief of charges, a decision is made as to the employer's liability for benefit costs.

(a) The employer is notified of the decision and if an appeal is not filed, the decision becomes final and binding on both the employer and the Department.

(b)(i) A request for relief of charges or appeal that is filed after the expiration of the applicable time limit may be considered by the Department if:

(A) the employer has good cause for the late request or appeal as provided in R994-508-104;

(B) relief of charges was denied due to a mistake as to the facts and the Department did not rely on the requesting or appealing employer's failure to submit correct information in determining a claimant's eligibility for benefits. However, the Department will not consider such a request after September 30 with respect to benefits paid in the fiscal year that ended the prior June 30, even if there was a mistake as to facts.

(c) If the Department fails to give the relief of charges granted by a previous decision, the employer must request a correction of this error in accordance with Section R994-303-103.

**R994-306-301. Benefit Cost Calculation Errors.**

(1) Employers will be notified of benefit costs as they accrue at the end of each quarter. The notice used is called the "Statement of Unemployment Benefit Costs" (Form 66). This statement notifies the employer of the amount of benefits paid during the preceding quarter and gives the employer an opportunity to advise the Department of any errors. Upon written request from the employer, corrections will be made for all quarters not yet used to determine the employer's contribution rate. The following are examples which may occur:

(a) The employer is charged for costs for which the Department should have granted relief in accordance with Section R994-307-101.

(b) The employer did not receive prior notice that a claim

had been filed or the determination of the claimant's eligibility and therefore did not have an opportunity to request relief of charges.

**R994-306-401. Annual Notice of Contribution Rate.**

(1) When the "Contribution Rate Notice" (Form 45) is issued at the end of the year, as per Subsection R994-303-103, the employer will have 30 days to protest the rate. When this decision, which establishes the contribution rate for the next year, becomes final it will not be changed even upon a showing of a mistake as to facts.

**KEY: unemployment compensation, rates****January 1, 2002****Notice of Continuation May 16, 2013**

35A-4-303

35A-4-306

35A-4-405(2)(a)

35A-4-502(1)(b)

**R994. Workforce Services, Unemployment Insurance.****R994-307. Social Costs -- Relief of Charges.****R994-307-101. Relief of Charges to Contributing Employers.**

(1) Under the following circumstances a written request is required for relief of charges:

(a) Separation Issues.

(i) Relief may be granted based only on the circumstance which caused the claim to be filed or a separation which occurred prior to the initial filing of the claim. If there is more than one separation from the same employer, charges or relief of charges will be based on the reason for the last separation occurring prior to the effective date of the claim. Separations occurring after the initial filing of a claim do not result in relief of charges on that claim, but may be the basis for relief of charges on a subsequent claim.

(A) The claimant voluntarily left work for that employer due to circumstances which would have resulted in a denial of benefits under Subsection 35A-4-405(1) of the Act.

(B) The separation from that employer would have resulted in an allowance of benefits made under the provisions of "equity and good conscience" under circumstances not caused or aggravated by the employer. For example: If the claimant quit because of a personal circumstance which was not the result of this employment the employer would be relieved of charges. However, if the quit was precipitated by a reduction in the claimant's hours of work, even though the change in working conditions was necessitated by economic conditions, the employer would NOT be relieved of charges.

(C) The claimant quit that employer for health reasons which were beyond reasonable control of the employer. Although the job may have caused or aggravated the health problems, the employer is eligible for relief if it was in compliance with industry safety standards.

(D) The claimant quit work for that employer not because of adverse working conditions, but solely due to a personal decision to accept work with another employer.

(E) The claimant quit work from that employer for personally compelling circumstances not within the employer's power to control or prevent.

(F) The claimant quit new work from that employer after a short trial period, and through no fault of the employer the new work was unsuitable as defined in Subsections 35-4-405(3)(c), (d), and (e).

(G) The claimant was discharged from that employer for circumstances which would have resulted in a denial of benefits under Section 35A-4-405(2) of the Act.

(H) The claimant was discharged for nonperformance due to medical reasons. The employer is eligible for relief:

(I) only if the employer complied with industry health and safety standards, and

(II) the non-performance was due to a chronic medical condition, and

(III) the medical circumstances are expected to continue. The medical problems may be attributed to the worker or to a dependent. A series of unrelated absences attributed to medical problems do not qualify as chronic without medical verification that the conditions will probably continue to cause absences.

(b) Non-Separation Issues.

(i) When the claimant worked for two or more employers during the base period and is separated from one or more of these employers, but continues in regular part-time work for one of those employers, the nonseparating, part-time employer will not be liable for benefit costs provided;

(A) the claimant earned wages from a nonseparating employer within seven days prior to the date when the claim was filed,

(B) the claimant is not working on an "on call" basis,

(C) the number of hours of work has not been reduced, and

(D) the nonseparating employer makes a request that it not be held liable for benefit costs within ten days of the first notification of the employer's potential liability.

(ii) The employer was previously charged for the same wages which are being used a second time to establish a new claim. For example, as the result of a change in the method of computing the base period, or overlapping base periods due to the effective date of the claim.

(iii) The claimant did not work for the employer during the base period.

(iv) The Department incorrectly used wages which were or should have been correctly reported by the employer in determining the claimant's weekly benefit amount or maximum benefit amount.

(c) The Department may, on its own motion, grant relief of charges without a written request if in the Department representative's discretion there is sufficient information in the record to justify relief.

(2) Under the following circumstances a written request is NOT required for relief of charges:

(a) All employers shall be relieved of benefit costs:

(i) resulting from the state's share of extended benefit payments;

(ii) which, during the same fiscal year, have been designated by the Department as benefit overpayments;

(iii) resulting from combined wage claims that are charged to Utah employers, which are insufficient when separately considered for a monetary claim under Utah law but have been transferred to a paying state;

(iv) resulting from payments made after December 31, 1985 to claimants who have been given Department approval to attend school. Relief is granted only for those benefit costs during the period of Department approval.

(b) An employer shall be relieved of benefit costs if the employer has terminated coverage.

**KEY: unemployment compensation, rates  
December 31, 2005  
Notice of Continuation May 16, 2013**

**35A-4-303**

**R994. Workforce Services, Unemployment Insurance.**  
**R994-315. Centralized New Hire Registry Reporting.**  
**R994-315-101. Authority.**

This rule is authorized by 35A-7-101 et seq. Utah Code Ann. 1953.

**KEY: new hire registry**  
**August 8, 2007**  
**Notice of Continuation May 16, 2013**

**35A-7-101 et seq.**  
**U.S.C. 654(a) et seq.**  
**Pub. L. No. 104-193**

**R994-315-102. Definitions.**

In addition to definitions included in 35A-7-102, this rule makes the following definition:

(1) Multi-state Employer: A multi-state employer is defined as an employer who has employees in two or more States and who transmits new hire reports magnetically or electronically.

**R994-315-103. Reporting Formats.**

Employers may submit information by paper, magnetic tape, cartridge, or diskette or electronically. Submittals should not be duplicated.

(1) Paper

Employers may mail or fax copies of any one of the following:

(a) the Utah New Hire Registry Reporting Form (form 6)

(b) the employee's W-4 (Employee's Withholding Allowance Certificate), the worksheet portions are not necessary.

(c) computer printouts or other printed information that provides all six of the mandatory data elements required by 35A-7-104 (1).

(2) Magnetic Media

Employers may submit their new hire information on magnetic tape, cartridge, or diskette. Magnetic media must be submitted according to specifications approved by the Department.

(3) Electronic Media

Employers may submit information by Internet on-line data entry or Internet electronic file transfer. Electronic Media must be submitted according to specifications approved by the Department.

**R994-315-104. Multi-state Employers.**

(1) Multi-state employers have the option to report all new hires to a single state, chosen by the employer, in which the employer has employees. To exercise this option, the employer must designate one state for reporting new hires, transmit the report magnetically or electronically, and notify the Secretary of Health and Human Services in writing.

The letter of request should include the following information:

(a) Employer Federal ID Number (FEIN).

(b) Any other FEIN's under which the employer does business.

(c) Employer Company name, address and telephone number.

(d) The state to which the employer will report all workers.

(e) A list of states in which the employer employs workers.

(f) Name and phone number of person responsible for providing data.

**R994-315-105. Waiver of Penalty for Failure to Report.**

(1) An employer that fails to report the hiring or re-hiring of an employee in a timely manner is subject to a civil penalty of \$25 for each such failure in accordance with Section 35A-7-106. The \$25 penalty will be waived if the employer can show good cause for failure to provide the required new hire report(s). Good cause may be established if the employer was prevented from filing a new hire report due to circumstances which were compelling and reasonable or beyond its immediate control. Payment of the \$25 penalty does not relieve the employer from the responsibility of filing the required new hire report(s).

**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 of the week in which 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.

(3) If a claimant is disqualified from the receipt of unemployment benefits because he or she was discharged for a crime in connection with work under R994-405-210, whether the claimant was deemed monetarily eligible or not, the claim will be established for 52 weeks and cannot be canceled even if the requirements of subsection (2) have been satisfied.

**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 of the week in which 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) With the exception of subsection (3), 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. 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; and

(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.

(3) Intervening covered employment is not required if the claimant did not receive benefits during the preceding benefit year.

**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 Sunday of the week the claimant failed to comply and will continue through the Saturday prior to 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 7 calendar days of the decision date.

#### **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.

(i) 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.

(ii) 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.

(c) Employer Attachment.

A claimant who has an attachment to a prior employer and a date of recall to full-time employment 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.

(f) Department approval.

If Department approval is granted under the elements of R994-403-202, 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.

(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 is limited to circumstances where the claimant can show that the reasons for the delay in filing were due to circumstances beyond the claimant's control or were compelling and reasonable.

(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(6).

#### **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.

(C) Unemployment benefits are intended, in part, to stimulate the economy of Utah and the United States and thus are expected to be spent in this country. A claimant who travels to a foreign country must report to the Department that he or she is out of the country, even if it is for a temporary purpose and regardless of whether the claimant intends to return to the

United States if work becomes available. Failure to inform the Department will result in a fraud overpayment for the weeks benefits were paid while the claimant was in a foreign country. The claimant may be eligible if the travel is to Canada but must notify the Department of that travel. Canada is the only country with which Utah has a reciprocal agreement. If the claimant travels to, but is not eligible to work in, Canada and fails to notify the Department of the travel, it will result in a fraud overpayment for the weeks benefits were paid while the claimant was in Canada.

(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 except as provided in subparagraphs (B) and (C) of this section 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) Type of Work and Wage Restrictions.

(a) The claimant must be available for work that is considered suitable based on the length of time he or she has been unemployed as provided in R994-405-306.

(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.

(5) 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.

(6) 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.

(7) 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.

(8) 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.

(9) 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.

(10) 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.

Unless the claimant qualifies for a work search deferral pursuant to R994-403-108b, 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 means that the claimant must make a minimum of four new job contacts each week unless the claimant is otherwise directed by the unemployment division. 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. If the claimant fails to make four new job contacts during the first week filed, involvement in job development activities that are likely to result in employment will be accepted as reasonable, active job search efforts.

(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 extends beyond simply making a specific number of contacts to satisfy the Department requirement.

**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;

(4) must immediately notify the Department if the claimant is incarcerated; and

(5) must keep a detailed record of his or her weekly job contacts so that the Department can verify the contact at any time for an audit or eligibility review. A detailed record includes the following information:

- (a) the date of the contact,
- (b) the name of the employer or other identifying information such as a job reference number,
- (c) employer contact information such as the employer's mailing address, phone number, email address, or website address, and name of the person contacted if available,
- (d) details of the position for which the claimant applied,
- (e) method of contact, and
- (f) results of the contact.

**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. Except as provided in subsection (6) of this section, 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. Good cause is limited to circumstances where the claimant can show that the reasons for the delay in filing were due to circumstances beyond the claimant's control or were compelling and reasonable.

(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. The denial can be waived if the Department determines the claimant complied within 7 calendar days of the date the decision was issued.

**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 or agent fails to provide adequate 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 or agent'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 or agent 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 is limited to circumstances where the claimant or employer can show that the reasons for the delay in filing were due to circumstances that were compelling and reasonable or beyond the party's 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 for success as demonstrated by:

(a) an aptitude for and interest in the work the claimant is being trained to perform, or course of study the claimant is pursuing; and

(b) sufficient time and financial resources to complete the training.

(3) The training is provided by an institution approved by the Department.

(4) The training is not available except in school. For example, on-the-job training is not available to the claimant.

(5) The length of time required to complete the training should generally not extend beyond 18 months.

(6) The training should generally be vocationally oriented unless the claimant has no more than two terms, quarters, semesters, or similar periods of academic training necessary to obtain a degree.

(7) There is a reasonable expectation of employment following completion of the training. Reasonable expectation means the claimant will find a job using the skills and education acquired while in training pursuant to a fair and objective projection of job market conditions expected to exist at the time of completion of the training.

(8) A claimant did not leave work to attend school even if the employer required the training for advancement or as a condition of continuing employment.

(9) The schooling is full-time, as defined by the training facility.

**R994-403-203. Extensions of Department Approval.**

Initial approval shall be granted, for the school term beginning with the week in which the attendance began, or the effective date of the claim, whichever is later. The Department may extend the approval if the claimant establishes proof of:

(1) satisfactory attendance;

(2) passing grades;

(3) continuance of the same course of study and classes originally approved; and

(4) compliance with all other qualifying elements.

**R994-403-204. Availability Requirements When Approval is Granted.**

(1) The work search and registration requirements for a claimant who is granted Department approval are found in R994-403-108b(1)(f). Once the claimant is actually in training, 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**

**October 1, 2012**

**Notice of Continuation May 16, 2013**

**35A-4-403(1)**

**R994. Workforce Services, Unemployment Insurance.****R994-405. Ineligibility for Benefits.****R994-405-1. Determining the Reason for Separation.**

When a job ends and a claim is filed, the Department must determine the reason for the separation. If there is more than one separation from the same employer, eligibility for benefits will be based on the reason for the last separation occurring prior to the date the claim is filed. However, an existing prior denial of benefits which resulted in a disqualification based on a prior separation from the same employer, will continue until the claimant has earned six times the weekly benefit amount on the claim in which the disqualification took place.) Charge decisions will also be made on the last separation as provided in rule R994-307-101(1)(a)(i). A separation decision will be made and may affect eligibility even if the employer is not covered by the Act except no separation decision will be made on noncovered self employment cases.

**R994-405-2. Separations From a Temporary Help Company (THC).**

THC is defined in R994-202-102. Because the THC is the employer, eligibility for benefits of employees of a THC and the THC's liability for claims will be based on the reason for separation from the THC and not the reason for the separation from the client company.

(1) If the claimant reports back to the THC within a reasonable period of time after the claimant's last assignment ends and no work is offered because no work is available, the separation is a reduction of force, regardless of the reason the claimant left the last assignment except as provided in paragraph (2) of this section. A reasonable period of time is generally considered to be whatever is stipulated in the employment contract between the claimant and the THC but must be at least two business days. The claimant must contact the THC prior to filing a claim for benefits with the Department for the separation to be considered a reduction of force.

(2) If a claimant is no longer able to perform the type of work previously performed for the THC and the THC agrees to send the claimant out on work he or she is able to do, it is considered a quit and the THC may be eligible for relief of charges.

(3) If the claimant fails to contact the THC for a new assignment within a reasonable period of time after the claimant's last assignment ends, the separation is a quit and not a reduction of force.

(4) If the claimant files a new claim or reopens an existing claim prior to contacting the THC for another assignment, the job separation is a quit, even if the claimant subsequently contacts the THC within a reasonable period of time.

(5) If the claimant contacts the THC for a new assignment within a reasonable period of time after the claimant's last assignment ends and the claimant refuses a new assignment, the job separation is a quit if the new assignment is similar to the previous assignments. The separation is a reduction of force and an offer of new work if the new assignment is substantially different from the previous assignments. The job duties, wages, hours, and conditions of the new assignment should be considered in determining the similarity of the new assignment.

(6) If the THC refuses to send the claimant out on any new assignments it is a discharge. This includes instances where the claimant previously left an ongoing assignment or the client company prevented the claimant from completing an ongoing assignment.

**R994-405-3. Professional Employer Organizations (PEO).**

(1) PEO is defined in R994-202-106 and must be licensed pursuant to Sections 31A-40-301 through 306. PEOs are also known as employee leasing companies. PEOs are treated differently from a THC because the assignments are usually not

of a temporary nature.

(2) When a client company contracts with a PEO, the PEO becomes the employer of the client company's employees. Because the client company is no longer the employer, a job separation has occurred. The job separation is a reduction of force and the client company is not eligible for relief of charges.

(3) When the contract between a PEO and a client company ends, a separation occurs. Regardless of the circumstances or which entity is the moving party, the affected employees are considered separated due to a reduction of force, and the PEO is not eligible for relief of charges. Any offers of work extended to affected employees subsequent to the termination of the contract shall be considered offers of new work and shall be adjudicated in accordance with 35A-4-405(3) and R994-405-301 et seq.

(4) If the contract between the client company and the PEO remains in effect and the claimant's assignment with the client company ends, the PEO, or the client company acting on the PEO's behalf, must provide written notice to the claimant instructing the claimant to contact the PEO within a reasonable time for a new assignment. A reasonable time to contact the PEO is generally considered to be two working days after the assignment ends. The written notice must be provided to the claimant when the assignment ends and must be provided even if the PEO has a contract with the claimant requiring the claimant to contact the PEO when an assignment ends.

(5) If the PEO or client company does not provide written notice as referenced in paragraph (4) of this section, unemployment benefits will be determined based on the reason the assignment with the client company ended.

(6) If the PEO provides the notice referenced in paragraph (4) of this section and the claimant contacts the PEO as instructed and:

(a) refuses a new work assignment that is similar to the claimant's previous assignments with the PEO, the job separation is a quit. The duties, wages, hours, and conditions of the new assignment will be considered in determining if the new assignment is similar to the previous assignments.

(b) refuses a new work assignment that is substantially different from the claimant's previous assignments, the job separation is a layoff and an offer of new work.

(c) the PEO has no new assignments, the job separation is a layoff.

(7) If the PEO does not intend to offer the claimant another assignment the PEO should not provide the written notice referenced in paragraph (4) of this section at the time of separation. If no notice is provided, the separation will be determined based on the reason for the separation from the client company.

(8) If the claimant does not contact the PEO after receiving notice given pursuant to paragraph (4) of this section, the job separation is a quit.

**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 the employment would have caused an adverse effect which the claimant could not control or prevent. The claimant must show that 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 so as 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 will not be found if the claimant:

(i) reasonably could have continued working while looking for other employment,

(ii) had reasonable alternatives that would have made it possible to preserve the job like 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 claimant was required by the employer to violate state or federal law or if the claimant'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 Section R994-405-306. The fact the claimant accepted a job does not necessarily make the job suitable. The longer a job is held, the more it tends to negate the argument that the job was unsuitable. After a reasonable period of time a contention the quit was motivated by unsuitability of the job is generally no longer persuasive. The Department has an affirmative duty to determine whether the employment was suitable, even if the claimant does not raise suitability as an issue.

**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 considered in all cases except those involving a quit to accompany, follow, or join a spouse as provided in R994-405-104. If there are 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 claimant:

(a) 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, and,

(b) demonstrated a 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. An active work search, as provided in R994-403-113c, should have commenced immediately after 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 claimant to seek work. Some 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.**

(1) Except as provided in subsection (3) if a claimant quit work to join, accompany, or follow a spouse or significant other 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. If the claimant's employment is contingent on the spouse's military assignment and the spouse is reassigned, the separation will be considered a discharge.

(2) Quitting to get married is also disqualifying as provided in R994-405-107(7)(a).

(3)(a) A claimant who quits to accompany or follow his or her spouse to a new locality can establish good cause for quitting if the claimant can show all of the following:

(i) the claimant's spouse is a member of the United States armed forces and has been relocated by a full time assignment scheduled to last at least 180 days while on active duty as defined in 10 U.S.C. Sec. 101(d)(1) or active guard or reserve duty as defined in 10 U.S.C. Sec. 101(d)(6),

(ii) it is impractical for the claimant to commute to the previous work from the new locality, and

(iii) the claimant otherwise meets and follows the eligibility and reporting requirements including R994-403-112c(2)(a)(i).

(b) A claimant who is eligible under this subsection will be denied benefits for the limited period of time the claimant could have continued working up to 15 days before the scheduled start date of the spouse's active duty assignment as it is considered to be a failure to accept all available work as required under subsection 35A-4-403(1)(c).

(c) This subsection only applies to claims filed or reopened on or after May 6, 2012.

**R994-405-105. Burden of Proof in a Quit.**

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. The failure of the claimant to provide information will not necessarily result in a ruling favorable to the employer. If the claimant quit unsuitable new work, the burden of proof as described in R994-405-308 applies.

**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 a claimant leaves work prior to the date of an



impending reduction of force, the separation is a quit. 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 benefits will 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) If the claimant quit to avoid a disqualifying discharge the separation will 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 quit unless the claimant was previously disqualified as a result of the suspension.

(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 and the separation is adjudicated as a quit, 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 quit.

(5) Leaving Due to a Remark or Action of the Employer or a Coworker.

If a claimant hears rumors or other information suggesting he or she is to be laid off or discharged, the claimant 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 or lay off the claimant, the separation is a quit.

(6) Resignation Intended.

(a) Quit.

If a claimant gives notice of his or her intent to leave at a future date and is paid regular wages through the announced resignation date, the separation is a quit even if the claimant was relieved of work responsibilities prior to the effective date of the resignation. A separation is also a quit if a claimant 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 claimant resigns but 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 claimant submitted a resignation to be effective at a definite future date, but was relieved of work responsibilities and was not paid regular wages through the balance of the notice period, the separation is considered a discharge as the employer was the moving party in determining the final date of employment. Merely assigning vacation pay not previously assigned to the notice period does not make the separation a quit.

(7) If an employer tells a claimant it intends to discharge the claimant but allows the claimant to stay at work until he or she finds another job and the claimant decides to leave before finding another job, the separation is a quit. Good cause may be established if it would be unreasonable to require a claimant to remain employed after the employer has expressed its intent to discharge him or her.

**R994-405-107. Examples of Reasons for Quitting.**

(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. However, if the new work is later determined to have been unsuitable and 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 will 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.

If, after giving notice but prior to leaving the first job, the claimant learns the new job will not be available when promised, permanent, full-time, or suitable, good cause may be established if the claimant immediately attempted to rescind the notice, unless such an attempt would have been futile.

(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 will be denied for failure to accept all available work from the prior employer 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 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 claimant 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, the work must conflict with a sincerely held religious or moral conviction. If a claimant 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 quitting employment. Therefore, if the claimant quit to get married, benefits will be denied even if the new residence is beyond a reasonable commuting distance from the claimant's former place

of employment.

(b) If the employer has a rule requiring the separation of an employee who marries a coworker, the separation is a discharge even if the employer allowed the couple to decide who would leave.

(8) Health or Physical Condition.

(a) Although it is not essential for the claimant to have been advised by a physician to quit, a contention that health problems required the separation must be supported by competent evidence. Even if the work caused or aggravated a health problem, if there were alternatives, such as treatment, medication, or altered working conditions to alleviate the problem, good cause for quitting is not established.

(b) If the risk to the health or safety of the claimant was shared by all those employed in the particular occupation, it must be shown the claimant was affected to a greater extent than other workers. Absent such evidence, quitting was not reasonable.

(9) Retirement and Pension.

Voluntarily leaving work solely to accept retirement benefits is not a compelling reason for quitting, within the meaning of the Act. Although it may have been reasonable for a claimant 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 stop the objectionable conduct. If it would have been futile to complain, as when the owner or top manager of the employer company is causing the harassment, the requirement that the employer be given an opportunity to stop the conduct is not necessary. Sexual harassment is a form of sex discrimination 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 stop the objectionable conduct. If it would have been futile to complain, as when the owner or top manager of the employer company is the cause of the discrimination, the requirement that the employer be given an opportunity to stop the conduct is not necessary. 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 race, color, religion, sex, age or national origin.

(12) Voluntary Acceptance of Layoff.

If the employer wishes to reduce its workforce and 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 and Period of Disqualification.**

A disqualification based on a job separation begins the Sunday of the week in which the job separation took place. If the claimant did not file for benefits the week of the separation, the disqualification begins with the effective date of the new or reopened claim. The disqualification ends when the claimant earns requalifying wages equal to six times his or her WBA in bona fide covered employment as defined in R994-201-101(9). The WBA used to determine requalifying wages under this section is the WBA of the original claim. A disqualification that begins in one benefit year will continue into a new benefit year unless the claimant has earned requalifying wages. Severance or vacation pay cannot be used as requalifying wages.

#### **R994-405-109. Proximate Cause in a Quit.**

The claimant must show a relationship between the reason or reasons for quitting both as to cause and time. If the claimant did not quit immediately after becoming aware of the adverse conditions which led to the decision to quit, a presumption arises that the claimant quit for other reasons. The presumption may be overcome by showing the delay was due to the claimant's reasonable attempts to cure the problem.

#### **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 will 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 claimant. A reduction of force is considered a discharge without just cause.

#### **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 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. An employer might not be able to demonstrate that a single violation, even though harmful, would be repeated by a long-term employee with an established pattern of complying with the employer's rules. 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 claimant 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 the claimant 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 claimant had knowledge of the expected conduct. After a warning the claimant 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 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.**

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 the employer to provide information will not necessarily result in a ruling favorable to the claimant. 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.

(1) Discharge Before Effective Date of Resignation.

(a) Discharge.

If a claimant notifies the employer of an intent to leave work on a definite date, and the employer ends the employment relationship prior to that date, the separation is a discharge unless the claimant is paid through the resignation date. Unless there is some other evidence of disqualifying conduct, benefits will be awarded.

(b) Quit.

If the claimant 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 claimant was relieved of work responsibilities prior to the effective date of resignation. A separation is also a quit if a claimant 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. The claimant is not considered to have quit merely by saying he or she is looking for a new job. If a claimant resigns but 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 a claimant 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. A claimant 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 is considered a discharge.

(3) 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.

**R994-405-205. Disciplinary Suspension.**

When a claimant is placed on a disciplinary suspension, the definition of being unemployed may be satisfied. If a claimant files during the suspension period, the matter will 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 claimant 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. Proximate 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 claimant. If a separation decision has been made, it is generally demonstrated by giving notice to the claimant. Although the employer may learn of other offenses following the decision to terminate the claimant'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 a claimant 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 claimant's conduct. If a claimant 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 claimant'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 will 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 a claimant violates a reasonable employment rule and just cause is established, benefits will 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 claimant believes a rule is unreasonable, the claimant 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 claimant 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 do 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 claimant 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 claimant knew enforced attendance rules were being violated. A discharge for an attendance violation beyond the claimant's control is generally not disqualifying unless the claimant 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 claimant'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 claimant's control. The flagrant misuse of attendance privileges may result in a denial of benefits even if the last incident is beyond the claimant'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 regardless of whether the claimant would 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 claimant, 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 a claimant 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 welfare of the general public, 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 that 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 or her 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.**

A disqualification based on a job separation begins the Sunday of the week in which the job separation took place. If the claimant did not file for benefits the week of the separation, the disqualification begins with the effective date of the new or reopened claim. The disqualification ends when the claimant earns requalifying wages equal to six times his or her WBA in bona fide covered employment as defined in R994-201-101(9). The WBA used to determine requalifying wages under this section is the WBA of the original claim. A disqualification that begins in one benefit year will continue into a new benefit year unless the claimant has earned requalifying wages. Severance or vacation pay cannot be used as requalifying wages.

**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, the term "crime" as used in these sections, includes "misdemeanors". 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 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 the claimant was discharged for a crime that:

- (a) was in connection with work,
- (b) involved dishonesty constituting a crime or a felony or class A misdemeanor, and
- (c) was 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 will 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 are also disqualifying even if they are not theft-related such as 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 offered to satisfy the requirements of R994-405-210(1)(c), must be a voluntary statement, verbal or written, in which a claimant acknowledges committing an act that is a violation of the law. The admission does not necessarily have to be made to a Department representative, however, the admission must have been made freely and not a false statement given under duress or made to obtain some concession.

(2) If the requirements of R994-405-210(1) have been met, a disqualification may be assessed even if no criminal charges have been filed and even if it appears the claimant will not be prosecuted. If the claimant agrees to a diversionary program as permitted by the court or enters a plea in abeyance, there is a rebuttable presumption, for the purposes of this subsection, that the claimant has admitted to the criminal act.

(3) 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) begins 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. Lag period wages are wages paid after the base period but prior to the effective date of the claim.

**R994-405-216. Cancellations Not Allowed.**

If a claimant is disqualified from the receipt of unemployment benefits because he or she was discharged for a crime in connection with work, the claim will be established for 52 weeks and cannot be canceled as provided in R994-403-102a(3).

**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 occurs 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,
- (3) present no unreasonable conditions or restrictions on acceptance of the available work and
- (4) report for and pass a drug test if necessary.

**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) 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.

(2) 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.

(3) Notwithstanding any other provisions of this chapter, no work shall be deemed suitable and benefits shall not be denied under this chapter to any otherwise eligible individual for refusing to accept new work under any of the following conditions:

(a) If the position offered is vacant due to a strike, lockout, or other labor dispute;

(b) If the wages, hours, or other conditions of work offered are substantially less favorable to the individual than those prevailing for similar work in the locality; or

(c) If as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any bona fide labor organization.

**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.

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) Until the claimant has received 50% of the maximum benefit amount (MBA) for his or her regular claim, work paying at least the customary wage earned during the base period is suitable. Customary wage is defined as the wage earned during the majority of the base period.

(b) After a claimant has received 50% of the MBA for his or her regular claim, any work paying a wage that is at least 75% of the customary wage earned during the base period is suitable.

(2) Prior Experience.

A claimant must be given a reasonable time to seek work that will preserve his or her customary skills. Customary skills or skill level, as used in this subsection, is defined as skills used during a majority of the base period. However, if a claimant has no realistic expectation of obtaining employment in an occupation utilizing his or her customary skill level, work in related occupations becomes suitable.

After the claimant has received 50% of the MBA for his or her regular claim, any work that he or she can reasonably perform consistent with the claimant's past work 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. 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 provided they are not in violation of the law. 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) Fringe Benefits.

Working conditions include fringe benefits such as health insurance, pensions, and retirement provisions.

(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 contrary to 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) begins the Sunday of 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 ends when the claimant earns requalifying wages equal to six times his or her WBA in bona fide covered employment as defined in R994-201-101(9). The WBA used to determine requalifying wages under this section is the WBA of the original claim. A disqualification that begins in one benefit year will continue into a new benefit year unless the claimant has earned requalifying wages. Severance or vacation pay cannot be used as requalifying wages.

(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.

**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 are 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 decision to refuse the offer 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.**

Claimants may be ineligible for unemployment benefits when the unemployment is due to a strike.

**R994-405-402. Elements Necessary for a Disqualification.**

All of the following elements 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 the strike,

(5) there must be a stoppage of work,

(6) the strike must involve the claimant's grade, group or class of workers, and,

(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,

(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,

(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 that 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,

(b) the claimant was replaced by other permanent employees,

(c) the claimant was on a temporary layoff, prior to the strike, with a predetermined date of recall; however, if the claimant refuses to return to his or her regular job when called on the predetermined date his or her subsequent unemployment is due to a strike,

(d) as a result of start up delays, the claimant is not recalled to work for a period after the settlement of the strike,

(e) the employer refuses to agree to binding arbitration when the contract provides that the dispute shall be submitted to arbitration, or

(f) 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,

(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.

**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 disqualifying strike, and then obtained work for employer B where he or she worked for a short period of time before being laid off due to reduction of force. If he or she then files for unemployment benefits, and cannot qualify monetarily for benefits based solely on his or her employment with employer B, the claimant is not eligible for unemployment benefits.

**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 its agents or representatives conspired, planned or agreed with any of the workers in promoting or inciting the development of the strike.

**R994-405-406. Work Stoppage.**

Work stoppage means that the claimant is no longer working but it is not necessary for the employer to be unable to continue to conduct business. 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 the claimant is not a member of the group conducting the strike or not in sympathy with its purposes,

(b) the labor dispute concerns all of the employees and as a direct result causes a stoppage of their work,

(c) the claimant is covered either by the bargaining unit or is a member of the union, or

(d) the claimant voluntarily refuses to cross a peaceful picket line even when the picket line is being maintained by another group of workers.

(2) A claimant is not included in the grade, group or class if:

(a) the claimant 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,

(b) the claimant was an employee of a company that has no work for him or her 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,

(c) the claimant was an employee of a company that is out of work as a result of a strike at one of its work sites but he or she 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.

(3) The burden of proof is on the claimant to show that he or she is not participating in any way in the strike.

**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 claimant is not disqualified as a result of the strike. However, to establish 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.**

The period of disqualification begins on the effective date of the new or reopened claim and continues 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 that 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 or her 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 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 that 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 will 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 that 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 that requires no personal services is not reportable income.

#### **R994-405-701. Payments Following Separation - General Definition.**

Vacation and severance payments which a claimant is receiving, has received or is entitled to receive are treated as wages and the claimant's WBA is reduced as provided in R994-401-301(1). This is true even though vacation or severance payments do not meet the statutory definition of wages.

#### **R994-405-702. Definition of Disqualifying Vacation and Severance Pay.**

(1) Before a disqualification is assessed, the claimant must be entitled to vacation or severance pay in addition to regular wages.

(a) Entitled To Receive. The claimant may not receive unemployment benefits for any week if he or she is eligible to receive payment from the employer whether the payment has already been made or will be made. The week in which the payment is actually received is not controlling in determining when the payment is deductible. It is not necessary for the

employer to assign such payment to a particular week on the 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, a union, or the employer, it has not been established the claimant is entitled to payment and therefore a disqualification cannot be assessed. However, when it is determined the claimant is entitled to receive payment from the employer, a disqualification will be assessed beginning with the week in which the agreement is made establishing the right to payment, provided the other elements are present. An overpayment will 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. Payments made directly to the claimant after separation and intended for the purchase of health insurance, whether made in a lump sum or periodically, are considered separation payments. 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. Accrued sick leave, 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 or her regular wage or salary, the last day worked was a Wednesday, and his or her normal working days were Monday through Friday, the claimant is considered to have two weeks of pay beginning on the Thursday following the last day of work. The claimant's earnings for the first week, including his or her wages would normally exceed the weekly benefit amount; the claimant

would have a full week of pay for the second week, and 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 or her regular pay. For example, if the claimant received \$500 in severance pay, and last earned \$10 an hour working a 40 hour week, the claimant's customary weekly earnings were \$400 a week. The claimant is denied benefits for one week and must report \$100 as if it were earnings on the claim for the following week. The Department will ordinarily use a claimant's base salary for calculations in this paragraph but if the claimant provides verifiable evidence of a rate of pay higher than the base salary in the period immediately preceding separation, that can be used.

(c) **Payments Less than Weekly Benefit Amount.** If 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 or her vacation pay, or is filing during the time previously agreed to as his or her vacation, the vacation pay is assigned to that week. If the employer has prepaid vacation pay and at the time of a temporary layoff the claimant may still take his or her 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 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 or her time off work before or after the vacation shutdown. A holiday shutdown is treated the same as a vacation shutdown.

**R994-405-703. Period of Disqualification.**

Only those payments equal to or greater than the claimant's weekly benefit amount require a disqualification. Payments 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 or her 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 attributable to weeks following the separation can be used as base period wages if the employer was legally required to make such payments as provided in Section 35A-4-208.

Separation payments that are treated as wages will be assigned to weeks in the manner explained in Subsections R994-405-702(4).

**R994-405-801. Services in Education Institutions - General Definition.**

Subsection 35A-4-405(8) denies unemployment benefits during periods when the claimant's unemployment is due to school not being in session provided the claimant has been given a reasonable assurance that he or she can return to work when school resumes and the claimant intends to return 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. In extending coverage to school employees, it was intended such coverage would only be available when the claimant is no longer attached in any way to a school and 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 claimant is ineligible if all of the following elements are met:

(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 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" that 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 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 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 or she is not subject to a disqualification under Subsection 35A-4-405(8).

(2) Ineligibility under Subsection 35A-4-405(8) shall only apply if there are base period wages from an educational institution. If the claimant had sufficient non-school employment in the base period to qualify for benefits, the claimant 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 or she is otherwise eligible. If the claimant continues to be unemployed when school commences, he or she 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 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 or she worked for the educational institution during the prior school term and there has been no change in the conditions of his or her employment that would indicate severance of the employment relationship. Under such circumstances benefits initially will be denied.

(3) Advised on Non-Recall.

If the claimant has been advised by proper school administrative authorities that he or she 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 or she will not be recalled by the school where he or she last worked as a teacher's aide, but 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 separation or the claim, whichever is later.

#### **R994-405-806. Substitute Teachers.**

A substitute teacher is treated the same as any other school employee. If the claimant worked as a substitute teacher during the prior school term, he or she is presumed to have a reasonable assurance of having work under similar conditions during the next term and benefits will be denied when school is not in session. However, for any weeks the claimant 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 will be denied for a week that 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:

(1) between two successive academic years or terms, or  
 (2) during a break in school activity 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) 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 or she is otherwise eligible including meeting the eligibility requirements of Subsection 35A-4-403(1)(c) and R994-405-106(4).

#### **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,  
 (2) was not offered an opportunity for employment for an educational institution for the second academic years or terms,  
 (3) filed weekly claims in a timely manner as instructed, and  
 (4) benefits were denied solely by reason of Subsection 35A-4-405(8).

#### **R994-405-901. Professional Athletes.**

(1) Eligibility for Professional Athletes.

A claimant who has performed services as a professional athlete for substantially all of his or her base period is not eligible for benefits between successive sports seasons or similar periods when the claimant has a reasonable assurance of performing those services in the next sports season or similar period.

(2) Substantially All Services Performed in a Base Period.

A claimant has performed services as a professional athlete for substantially all of his or her base period when the base period wages from that work equal 90 percent or more of the claimant's total base period wages.

(3) Definition of Professional Athlete.

For the purposes of determining eligibility for benefits, a claimant is a professional athlete when he or she is employed as a competitive athlete or works as a specified ancillary employee. Employment as a competitive athlete includes preparing for and participating in competitive sports events. Specified ancillary employees are managers, coaches, and trainers who are employed by professional sports organizations and referees and umpires employed by professional sports leagues or

associations.

(4) Reasonable Assurance.

(a) The claimant has a reasonable assurance of performing services as a professional athlete during the next sports season or similar period when the claimant has:

- (i) a multi-year contract with a professional sports organization, league or association;
- (ii) a year-to-year contract and no indication of release;
- (iii) no contract but the employer affirms intent to recall;
- (iv) no contract but an employer representative confirms that the claimant is being considered for next season; or
- (v) no contract but plans to pursue employment as a professional athlete.

(b) The claimant does not have a reasonable assurance if he or she has no contract and has withdrawn from sports as a professional athlete.

**R994-405-902. Base Period Wage Credits.**

(1) If the claimant has a reasonable assurance of performing services as a professional athlete during the next sports season or similar period and 90 percent or more of the claimant's base period wage credits were earned as a professional athlete, neither those wage credits nor any other base period wage credits can be used to establish monetary eligibility for any weeks that begin during a period between the applicable sports seasons or similar periods.

(2) All of the claimant's base period wage credits can be used if the claimant did not earn 90 percent or more of his or her base period wage credits as a professional athlete.

(3) All of the claimant's base period wages credits can be used to establish monetary eligibility for any weeks that begin during the applicable sports season or similar period.

**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 claimant is a citizen or national of the United States, or if not, whether the claimant 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 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 or she 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.**

A claimant who is lawfully admitted for permanent residence must be given a dated employment authorization or other appropriate work permit by the US Citizenship and Immigration Services (USCIS).

**R994-405-1004. Lawfully Present for the Purpose of Performing Services.**

These are aliens with work permits issued by USCIS who have received permission to work in the United States. Aliens who do not possess USCIS documentation have not been processed through USCIS procedures and are not lawfully present in the United States. Aliens permitted to reside in the United States temporarily have privileges accorded by USCIS 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 USCIS 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 USCIS 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 USCIS 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 who are admitted on parole for medical treatment. All of these individuals are issued USCIS forms endorsed to show work status.

**R994-405-1007. Procedural Requirements.**

(1) Verification of Status.

If the claimant states he or she is an alien, the claimant must present documentary evidence of alien status. Acceptable evidence includes:

- (a) An alien registration document or other proof of immigration registration from USCIS that contains the claimant's alien admission number or alien file number, or
- (b) Other documents that 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 USCIS through an automated system or other system designated by the USCIS. This system must protect the claimant's privacy as required by law. The Department must use the claimant'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 USCIS 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 USCIS. The claimant will initially be given three weeks to provide documentation or advise the Department as to any circumstances that 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 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 USCIS 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 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, the claimant is ineligible under Subsection 35A-4-403(1)(c) because he or she cannot legally obtain employment.

**KEY: unemployment compensation, employment, employee's rights, employee termination**  
July 9, 2012 35A-4-502(1)(b)  
Notice of Continuation May 16, 2013 35A-1-104(4)  
35A-4-405

**R994. Workforce Services, Unemployment Insurance.****R994-508. Appeal Procedures.****R994-508-101. Right to Appeal an Initial Department Determination.**

(1) An interested party has the right to appeal an initial Department determination on unemployment benefits or unemployment tax liability (contributions) by filing an appeal with the Appeals Unit or at any DWS Employment Center.

(2) The appeal must be in writing and either sent through the U.S. Mail, faxed, or delivered to the Appeals Unit, or submitted electronically through the Department's website.

(3) The appeal must be signed by an interested party unless it can be shown that the interested party has conveyed, in writing, the authority to another person or is physically or mentally incapable of acting on his or her own behalf. Providing the correct Personal Identification Number (PIN) when filing an appeal through the Department's website will be considered a signed appeal.

(4) The appeal should give the date of the determination being appealed, the social security number of any claimant involved, the employer number, a statement of the reason for the appeal, and any and all information which supports the appeal. The failure of an appellant to provide the information in this subsection will not preclude the acceptance of an appeal.

(5) The scope of the appeal is not limited to the issues stated in the appeal.

(6) If the claimant is receiving benefits at the time the appeal is filed, payments will continue pending the written decision of the ALJ even if the claimant is willing to waive payment. If benefits are denied as a result of the appeal, an overpayment will be established.

**R994-508-102. Time Limits for Filing an Appeal from an Initial Department Determination.**

(1) If the initial Department determination was delivered to the party, the time permitted for an appeal is ten calendar days. "Delivered to the party" means personally handed, faxed, or sent electronically to the party. If the determination was sent through the U.S. Mail, an additional five calendar days will be added to the time allowed for an appeal from the initial Department determination. Therefore, the amount of time permitted for filing an appeal from any initial Department determination sent through the U.S. Mail is fifteen calendar days unless otherwise specified on the decision.

(2) In computing the period of time allowed for filing an appeal, the date as it appears in the determination is not included. The last day of the appeal period is included in the computation unless it is a Saturday, Sunday, or legal holiday when Department offices are closed. If the last day permitted for filing an appeal falls on a Saturday, Sunday, or legal holiday, the time permitted for filing a timely appeal will be extended to the next day when Department offices are open.

(3) An appeal sent through the U.S. Mail is considered filed on the date shown by the postmark. If the postmark date cannot be established because it is illegible, erroneous, or omitted, the appeal will be considered filed on the date it was mailed if the sender can establish that date by competent evidence and can show that it was mailed prior to the date of actual receipt. If the date of mailing cannot be established by competent evidence, the appeal will be considered filed on the date it is actually received by the Appeals Unit as shown by the Appeals Unit's date stamp on the document or other credible evidence such as a written notation of the date of receipt. "Mailed" in this subsection means taken to the post office or placed in a receptacle which is designated for pick up by an employee who has the responsibility of delivering it to the post office.

**R994-508-103. Untimely Appeal.**

If it appears that an appeal was not filed in a timely manner, the appellant will be notified and given an opportunity to show that the appeal was timely or that it was delayed for good cause. If it is found that the appeal was not timely and the delay was without good cause, the ALJ or the Board will not have jurisdiction to consider the merits unless jurisdiction is established in accordance with provisions of Subsection 35A-4-406(2). Any decision with regard to jurisdictional issues will be issued in writing and delivered or mailed to all interested parties with a clear statement of the right of further appeal or judicial review.

**R994-508-104. Good Cause for Not Filing Within Time Limitations.**

A late appeal may be considered on its merits if it is determined that the appeal was delayed for good cause. Good cause is limited to circumstances where it is shown that:

(1) the appellant received the decision after the expiration of the time limit for filing the appeal, the appeal was filed within ten days of actual receipt of the decision and the delay was not the result of willful neglect;

(2) the delay in filing the appeal was due to circumstances beyond the appellant's control; or

(3) the appellant delayed filing the appeal for circumstances which were compelling and reasonable.

**R994-508-105. Response to an Appeal.**

A respondent is not required to file a written response to an appeal. A respondent may file a response if it does not delay the proceedings.

**R994-508-106. Notice of the Hearing.**

(1) All interested parties will be notified by mail, at least seven days prior to the hearing, of:

(a) the time and place of the hearing;

(b) the right to be represented at the hearing;

(c) the legal issues to be considered at the hearing;

(d) the procedure for submitting written documents;

(e) the consequences of not participating;

(f) the procedures and limitations for requesting a continuance or rescheduling; and

(g) the procedure for requesting an interpreter for the hearing, if necessary.

(2) When a new issue arises during the hearing, advance written notice may be waived by the parties after a full explanation by the ALJ of the issues and potential consequences.

(3) It is the responsibility of a party to notify and make arrangements for the participation of the party's representative and/or witnesses, if any.

(4) If a party has designated a person or professional organization as its agent, notice will be sent to the agent which will satisfy the requirement to give notice to the party.

**R994-508-107. Department to Provide Documents.**

The Appeals Unit will obtain the information which the Department used to make its initial determination and the reasoning upon which that decision was based and will send all of the Department's relevant documentary information to the parties with the notice of hearing.

**R994-508-108. Discovery.**

(1) Discovery is a legal process to obtain information which is necessary to prepare for a hearing. In most unemployment insurance hearings, informal methods of discovery are sufficient. Informal discovery is the voluntary exchange of information regarding evidence to be presented at the hearing, and witnesses who will testify at the hearing. Usually a telephone call to the other party requesting the needed

information is adequate. Parties are encouraged to cooperate in providing information. If this information is not provided voluntarily, the party requesting the information may request that the ALJ compel a party to produce the information through a verbal or written order or issuance of a subpoena. In considering the requests, the ALJ will balance the need for the information with the burden the requests place upon the opposing party and the need to promptly decide the appeal.

(2) The use of formal discovery procedures in unemployment insurance appeals proceedings are rarely necessary and tend to increase costs while delaying decisions. Formal discovery may be allowed for unemployment insurance hearings only if so directed by the ALJ and when each of the following elements is present:

- (a) informal discovery is inadequate to obtain the information required;
  - (b) there is no other available alternative that would be less costly or less intimidating;
  - (c) it is not unduly burdensome;
  - (d) it is necessary for the parties to properly prepare for the hearing; and
  - (e) it does not cause unreasonable delays.
- (3) Formal discovery includes requests for admissions, interrogatories, and other methods of discovery as provided by the Utah Rules of Civil Procedure.

#### **R994-508-109. Hearing Procedure.**

(1) All hearings will be conducted before an ALJ in such manner as to provide due process and protect the rights of the parties.

(2) The hearing will be recorded.

(3) The ALJ will regulate the course of the hearing to obtain full disclosure of relevant facts and to afford the parties a reasonable opportunity to present their positions.

(4) The decision of the ALJ will be based solely on the testimony and evidence presented at the hearing.

(5) All testimony of the parties and witnesses will be given under oath or affirmation.

(6) All parties will be given the opportunity to provide testimony, present relevant evidence which has probative value, cross-examine any other party and/or other party's witnesses, examine or be provided with a copy of all exhibits, respond, argue, submit rebuttal evidence and/or provide statements orally or in writing, and/or comment on the issues.

(7) The evidentiary standard for ALJ decisions, except in cases of fraud, is a preponderance of the evidence. Preponderance means evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. The evidentiary standard for determining claimant fraud is clear and convincing evidence. Clear and convincing is a higher standard than preponderance of the evidence and means that the allegations of fraud are highly probable.

(8) The ALJ will direct the order of testimony and rule on the admissibility of evidence. The ALJ may, on the ALJ's own motion or the motion of a party, exclude evidence that is irrelevant, immaterial, or unduly repetitious.

(9) Oral or written evidence of any nature, whether or not conforming to the rules of evidence, may be accepted and will be given its proper weight. A party has the responsibility to present all relevant evidence in its possession. When a party is in possession of evidence but fails to introduce the evidence, an inference may be drawn that the evidence does not support the party's position.

(10) Official Department records, including reports submitted in connection with the administration of the Employment Security Act, may be considered at any time in the appeals process including after the hearing.

(11) Parties may introduce relevant documents into evidence. Parties must mail, fax, or deliver copies of those documents to the ALJ assigned to hear the case and all other interested parties so that the documents are received three days prior to the hearing. Failure to prefile documents may result in a delay of the proceedings. If a party has good cause for not submitting the documents three days prior to the hearing or if a party does not receive the documents sent by the Appeals Unit or another party prior to the hearing, the documents will be admitted after provisions are made to insure due process is satisfied. At his or her discretion, the ALJ can either:

- (a) reschedule the hearing to another time;
- (b) allow the parties time to review the documents at an in-person hearing;
- (c) request that the documents be faxed during the hearing, if possible, or read the material into the record in case of telephone hearing; or
- (d) leave the record of the hearing open, send the documents to the party or parties who did not receive them, and give the party or parties an opportunity to submit additional evidence after they are received and reviewed.

(12) The ALJ may, on his or her own motion, take additional evidence as is deemed necessary.

(13) With the consent of the ALJ, the parties to an appeal may stipulate to the facts involved. The ALJ may decide the appeal on the basis of those facts, or may set the matter for hearing and take further evidence as deemed necessary to decide the appeal.

(14) The ALJ may require portions of the testimony be transcribed as necessary for rendering a decision.

(15) All initial determinations made by the Department are exempt from the provisions of the Utah Administrative Procedures Act (UAPA). Appeals from initial determinations will be conducted as formal adjudicative proceedings under UAPA.

#### **R994-508-110. Telephone Hearings.**

(1) Hearings are scheduled as telephonic hearings. Every party wishing to participate in the telephone hearing must call the Appeals Unit before the hearing and provide a telephone number where the party can be reached at the time of the hearing. If the party that filed the appeal fails to call in advance as required by the notice of hearing, the appeal will be dismissed and an order of default will be issued.

(2) If a party requires an in-person hearing, the party must contact an ALJ and request that the hearing be scheduled as an in-person hearing. The request should be made sufficiently in advance of the hearing so that all other parties may be given notice of the change in hearing type and the opportunity to appear in person also. Requests will only be granted if the party can show that an in-person hearing is necessary to accommodate a special need or if the ALJ deems an in-person hearing is necessary to ensure an orderly and fair hearing which meets due process requirements. If the ALJ grants the request, all parties will be informed that the hearing will be conducted in person. Even if the hearing is scheduled as an in-person hearing, a party may elect to participate by telephone. In-person hearings are held in the office of the Appeals Unit unless the ALJ determines that another location is more appropriate. The Department is not responsible for any travel costs incurred by attending an in-person hearing.

(3) The Appeals Unit will permit collect calls from parties and their witnesses participating in telephone hearings; however, professional representatives not at the physical location of their client must pay their own telephone charges.

#### **R994-508-111. Evidence, Including Hearsay Evidence.**

(1) The failure of one party to provide information either to the Department initially or at the appeals hearing severely



limits the facts available upon which to base a good decision. Therefore, it is necessary for all parties to actively participate in the hearing by providing accurate and complete information in a timely manner to assure the protection of the interests of each party and preserve the integrity of the unemployment insurance system.

(2) Hearsay, which is information provided by a source whose credibility cannot be tested through cross-examination, has inherent infirmities which make it unreliable.

(3) Evidence will not be excluded solely because it is hearsay. Hearsay, including information provided to the Department through telephone conversations and written statements will be considered, but greater weight will be given to credible sworn testimony from a party or a witness with personal knowledge of the facts.

(4) Findings of fact cannot be based exclusively on hearsay evidence unless that evidence is admissible under the Utah Rules of Evidence. All findings must be supported by a residuum of legal evidence competent in a court of law.

**R994-508-112. Procedure For Use of an Interpreter at the Hearing.**

(1) If a party notifies the Appeals Unit that an interpreter is needed, the Unit will arrange for an interpreter at no cost to the party.

(2) The ALJ must be assured that the interpreter understands the English language and understands the language of the person for whom the interpreter will interpret.

(3) The ALJ will instruct the interpreter to interpret, word for word, and not summarize, add, change, or delete any of the testimony or questions.

(4) The interpreter will be sworn to truthfully and accurately translate all statements made, all questions asked, and all answers given.

**R994-508-113. Department a Party to Proceedings.**

As a party to the hearing, the Department or its representatives have the same rights and responsibilities as other interested parties to present evidence, bring witnesses, cross-examine witnesses, give rebuttal evidence, and appeal decisions. The ALJ cannot act as the agent for the Department and therefore is limited to including in the record only that relevant evidence which is in the Department files, including electronically kept records or records submitted by Department representatives. The ALJ will, on his or her own motion, call witnesses for the Department when the testimony is necessary and the need for such witnesses or evidence could not have been reasonably anticipated by the Department prior to the hearing. If the witness is not available, the ALJ will, on his or her own motion, continue the hearing until the witness is available.

**R994-508-114. Ex Parte Communications.**

Parties are not permitted to discuss the merits or facts of any pending case with the ALJ assigned to that case or with a member of the Board prior to the issuance of the decision, unless all other parties to the case have been given notice and opportunity to be present. Any ex parte discussions between a party and the ALJ or a Board member will be reported to the parties at the time of the hearing and made a part of the record. Discussions with Department employees who are not designated to represent the Department on the issue and are not expected to participate in the hearing of the case are not ex parte communications and do not need to be made a part of the record.

**R994-508-115. Requests for Removal of an ALJ from a Case.**

A party may request that an ALJ be removed from a case on the basis of partiality, interest, or prejudice. The request for

removal must be made to the ALJ assigned to hear the case. The request must be made prior to the hearing unless the reason for the request was not, or could not have been known prior to the hearing. The request must state specific facts which are alleged to establish cause for removal. If the ALJ agrees to the removal, the case will be assigned to a different ALJ. If the ALJ finds no legitimate grounds for the removal, the request will be denied and the ALJ will explain the reasons for the denial during the hearing. Appeals pertaining to the partiality, interest, or prejudice of the ALJ may be filed consistent with the time limitations for appealing any other decision.

**R994-508-116. 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 a party.

(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 provide evidence of cause for the request.

(3) Unless compelling reasons exist, a party will not normally be granted more than one request for a continuance.

**R994-508-117. Failure to Participate in the Hearing and Reopening the Hearing After the Hearing Has Been Concluded.**

(1) If a party fails to appear for or participate in the hearing, either personally or through a representative, the ALJ may take evidence from participating parties and will issue a decision based on the best available evidence.

(2) Any party failing to participate, personally or through a representative, may request that the hearing be reopened.

(3) The request must be in writing, must set forth the reason for the request, and must be mailed, faxed, or delivered to the Appeals Unit within ten days of the issuance of the decision issued under Subsection (1). Intermediate Saturdays, Sundays and legal holidays are excluded from the computation of the ten days in accordance with Rule 6 of the Utah Rules of Civil Procedure. If the request is made after the expiration of the ten-day time limit, but within 30 days, the party requesting reopening must show cause for not making the request within ten days. If no decision has yet been issued, the request should be made without unnecessary delay. If the request is received more than 30 days after the decision is issued, the Department will have lost jurisdiction and the party requesting reopening must show good cause for not making a timely request.

(4) If a request to reopen is not granted, the ALJ will issue a decision denying the request. A party may appeal a denial of the request to reopen to the Board within 30 days of the date of issuance of the decision. The appeal must be in writing and set forth the reason or reasons for the appeal. The appeal can only contest the denial of the request to set aside the default and not the underlying merits of the case except as provided in R994-508-118(2)(f).

(5) The ALJ may reopen a hearing on his or her own motion if it appears necessary to take continuing jurisdiction or if the failure to reopen would be an affront to fairness.

(6) If the request to reopen is made more than 30 days after the issuance of the ALJ's decision, the ALJ may consider the request or refer it to the Board to be treated as an appeal to the Board.

**R994-508-118. What Constitutes Grounds to Reopen a**

**Hearing.**

(1) The request to reopen will be granted if the party was prevented from appearing at the hearing due to circumstances beyond the party's control.

(2) The request 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:

(a) the danger that the party not requesting reopening will be harmed by reopening;

(b) the length of the delay caused by the party's failure to participate including the length of time to request reopening;

(c) the reason for the request including whether it was within the reasonable control of the party requesting reopening;

(d) whether the party requesting reopening acted in good faith;

(e) whether the party was represented at the time of the hearing. Attorneys and professional representatives are expected to have greater knowledge of Department procedures and rules and are therefore held to a higher standard; and

(f) whether based on the evidence of record and the parties' arguments or statements, taking additional evidence might affect the outcome of the case.

(3) Requests to reopen 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.

(4) Excusable neglect is not limited to cases where the failure to act was due to circumstances beyond the party's control.

(5) The ALJ has the discretion to schedule a hearing to determine if a party requesting reopening satisfied the requirements of this rule or may, after giving the other parties an opportunity to respond to the request, grant or deny the request on the basis of the record in the case.

**R994-508-119. Withdrawal of Appeal.**

A party who has filed an appeal with the Appeals Unit may request that the appeal be withdrawn. The request must explain the reasons for the withdrawal and be made to the ALJ assigned to hear the case, or the supervising ALJ if no ALJ has yet been assigned. The ALJ may deny the request if the withdrawal of the appeal would jeopardize the due process rights of any party. If the ALJ grants the request, the ALJ will issue a decision dismissing the appeal and the initial Department determination will remain in effect. The decision will inform the parties of the right to reinstate the appeal and the procedure for reinstating the appeal. A request to reinstate an appeal must be made within ten calendar days of the decision dismissing the appeal, must be in writing, and must show cause for the request. A request to reinstate made more than ten days after the dismissal will be treated as a late appeal.

**R994-508-120. Prompt Notification of Decision.**

Any decision by an ALJ or the Board which affects the rights of any party with regard to benefits, tax liability, or jurisdictional issues will be mailed to the last known address of the parties or delivered in person. Each decision issued will be in writing with a complete statement of the findings of fact, reasoning and conclusions of law, and will include or be accompanied by a notice specifying the further appeal rights of the parties. The notice of appeal rights shall state clearly the place and manner for filing an appeal from the decision and the period within which a timely appeal may be filed.

**R994-508-122. Finality of Decision.**

The ALJ's decision is binding on all parties and is the final

decision of the Department unless appealed within 30 days of date the decision was issued.

**R994-508-201. Attorney Fees.**

(1) An attorney or other authorized representative may not charge or receive a fee for representing a claimant in an action before the Department without prior approval by an ALJ or the Board. The Department is not responsible for the payment of the fee, only the regulation and approval of the fee. The Department does not regulate fees charged to employers.

(2) Fees will not be approved in excess of 25 percent of the claimant's maximum potential regular benefit entitlement unless such a limitation would preclude the claimant from pursuing an appeal to the Court of Appeals and/or the Supreme Court or would deprive the client of the right to representation.

**R994-508-202. Petition for Approval of Fee.**

(1) If a fee is to be charged, a written petition for approval must be submitted by the claimant's representative to the ALJ before whom the representative appeared, or to the supervising ALJ if no hearing was scheduled. An approval form can be obtained through the Appeals Unit. Prior to approving the fee, a copy of the petition will be sent to the claimant and the claimant will be allowed ten days from the date of mailing to object to the fee. At the discretion of the ALJ, the fee may be approved as requested, adjusted to a lower amount, or disallowed in its entirety.

(2) If the case is appealed to the Board level, the claimant's representative must file a new petition with the Board if additional fees are requested.

**R994-508-203. Criteria for Evaluation of Fee Petition.**

The appropriateness of the fee will be determined using the following criteria:

(1) the complexity of the issues involved;

(2) the amount of time actually spent in;

(a) preparation of the case;

(b) attending the hearing;

(c) preparation of a brief, if required. Unless an appeal is taken to the Court of Appeals, fees charged for preparation of briefs or memoranda will not ordinarily be approved unless the ALJ requested or preapproved the filing of the brief or memoranda; and

(d) further appeal to the Board, the Court of Appeals, and/or the Supreme Court.

(3) The quality of service rendered including:

(a) preparedness of the representative;

(b) organization and presentation of the case;

(c) avoidance of undue delays. An attorney or representative should make every effort to go forward with the hearing when it is originally scheduled to avoid leaving the claimant without income or an unnecessary overpayment; and,

(d) the necessity of representation. If the ALJ or the Board determines that the claimant was not in need of representation because of the simplicity of the case or the lack of preparation on the part of the representative, only a minimal fee may be approved or, in unusual circumstances, a fee may be disallowed.

(4) The prevailing fee in the community. The prevailing fee is the rate charged by peers for the same type of service. In determining the prevailing fee for the service rendered, the Department may consider information obtained from the Utah State Bar Association, Lawyer's Referral Service, or other similar organizations as well as similar cases before the Appeals Unit.

**R994-508-204. Appeal of Attorney's Fee.**

The claimant or the authorized representative may appeal the fee award to the Board within 30 days of the date of issuance of the ALJ's decision. The appeal must be in writing and set

forth the reason or reasons for the appeal.

**R994-508-301. Appeal From a Decision of an ALJ.**

If the ALJ's decision did not affirm the initial Department determination, the Board will accept a timely appeal from that decision if filed by an interested party. If the decision of the ALJ affirmed the initial Department determination, the Board has the discretion to refuse to accept the appeal or request a review of the record by an individual designated by the Board. If the Board refuses to accept the appeal or requests a review of the record as provided in statute, the Board will issue a written decision declining the appeal and containing appeal rights.

**R994-508-302. Time Limit for Filing an Appeal to the Board.**

(1) The appeal from a decision of an ALJ must be filed within 30 calendar days from the date the decision was issued by the ALJ. This time limit applies regardless of whether the decision of the ALJ was sent through the U.S. Mail or personally delivered to the party. "Delivered to the party" means personally handed, faxed, or sent electronically to the party. No additional time for mailing is allowed.

(2) In computing the period of time allowed for filing a timely appeal, the date as it appears in the ALJ's decision is not included. The last day of the appeal period is included in the computation unless it is a Saturday, Sunday, or legal holiday when the offices of the Department are closed. If the last day permitted for filing an appeal falls on a Saturday, Sunday, or legal holiday, the time permitted for filing a timely appeal will be extended to the next day when the Department offices are open.

(3) The date of receipt of an appeal to the Board is the date the appeal is actually received by the Board, as shown by the Department's date stamp on the document or other credible evidence such as a written or electronic notation of the date of receipt, and not the post mark date from the post office. If the appeal is faxed to the Board, the date of receipt is the date recorded on the fax.

(4) Appeals to the Board which appear to be untimely will be handled in the same way as untimely appeals to the ALJ in rules R994-508-103 and R994-508-104.

**R994-508-303. Procedure for Filing an Appeal to the Board.**

(1) An appeal to the Board from a decision of an ALJ must be in writing and include:

(a) the name and signature of the party filing the appeal. Accessing the Department's website for the purpose of filing an appeal and providing a correct PIN will be considered a signed appeal;

(b) the name and social security number of the claimant in cases involving claims for unemployment benefits;

(c) the grounds for appeal; and

(d) the date when the appeal was mailed or sent to the Board.

(2) The appeal must be mailed, faxed, delivered to, or filed electronically with the Board.

(3) An appeal which does not state adequate grounds, or specify alleged errors in the decision of the ALJ, may be summarily dismissed.

**R994-508-304. Response to an Appeal to the Board.**

Interested parties will receive notice that an appeal has been filed and a copy of the appeal and will be given 15 days from the date the appeal was mailed to the party to file a response. Parties are not required to file a response. A party filing a response should mail a copy to all other parties and the Board.

**R994-508-305. Decisions of the Board.**

(1) The Board has the discretion to consider and render a decision on any issue in the case even if it was not presented at the hearing or raised by the parties on appeal.

(2) Absent a showing of unusual or extraordinary circumstances, the Board will not consider new evidence on appeal if the evidence was reasonably available and accessible at the time of the hearing before the ALJ.

(3) The Board has the authority to request additional information or evidence, if necessary.

(4) The Board may remand the case to the Department or the ALJ when appropriate.

(5) A copy of the decision of the Board, including an explanation of the right to judicial review, will be delivered or mailed to the interested parties.

**R994-508-307. Withdrawal of Appeal to the Board.**

A party who has filed an appeal from a decision of an ALJ may request that the appeal be withdrawn. The request must explain the reasons for the withdrawal by making a written statement to the Board explaining the reasons for the withdrawal. The Board may deny such a request if the withdrawal of the appeal jeopardizes the due process rights of any party. If the Board grants the request, a decision dismissing the appeal will be issued and the underlying decision will remain in effect. The decision will inform the party of the right to reinstate the appeal and the procedure for reinstating the appeal. A request to reinstate an appeal under this subsection must be made within 30 days of the decision dismissing the appeal, must be in writing, and must show cause for the request. A request to reinstate made more than ten days after the dismissal will be treated as a late appeal.

**R994-508-401. Jurisdiction and Reconsideration of Decisions.**

(1) An initial Department determination or a decision of an ALJ or the Board is not final until the time permitted for the filing of an appeal has elapsed. There are no limitations on the review of decisions until the appeal time has elapsed.

(2) After a determination or decision has become final, the Department may, on its own initiative or upon the request of any interested party, review a determination or decision and issue a new decision or determination, if appropriate, if there has been a change of conditions or a mistake as to facts. The reconsideration must be made at, or with the approval of, the level where the last decision on the case was made or is currently pending.

(a) A change in conditions may include a change in the law which would make reconsideration necessary in fairness to the parties who were adversely affected by the law change. A change in conditions may also include an unforeseeable change in the personal circumstances of the claimant or employer which would have made it reasonable not to file a timely appeal.

(b) A mistake as to facts is limited to material information which was the basis for the decision. A mistake as to facts may include information which is misunderstood or misinterpreted, but does not include an error in the application of the act or the rules provided the decision is made under the correct section of the act. A mistake as to facts can only be found if it was inadvertent. If the party alleging the mistake intentionally provided the wrong information or intentionally withheld information, the Department will not exercise jurisdiction under this paragraph.

(3) The Department is not required to take jurisdiction in all cases where there is a change in conditions or a mistake as to facts. The Department will weigh the administrative burden of making a redetermination against the requirements of fairness and the opportunities of the parties affected to file an appeal. The Department may decline to take jurisdiction if the redetermination would have little or no effect.

(4) Any time a decision or determination is reconsidered, all interested parties will be notified of the new information and provided with an opportunity to participate in the hearing, if any, held in conjunction with the review. All interested parties will receive notification of the redetermination and be given the right to appeal.

(5) A review cannot be made after one year from the date of the original determination except in cases of fraud or claimant fault. In cases of fault or fraud, the Department has continuing jurisdiction as to overpayments. In cases of fraud, the Department only has jurisdiction to assess the penalty provided in Utah Code Subsection 35A-4-405(5) for a period of one year after the discovery of the fraud.

**KEY: unemployment compensation, appellate procedures**  
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