R23. Administrative Services, Facilities Construction and Management.
R23-23. Health Reform -- Health Insurance Coverage in State Contracts -- Implementation.
R23-23-1. Purpose.

The purpose of this rule is to comply with the provisions of Section 63A-5-205.5.

R23-23-2. Authority.

This rule is authorized under Subsection 63A-5-103(2)(a), which directs the Utah State Building Board to make rules necessary for the discharge of the duties of the Division of Facilities Construction and Management as well as Section 63A-5-205.5 which requires this rule related to health insurance provisions in certain design and/or construction contracts.

R23-23-3. Demonstration of Compliance.

(1) At such time as a contractor becomes subject to the requirements of Section 63A-5-205.5, the contractor shall obtain and submit to the director a written Statement of Compliance in the form published on the division's website.

(2) At such time as a subcontractor of a contractor becomes subject to the requirements of Section 63A-5-205.5, the contractor shall obtain from the subcontractor a written Statement of Compliance in the form published on the division's website.

R23-23-4. Compliance Subject to Audit.

A contractor or subcontractor's compliance with Section 63A-5-205.5 is subject to an audit by the division or the Office of the Legislative Auditor General.

R23-23-5. Penalties.

The penalties that may be imposed if a contractor or subcontractor intentionally violates the provisions of Section 63A-5-205.5 may include:

(1) a three-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the first violation;

(2) a six-month suspension of the contractor or subcontractor from entering into future contracts with the state upon the second violation;

(3) an action for debarment of the contractor or subcontractor in accordance with Section 63G-6a-904 upon the third or subsequent violation; and

(4) monetary penalties which may not exceed 50 percent of the amount necessary to purchase qualified health insurance coverage for an employee and the dependents of an employee of the contractor or subcontractor who were not offered qualified health insurance coverage during the duration of the contract.

R23-23-6. Benchmark Available on Division's Website.

The commercially equivalent benchmark for the qualified health insurance coverage that is provided by the Department of Health in accordance with Utah Code Subsection 26-40-115(2) is available on the division's website.

KEY: health insurance, contractors, contracts, contract requirements
June 26, 2018 63A-5-103(2)(a)
Notice of Continuation June 10, 2014 63A-5-205.5

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

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

R25-7-2. Authority and Exemptions.

This rule is established pursuant to:

(1) Section 63A-3-107, which authorizes the Division of Finance to make rules governing in-state and out-of-state travel expenses; and

(2) Section 63A-3-106, which authorizes the Division of Finance to make rules governing meeting per diem and travel expenses for board members attending official meetings.

R25-7-3. Definitions.

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

(2) "Board" means a board, commission, council, committee, task force, or similar body established to perform a governmental function.

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

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

(5) "Home-Base" means the location the employee leaves from and/or returns to.

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

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

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

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

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

R25-7-4. Eligible Expenses.

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

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

R25-7-5. Approvals.

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

(2) Both in-state and out-of-state travel must be approved by the Executive Director or designee. The approval of in-state travel reimbursement forms may be considered as documentation of prior approval for in-state travel. Prior approval for out-of-state travel should be documented on form FI5 - "Request for Out-of-State Travel Authorization".

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

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

R25-7-6. Reimbursement for Meals.

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

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

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

(a) The daily travel meal allowance for in-state travel is $43.00 and is computed according to the rates listed in the following table.

TABLE 1

In-State Travel Meal Allowances

Meals	Rate
Breakfast	$10.00
Lunch	$14.00
Dinner	$19.00
Total	$43.00

(b) The daily travel meal allowance for out-of-state travel is $46.00 and is computed according to the rates listed in the following table.

TABLE 2

Out-of-State Travel Meal Allowances

Meals	Rate
Breakfast	$10.00
Lunch	$14.00
Dinner	$22.00
Total	$46.00

(4) When traveling to a Tier I premium location (Anchorage, Chicago, Hawaii, New York City, San Francisco, and Seattle), the traveler may choose to accept the per diem rate for out-of-state travel (as shown above) or to be reimbursed at the actual meal cost, with original receipts, up to $69 per day.

When traveling to a Tier II premium location (Atlanta, Baltimore, Boston, Dallas, Los Angeles, San Diego, and Washington, DC), the traveler may choose to accept the per diem rate for out-of-state travel (as shown above) or to be reimbursed at the actual meal cost, with original receipts, up to $59 per day.

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

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

Tier I Location

(i) If breakfast is provided deduct $16, leaving a premium allowance for lunch and dinner of actual up to $53.

(ii) If lunch is provided deduct $20, leaving a premium allowance for breakfast and dinner of actual up to $49.

(iii) If dinner is provided deduct $33, leaving a premium allowance for breakfast and lunch of actual up to $36.

Tier II Location

(i) If breakfast is provided deduct $13, leaving a premium allowance for lunch and dinner of actual up to $46.

(ii) If lunch is provided deduct $17, leaving a premium allowance for breakfast and dinner of actual up to $42.

(iii) If dinner is provided deduct $29, leaving a premium allowance for breakfast and lunch of actual up to $30.

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

(d) Actual meal cost includes tips.

(e) Alcoholic beverages are not reimbursable.

(5) When traveling in foreign countries, the traveler may choose to accept the per diem rate for out-of-state travel (as shown above) or to be reimbursed the actual meal cost, with original receipts, not to exceed the federal reimbursement rate

for the location as of the date of travel.

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

(b) Actual meal cost includes tips.

(c) Alcoholic beverages are not reimbursable.

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

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

TABLE 3

The Day Travel Begins

1st Quarter a.m. 12:00-5:59 *B, L, D	2nd Quarter a.m. 6:00-11:59 *L, D	3rd Quarter p.m. 12:00-5:59 *D	4th Quarter p.m. 6:00-11:59 *no meals
In-State			
$43.00	$33.00	$19.00	$0
Out-of-State			
$46.00	$36.00	$22.00	$0

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

(b) The days at the location.

(i) Complimentary meals of a hotel, motel, and/or association and meals included in the registration cost are deducted from the total daily meal allowance. However, continental breakfasts will not reduce the meal allowance. Please Note: For breakfast, if a hot food item is offered, it is considered a complimentary meal, no matter how it is categorized by the hotel/conference facility. The meal is considered a "continental breakfast" if no hot food items are offered.

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

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

TABLE 4

The Day Travel Ends

1st Quarter a.m. 12:00-6:00 *no meals	2nd Quarter a.m. 6:01-12:00 *B	3rd Quarter p.m. 12:01-6:00 *B, L	4th Quarter p.m. 6:01-11:59 *B, L, D
In-State			
$0	$10.00	$24.00	$43.00
Out-of-State			
$0	$10.00	$24.00	$46.00

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

(7) An employee may be authorized by the Department Director or designee to receive a taxable meal allowance when the employee's destination is at least 100 miles one way from their home base and the employee does not stay overnight.

(a) Breakfast is paid when the employee leaves their home base before 6:00 a.m.

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

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

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

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

(c) Dinner is paid when the employee leaves their home base and returns after 6:00 p.m.

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

R25-7-7. Meals for Statutory Non-Salaried State Boards.

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

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

R25-7-8. Reimbursement for Lodging.

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

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

(2) For in-state lodging at a non-conference hotel, the state will reimburse the actual cost up to $70 per night for single occupancy plus tax and any mandatory fees charged by the hotel except as noted in the table below:

TABLE 5

Cities with Differing Rates

Beaver	$75.00 plus tax and mandatory fees
Blanding	$75.00 plus tax and mandatory fees
Bluff	$95.00 plus tax and mandatory fees
Brigham City	$80.00 plus tax and mandatory fees
Bryce Canyon City	$80.00 plus tax and mandatory fees
Cedar City	$80.00 plus tax and mandatory fees
Duchesne	$85.00 plus tax and mandatory fees
Ephraim	$75.00 plus tax and mandatory fees
Farmington	$85.00 plus tax and mandatory fees
Fillmore	$75.00 plus tax and mandatory fees
Garden City	$80.00 plus tax and mandatory fees
Green River	$85.00 plus tax and mandatory fees

Hanksville	$75.00 plus tax and mandatory fees
Heber	$85.00 plus tax and mandatory fees
Kanab	$90.00 plus tax and mandatory fees
Layton	$90.00 plus tax and mandatory fees
Logan	$85.00 plus tax and mandatory fees
Mexican Hat	$90.00 plus tax and mandatory fees
Moab	$110.00 plus tax and mandatory fees
Monticello	$80.00 plus tax and mandatory fees
Ogden	$90.00 plus tax and mandatory fees
Panguitch	$75.00 plus tax and mandatory fees
Park City/Midway	$110 plus tax and mandatory fees
Price	$75.00 plus tax and mandatory fees
Provo/Orem/Lehi/American Fork/ Springville	$85.00 plus tax and mandatory fees
Roosevelt/Ballard	$90.00 plus tax and mandatory fees
Salt Lake City Metropolitan Area (Draper to Centerville), Tooele	$100.00 plus tax and mandatory fees
St.George/Washington/Springdale/ Hurricane	$85.00 plus tax and mandatory fees
Torrey	$85.00 plus tax and mandatory fees
Tremonton	$90.00 plus tax and mandatory fees
Vernal	$95.00 plus tax and mandatory fees
All Other Utah Cities	$70.00 plus tax and mandatory fees

(3) State employees traveling less than 50 miles from their home base are not entitled to lodging reimbursement. Miles are calculated from either the departure home-base or from the destination to the traveler's home-base. The traveler may leave from one home-base and return to a different home-base. For example, if the traveler leaves from their residence, then the home-base for departure calculations is their residence. If the traveler returns to where they normally work (ie. Cannon Health Building), then the home-base for arrival calculations is the Cannon Health Building.

(a) In some cases, agencies must use judgement to determine a traveler's home-base. The following are some things to consider when determining a traveler's home-base.

(i) Is the destination less than 50 miles from the traveler's home or normal work location? If the destination is less than 50 miles from either the traveler's home or from their normal work location, then generally the employee should not be reimbursed for lodging.

(ii) Is there a valid business reason for the traveler to go to the office (or to some other location) before driving to the destination?

(iii) Is the traveler required to work at the destination the next day?

(iv) Is the traveler going directly home after the trip, or is there a valid business reason for the traveler to first go to the office (or to some other location)?

(v) Even if "it is not specifically against policy", would the lodging be considered necessary, reasonable and in the best interest of the State?

(4) When the State of Utah pays for a person from out-of-state to travel to Utah, the in-state lodging per diem rates will apply.

(5) For out-of-state travel stays at a non-conference hotel, the state will reimburse the actual cost per night plus tax and any mandatory fees charged by the hotel, not to exceed the federal lodging rate for the location. These reservations must be made through the State Travel Office.

(6) The state will reimburse the actual cost per night plus tax and any mandatory fees charged by the hotel for in-state or out-of-state travel stays where the department/traveler makes reservations through the State Travel Office.

If lodging is not available at the allowable per diem rate in the area the employee needs to stay, the State Travel Office will book a hotel with the best available rate. In this circumstance, the employee will be reimbursed at the actual rate booked.

If an employee chooses to stay at a hotel that costs more than the allowable per diem rate, the employee will only be reimbursed for the allowable per diem rate plus tax and any mandatory fees charged by the hotel. These instances will be audited 100% by the State Finance Post-Auditors.

(7) Lodging is reimbursed at the rates listed in Table 5 for single occupancy only. For double state employee occupancy, add $20, for triple state employee occupancy, add $40, for quadruple state employee occupancy, add $60.

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

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

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

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

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

(10) When lodging is required, travelers should stay at the lodging facility nearest to the meeting/training/work location where state lodging per diem rates are accepted in order to minimize transportation costs.

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

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

(i) $25 per night with no receipts required or

(ii) Actual cost up to $40 per night with a signed receipt from a facility such as a campground or trailer park, not from a private residence.

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

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

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

R25-7-9. Reimbursement for Incidentals.

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

(1) Travelers will be reimbursed for actual out-of-pocket costs for incidental items such as baggage tips, transportation costs, maid service, and bellman. Gratuities/tips for various services such as taxi/shuttle, assistance with baggage, maid service, and bellman, may be reimbursed up to a combined maximum of $5.00 per day.

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

(b) No other gratuities will be reimbursed.

(c) Include an original receipt for each individual incidental item above $19.99.

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

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

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

(c) The maximum that airport parking will be reimbursed is the economy lot parking rate at the airport they are flying out of. A receipt is required for amounts of $20 or more.

(3) Registration should be paid in advance on a state warrant, or with a state purchasing card.

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

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

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

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

(b) The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for business telephone calls and personal telephone calls.

(5) Allowances for personal telephone calls made while out of town on state business overnight may be based on the number of nights away from home. The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for personal telephone calls.

(a) Four nights or less - actual amount up to $2.50 per night.

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

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

(d) More than thirty days - start over

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

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

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

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

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

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

(8) Travel on a Weekend during Trips of More Than 10 Nights' Duration - A department may provide for employees to return home on a weekend when a trip extends longer than ten nights. Reimbursements may be given for costs allowed by these policies.

R25-7-10. Reimbursement for Transportation.

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

(1) Air transportation is limited to Air Coach or Excursion class. Priority seating charges will not be reimbursed unless preapproved by the department director or designee.

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

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

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

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

(a) The maximum reimbursement for parking, whether travelers park at the airport or away from the airport, is the long term parking rate at the airport they are flying out of.

(b) The parking receipt must be included with the Travel Reimbursement Request, form FI 51A or FI 51B for amounts of $20 or more.

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

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

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

(b) Reimbursement for a private vehicle will be at the rate of 42 cents per mile or 54 cents per mile if a state vehicle is not available to the employee.

(i) To determine which rate to use, the traveler must first determine if their department has an agency vehicle (long-term leased vehicle from Fleet Operations) that meets their needs and is reasonably available for the trip (does not apply to special purpose vehicles). If reasonably available, the employee should use an agency vehicle. If an agency vehicle that meets their needs is not reasonably available, the agency may approve the traveler to use either a daily pool fleet vehicle or a private vehicle. If a daily pool fleet vehicle is not reasonably available, the traveler may be reimbursed at 54 cents per mile.

(ii) If a trip is estimated to average 100 miles or more per day, the agency should approve the traveler to rent a daily pool fleet vehicle if one is reasonably available. Doing so will cost less than if the traveler takes a private vehicle. If the agency approves the traveler to take a private vehicle, the employee will be reimbursed at the lower rate of 42 cents per mile.

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

(d) Any exceptions to this mileage reimbursement rate guidance must be approved in writing by the employees Executive Director or designee.

(e) Mileage will be computed using Mapquest or other generally accepted map/route planning website, or from the latest official state road map and will be limited to the most economical, usually traveled routes.

(f) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

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

(h) Departments may allow mileage reimbursement on an approved Travel Reimbursement Request, form FI 51A or FI

51B, if other costs associated with the trip are to be reimbursed at the same time.

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

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

(b) If the traveler drives a privately-owned vehicle, reimbursement will be at the rate of 42 cents per mile or the airplane fare, whichever is less, unless otherwise approved by the Department Director or designee.

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

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

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

(iv) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

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

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

(5) Use of rental vehicles must be approved in writing in advance by the Department Director or designee.

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

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

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

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

(ii) Rental vehicle reservations not made through the State Travel Office must be approved in advance by the Department Director or designee.

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

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

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

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

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

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

(d) Reimbursement will be made at 53 cents per mile.

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

(7) Travel by private motorcycle must be approved prior to the trip by the Department Director or designee. Travel will be reimbursed at 20 cents per mile.

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

KEY: air travel, per diem allowances, state employees, transportation

June 21, 2018	**63A-3-107**
Notice of Continuation February 8, 2018	**63A-3-106**

R156. Commerce, Occupational and Professional Licensing.
R156-11a. Cosmetology and Associated Professions Licensing Act Rule.
R156-11a-101. Title.

This rule is known as the "Cosmetology and Associated Professions Licensing Act Rule."

R156-11a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 11a, as used in Title 58, Chapters 1 and 11a or this rule:

(1) "Acrylic nail", as used in Section 15A-3-402 and Subsection R156-11a-102(25), means an extension for natural nails molded out of a polymer powder and a liquid monomer buffed to a shine.

(2) "Advanced pedicures", as used in Subsection 58-11a-102(39)(a)(i)(D), means any of the following while caring for the nails, cuticles or calluses of the feet:

(a) utilizing manual instruments, implements, advanced electrical equipment, tools, or microdermabrasion for cleaning, trimming, softening, smoothing, or buffing;

(b) utilizing blades, including corn or callus planer or rasp, for smoothing, shaving or removing dead skin from the feet as defined in Section R156-11a-611; or

(c) utilizing topical products and preparations for chemical exfoliation as defined in Subsection R156-11a-610(4).

(3) "Aroma therapy" means the application of essential oils which are applied directly to the skin, undiluted or in a misted dilution with a carrier oil or lotion. for varied applications such as massage, hot packs, cold packs, compress, inhalation, steam or air diffusion, or in hydrotherapy services.

(4) "BCA acid" means bicloroacetic acid.

(5) "Body wraps", as used in Subsection 58-11a-102(39)(a)(i)(A), means body treatments utilizing products or equipment to enhance and maintain the texture, contour, integrity and health of the skin and body.

(6) "Chemical exfoliation", as defined in Subsections 58-11a-102(39)(a)(i)(C) and R156-11a-610(4), means a resurfacing procedure performed with a chemical solution or product for the purpose of removing superficial layers of the epidermis to a point no deeper than the stratum corneum.

(7) "Dermabrasion or open dermabrasion" means the surgical application of a wire or diamond frieze for deep skin resurfacing by a physician to abrade the skin to the epidermis and possibly down to the papillary dermis.

(8) "Dermaplane" means the use of a scalpel or bladed instrument under the direct supervision of a health care practitioner to shave the upper layers of the stratum corneum.

(9) "Direct supervision by a licensed health care practitioner" means a health care practitioner who, acting within the scope of the licensee's license, authorizes and directs the work of a licensee pursuant to this chapter as defined under Subsection R156-1-102a(4)(a).

(10) "Equivalent number of credit hours" means:

(a) the following conversion table if on a semester basis:

(i) theory - 1 credit hour - 30 clock hours;

(ii) practice - 1 credit hour - 30 clock hours; and

(iii) clinical experience - 1 credit hour - 45 clock hours; and

(b) the following conversion table if on a quarter basis:

(i) theory - 1 credit hour - 20 clock hours;

(ii) practice - 1 credit hour - 20 clock hours; and

(iii) clinical experience - 1 credit hour - 30 clock hours.

(11) "Exfoliation" means the sloughing off of non-living skin cells "corneocytes" by superficial and non-invasive means.

(12) "Extraction" means the following:

(a) "Advanced extraction", as used in Subsections 58-11a-102(39)(a)(i)(F) and R156-11a-611(2)(b), means to perform extraction with a lancet or device that removes impurities from the skin.

(b) "Manual extraction", as used in Subsection 58-11a-102(31)(a), means to remove impurities from the skin with protected fingertips, cotton swabs or a loop comedone extractor.

(13) "Galvanic current" means a constant low-voltage direct current.

(14) "General supervision by a licensed health care practitioner" means a health care practitioner who, acting within the scope of the licensee's license, authorizes and directs the work of a licensee pursuant to this chapter as defined under Subsection R156-1-102a(4)(c).

(15) "Health care practitioner" means a physician/surgeon licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, an advanced practice registered nurse licensed under Title 58, Chapter 31b, Nurse Practice Act, a podiatrist under Title 58, Chapter 5A, Podiatric Physician Licensing Act, or a physician assistant licensed under Title 58, Chapter 70a, Physician Assistant Practice Act, acting within the appropriate scope of practice.

(16) "Hydrotherapy", as used in Subsection 58-11a-102(39)(a)(i)(B), means the use of water for cosmetic purposes or beautification of the body.

(17) "Indirect supervision" means the supervising instructor who, acting within the scope of the licensee's license, authorizes and directs the work of a licensee pursuant to this chapter as defined under Subsection R156-1-102a(4)(b).

(18) "Limited chemical exfoliation" means a non-invasive chemical exfoliation and is further defined in Subsection R156-11a-610(3).

(19) "Lymphatic massage", as used in Subsections 58-11a-102(39)(a)(ii) and 58-11a-302(11)(e), means a method using a light rhythmic pressure applied by manual or other means to the skin using specific lymphatic maneuvers to promote drainage of the lymphatic fluid through the tissue.

(20) "Manipulating", as used in Subsection 58-11a-102(31)(a), means applying a light pressure by the hands to the skin.

(21) "Microdermabrasion", as used in Subsection 58-11a-102(39)(a)(i)(E), means a gentle, progressive, superficial, mechanical exfoliation of the uppermost layers of the stratum corneum using a closed-loop vacuum system.

(22) "Microneedling" means the use of multiple tiny solid needles designed to pierce the skin for the purpose of stimulating collagen production or cellular renewal. Devices used may be in the form of rollers, stamps or electronic "pens". It is also known as:

(a) dermal needling;

(b) Collagen Induction Therapy (CIT);

(c) dermal rolling;

(d) cosmetic dry needling;

(e) multitrepannic collagen actuation; or

(f) percutaneous collagen induction.

(23) "Patch test" or "predisposition test" means applying a small amount of a chemical preparation to the skin of the arm or behind the ear to determine possible allergies of the client to the chemical preparation.

(24) "Pedicure" means any of the following:

(a) cleaning, trimming, softening, or caring for the nails, cuticles, or calluses of the feet;

(b) the use of manual instruments or implements on the nails, cuticles, or calluses of the feet;

(c) callus removal by sanding, buffing, or filing; or

(d) massaging of the feet or lower portion of the leg.

(25) "Source capture system", as used in Section 15A-3-402 and Subsection 58-11a-502(7), means an air filtration and recirculation system that shall be:

(a) maintained and cleaned according to the manufacturer's instructions; and

(b) capable of:

(i) filtering and recirculating air to inside space not less than 50 cubic feet per minute (cfm) per acrylic nail station; or

(ii) exhausting not less than 50 cubic feet per minute (cfm) per acrylic nail station.

(26) "TCA acid" means trichloroacetic acid.

(27) "Unprofessional conduct" is further defined, in accordance with Section 58-1-501, in Section R156-11a-502.

R156-11a-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 11a.

R156-11a-104. Organization - Relationship to Rule R156-1.

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

R156-11a-301. Change of Legal Entity.

In accordance with Section 58-11a-301, a school shall be required to submit a new application for licensure upon any change of legal entity status. The new legal entity may not engage in practice as a licensed school, pursuant to Subsections 58-11a-102(16) through (19), until the application is approved and a license issued.

R156-11a-302. Good Moral Character - Disqualifying Convictions.

(1) When reviewing an application to determine the good moral character of an applicant as set forth in Section 58-11a-302 and whether the applicant has been involved in unprofessional conduct as set forth in Subsection 58-1-501(2)(c), the Division and the Board shall consider the applicant's criminal record as follows:

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

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

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

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

(iii) any offense involving controlled dangerous substances; or

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

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

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

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

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

R156-11a-302a. Qualifications for Licensure - Examination Requirements.

In accordance with Section 58-11a-302, the examination requirements for licensure are established as follows:

(1) Except as otherwise provided in Section 58-1-308 and R156-11a-308 for individuals reinstating a license, applicants for each classification listed below shall pass within one year prior to the date of application, or within other reasonable timeframe as approved by the Division upon review of applicable extenuating circumstances, the respective examination with a passing score of at least 75% as determined by the examination provider.

(a) Applicants for licensure as a barber shall pass the National- Interstate Council of State Boards of Cosmetology (NIC) Barber Theory and Practical Examinations.

(b) Applicants for licensure as a cosmetologist/barber shall pass the NIC Cosmetology/Barber Theory and Practical Examinations.

(c) Applicants for licensure as an electrologist shall pass the NIC Electrology Theory and Practical Examinations.

(d) Applicants for licensure as a basic esthetician shall pass the NIC Esthetics Theory and Practical Examinations.

(e) Applicants for licensure as a master esthetician shall pass the NIC Master Esthetics Theory and Practical Examinations.

(f) Applicants for licensure as a hair designer shall pass the NIC Hair Design Theory and Practical Examinations.

(g) Applicants for licensure as a barber instructor, cosmetologist/barber instructor, electrology instructor, esthetician instructor, hair designer instructor, or nail technology instructor shall pass the NIC Instructor Examinations.

(h) Applicants for licensure as a nail technician shall pass the NIC Nail Technology Theory and Practical Examinations.

(2) Any substantially equivalent theory, practical or instructor examination approved by the licensing authority of any other state is acceptable for any of the examinations specified in Subsection(1).

R156-11a-302b. Qualifications for Licensure - Equivalency of Foreign School Education.

In accordance with Subsection 58-11a-302(17):

(1) An applicant shall submit documentation of education equivalency from a foreign school education to a Utah licensed barber school, cosmetology/barber school, hair design school, esthetics school, electrology school, or nail technology school.

(2) The documentation shall be an education or credential evaluation from one of the following approved credential evaluation services:

(a) Josef Silny and Associates Incorporated, International Education Consultants; or

(b) Educational Credential Evaluators Incorporated.

R156-11a-302c. Qualifications for Licensure - Acceptance of Credit Hours.

In accordance with Subsection 58-11a-302(21), a licensed school shall accept credit hours toward graduation as follows:

(1) The school shall accept credit hours toward the curriculum set forth in Sections R156-11a-700, R156-11a-701, R156-11a-702, R156-11a-703, R156-11a-704, R156-11a-705, and R156-11a-706.

(2) The credit hours accepted shall not exceed the number of hours required in Subsections 58-11a-302(1)(d)(i), 58-11a-302(4)(d)(i), 58-11a-302(7)(d), 58-11a-302(10)(d)(i), 58-11a-302(11)(d)(i), 58-11a-302(14)(d)(i), and 58-11a-302(17)(d)(i) for that professional license in Utah.

R156-11a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licenses and certificates under Title 58, Chapter 11a is established by rule in Section R156-1-308a.

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

R156-11a-308. Reinstatement of License.

In accordance with Subsection 58-1-308(5)(a), an individual may apply for reinstatement of license between two years and five years from the date of license expiration without being required to pass the exams provided in Section R156-11a-302a.

R156-11a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to provide direct supervision of an apprentice, or of a student attending a barber, cosmetology/barber, esthetics, electrology, hair design, or nail technology school, or of a student instructor;

(2) failing to obtain accreditation as a barber, cosmetology/barber, esthetics, electrology, hair design, or nail technology school in accordance with Section R156-11a-601;

(3) failing to maintain accreditation as a barber, cosmetology/barber, esthetics, electrology, hair design, or nail technology school after having been approved for accreditation;

(4) failing to comply with the standards of accreditation applicable to barber, cosmetology/barber, esthetics, electrology, hair design, or nail technology schools;

(5) failing to provide adequate instruction or training as applicable to a student of a barber, cosmetology/barber, esthetics, electrology, or nail technology school, or in an approved barber, cosmetology/barber, esthetics, or nail technology apprenticeship;

(6) failing to comply with Title 26, Utah Health Code;

(7) failing to comply with the apprenticeship requirements applicable to barber, cosmetologist/barber, basic esthetician, master esthetician, or nail technician apprenticeships as set forth in Sections R156-11a-800 through R156-11a-804;

(8) failing to comply with the standards for curriculums applicable to barber, cosmetology/barber, esthetics, electrology, hair design, or nail technology schools as set forth in Sections R156-11a-700 through R156-11a-707;

(9) using any device classified by the Food and Drug Administration as a prescriptive medical device without the appropriate level of supervision by a licensed health care practitioner acting within the licensed health care practitioner's scope of practice;

(10) performing services within the scope of practice as a basic esthetician, or a master esthetician without having been adequately trained to perform such services;

(11) failing as a supervisor to provide the appropriate level of supervision while a basic esthetician, an electrologist or a master esthetician under supervision is performing service within the scope of practice as set forth in Subsections 58-11a-102(31), 58-11a-102(34) and 58-11a-102(39);

(12) performing services within the scope of practice as a basic esthetician, a master esthetician or an electrologist without having the appropriate level of supervision as required by Subsection 58-11a-102(31), 58-11a-102(34) and 58-11a-102(39);

(13) violating any standard established in Sections R156-11a-601 through R156-11a-612;

(14) performing a procedure while the licensee has a known contagious disease of a nature that may be transmitted by performing the procedure, unless the licensee takes medically approved measures to prevent transmission of the disease; and

(15) performing a procedure on a client who has a known contagious disease of a nature that may be transmitted by performing the procedure, unless the licensee takes medically approved measures to prevent transmission of the disease.

R156-11a-503. Administrative Penalties - Unlawful Conduct.

(1) In accordance with Subsections 58-1-501(1)(a) and (c), 58-11a-301(1) and (2), 58-11a-502(1), (2), (4), (5), (6), or (7), and 58-11a-503(4), unless otherwise ordered by the presiding officer, the following fine schedule shall apply to citations issued under Title 58, Chapter 11a:

(a) Practicing or engaging in, or attempting to practice or engage in activity for which a license is required under Title 58, Chapter 11a in violation of Subsection 58-11a-502(1):

First Offense: $500

Second Offense: $1,000;

(b) Aiding or abetting a person engaging in the practice of, or attempting to engage in the practice of, knowingly employing any other person to engage in or practice or attempt to engage in or practice any occupation or profession for which a license is required under Title 58, Chapter 11a in violation of Subsection 58-11a-502(2):

First Offense: $800

Second Offense: $1,600;

(c)(i) Using a solution composed of at least 10% methyl methacrylete (MMA) on a client in violation of Subsection 58-11a-502(4):

First Offense: $500

Second Offense: $1,000;

(ii) Possessing a solution composed of at least 10% methyl methacrylete (MMA) in violation of Subsection 58-11a-502(4):

First Offense: $500

Second Offense: $1,000;

(d) Performing an ablative procedure as defined in Section 58-67-102 in violation of Subsection 58-11a-502(5):

First Offense: $1,000

Second Offense: $2,000;

(e) When acting as an instructor regarding a service requiring licensure under Title 58, Chapter 11a, for a class or education program where attendees are not licensed under Title 58, Chapter 11a, violating Subsection 58-11a-502(6) by failing to inform each attendee in writing that:

(i) taking the class or program without completing the requirements for licensure under this chapter is insufficient to certify or qualify the attendee to perform a service for compensation that requires licensure under this chapter; and

(ii) the attendee is required to obtain licensure under this chapter before performing the service for compensation:

First Offense: $500

Second Offense: $1,000;

(f) Failing, as a salon or school where nail technology is practiced or taught, to maintain a source capture system as required under Title 15A, State Construction and Fire Codes Act, including failing to maintain and clean a source capture system's air filter according to the manufacturer's instructions, in violation of Subsection 58-11a-502(7):

First Offense: $500

Second Offense: $1,000.

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Subsection 58-11a-503(4)(h).

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

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

(5) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-11a-601. Standards for Accreditation.

In accordance with Subsections 58-11a-302(3)(c)(iv), 58-11a-302(6)(c)(iv), 58-11a-302(9)(c)(iv), 58-11a-302(13)(c)(iv), 58-11a-302(16)(c)(iv), and 58-11a-302(19)(c)(iv), the accreditation standards for a barber school, a cosmetology/barber school, an electrology school, an esthetics school, a hair design school, and a nail technology school include:

(1) Each school shall be accredited by:

(a) the National Accrediting Commission of Cosmetology Arts and Sciences (NACCAS); or

(b) other accrediting bodies recognized by the U.S. Department of Education.

(2) Each school shall maintain and keep the accreditation current.

(3) A newly licensed school shall pursue accreditation under this section using the following procedure:

(a) A new school shall:

(i) within one month of the date the school was licensed as a school by the Division, submit to an accrediting commission an application for candidate status;

(ii) within 18 months of the date the school was licensed by the Division, provide the Division evidence of receiving candidate status from the accrediting commission;

(iii) file with the Utah Department of Commerce's Division of Consumer Protection a "Request for Exemption pursuant to the Postsecondary Proprietary School Act" application, pursuant to Section 13-34-105 and Section R152-34-5;

(iv) during the pendency of its application for accreditation status, comply with all applicable accreditation standards; and

(v) receive approval for accreditation within 24 months following the date it achieved candidate status.

(b) The Division shall determine whether a newly-licensed school entity has succeeded a previously-licensed school entity for the purposes of achieving accreditation.

(c) If a newly-licensed school is determined by the Division to be a new entity, then the newly-licensed school shall comply with the accreditation deadlines specified in Subsection R156-11a-601(3)(a) above.

(d) If a newly-licensed school is determined by the Division not to be a new entity, then the newly-licensed school shall meet the accreditation deadlines previously set by its accrediting commission.

(4) The Division's determination shall be based upon whether the newly-licensed school:

(a) operates on essentially the same premises as the previously-licensed school;

(b) uses essentially the same staff;

(c) operates under essentially the same ownership; and

(d) maintains the previously-licensed school's accreditation status with the applicable governing accreditation commission.

(5) A licensee whose accreditation has been withdrawn shall immediately notify the Division.

(6) A licensee who fails to obtain or maintain accreditation status, as required herein, shall immediately surrender to the Division its license as a school. Failure to do so shall constitute a basis for immediate revocation of licensure in accordance with Section 63G-4-502.

R156-11a-602. Standards for the Physical Facility.

In accordance with Subsections 58-11a-302(3)(c)(iii), 58-11a-302(6)(c)(iii), 58-11a-302(9)(c)(iii), 58-11a-302(13)(c)(iii), 58-11a-302(16)(c)(iii), and 58-11a-302(19)(c)(iii), the standards for the physical facilities of a barber, cosmetology/barber, electrology, esthetics, hair design, or nail technology school shall include:

(1) the governing standards established by the accreditation commission; and

(2) whether or not addressed in the governing standards:

(a) enough of each type of training equipment so that each student has an equal opportunity to be properly trained;

(b) laundry facilities to maintain sanitation and sterilization; and

(c) appropriate amounts of clean towels, sheets, linen, sponges, headbands, compresses, robes, drapes and other necessary linens for each student's and client's use.

R156-11a-603. Standards for a Student Kit.

(1) In accordance with Subsections 58-11a-302(3)(c)(iv), 58-11a-302(6)(c)(iv), 58-11a-302(9)(c)(iv), 58-11a-302(13)(c)(iv), 58-11a-302(16)(c)(iv), and 58-11a-302(19)(c)(iii), barber, cosmetology/barber, electrology, esthetics, hair design, and nail technology schools shall provide to each student a list of all basic kit supplies needed by that student.

(2) The basic kit may be supplied by the school or purchased independently by the student.

R156-11a-604. Standards for Prohibition Against Operation as a Barbershop, Salon or Spa.

(1) In accordance with Subsections 58-11a-302(3)(c)(iii), 58-11a-302(6)(c)(iii), 58-11a-302(9)(c)(iv), 58-11a-302(13)(c)(iii), 58-11a-302(16)(c)(iii), and 58-11a-302(19)(c)(iii), when a barbershop, salon, or spa is under the same ownership or is otherwise associated with a school, the barbershop, salon, or spa shall maintain separate operations from the school.

(2) If the barbershop, salon, or spa is located in the same building as a school, separate entrances and visitor reception areas are required. The barbershop, salon, or spa shall also use separate public information releases, advertisements, and names than that used by the school.

R156-11a-605. Standards for Protection of Students.

In accordance with Subsections 58-11a-302(3)(c)(iii) and (iv), 58-11a-302(6)(c)(iii) and (iv), 58-11a-302(9)(c)(iii) and (iv), 58-11a-302(13)(c)(iii) and (iv), 58-11a-302(16)(c)(iii) and (iv), and 58-11a-302(19)(c)(iii) and (iv), standards for the protection of students shall include the following:

(1) If a school ceases to operate for any reason, the school shall:

(a) notify the Division within 15 days by registered or certified mail; and

(b) name a trustee who shall be responsible for:

(i) maintaining the student records for a minimum period of ten years; and

(ii) providing student information, such as accumulated hours and dates of attendance.

(2) Schools shall provide a copy of the written contract prepared in accordance with Section R156-11a-607 to each student.

(3) Schools shall not use students to perform maintenance, janitorial, or remodeling work such as scrubbing floors, walls or toilets, cleaning windows, waxing floors, painting, decorating, or performing any outside work on the grounds or building. Students may be required to clean up after themselves and to perform or participate in daily cleanup of work areas, including the floor space, shampoo bowls, laundering of towels and linen, and other general cleanup duties that are related to the performance of client services.

(4) Schools shall not require students to sell products applicable to their industry as a condition to graduate, but may provide instruction in product sales techniques as part of their curriculums.

(5) Schools shall keep a daily written record of student attendance.

(6) Schools shall not be permitted to remove hours earned by a student. If a student is late for class, the school may

require the student to retake the class before giving credit for the class. Schools may require a student to take a refresher course or retake a class toward graduation based upon an evaluation of the student's level of competency.

(7) In accordance with Subsection 58-11a-502(3)(a), schools shall not require students to participate in hair removal training that pertains to the genitals or anus of a client.

R156-11a-606. Standards for Protection of Schools.

In accordance with Subsections 58-11a-302(3)(c)(iv), 58-11a-302(6)(c)(iv), 58-11a-302(9)(c)(iv), 58-11a-302(13)(c)(iv), 58-11a-302(16)(c)(iv), and 58-11a-302(17)(c)(iv), standards for the protection of barber, cosmetology/barber, electrology, esthetics, hair design, and nail technology schools shall include the following:

(1) Schools shall not be required to release documentation of hours earned to a student until the student has paid the tuition or fees owed to the school as provided in the terms of the contract.

(2) Schools may accept transfer students. Schools shall determine the number of hours to be accepted toward graduation based upon an evaluation of the student's level of training in accordance with Section R156-11a-302c.

(3) Hours obtained by a student who is enrolled in an apprenticeship may not be used to satisfy any of the required hours of school instruction.

R156-11a-607. Standards for a Written Contract.

(1) In accordance with Subsections 58-11a-302(3)(c)(iv, 58-11a-302(6)(c)(iv), 58-11a-302(9)(c)(iv), 58-11a-302(13)(c)(iv), 58-11a-302(16)(c)(iv), and 58-11a-302(17)(c)(iv), barber, cosmetology/barber, electrology, esthetics, hair design and nail technology schools shall complete a written contract with each student prior to admission.

(2) Each contract shall include specifically, or by reference to the school's catalogue or handbook, or both, the following:

(a) the current status of the school's accreditation;

(b) rules of conduct;

(c) attendance requirements;

(d) provisions for make-up work;

(e) grounds for probation, suspension or dismissal; and

(f) a detailed fee schedule which shall include the student's financial responsibility upon voluntarily leaving the school or upon being suspended from the school.

(3) The school shall maintain on file a copy of the contract and of any referenced catalogue or handbook, for each student, and shall provide a copy of the contract and any catalogue or handbook to the Division upon request.

R156-11a-608. Standards for Staff Requirements of Schools.

In accordance with Subsections 58-11a-302(3)(c)(iv), 58-11a-302(6)(c)(iv), 58-11a-302(9)(c)(iv), 58-11a-302(13)(c)(iv), 58-11a-302(16)(c)(iv), and 58-11a-302(17)(c)(iv), the staff requirements for barber, cosmetology/barber, electrology, esthetics, hair design, and nail technology schools shall include:

(1) Schools shall have a minimum of one licensed instructor for every 20 students, or fraction thereof, attending a practical session, and one licensed instructor for any group attending a theory session. Special guest speakers shall not reduce the required number of licensed instructors.

(2) Schools may give credit for special workshops, training seminars, and competitions, or may invite special guest speakers who are not licensed in accordance with Section 58-11a-302, to provide instruction or give practical demonstrations to supplement the curriculum as long as a licensed instructor from the school is present.

(3) Student instructors shall not be counted as part of the instructor staff.

R156-11a-609. Standards for Instructors.

(1) In accordance with Subsections 58-11a-302(2)(e) and (f), 58-11a-302(5)(e) and (f), 58-11a-302(8)(e) and (f), 58-11a-302(12)(e) and (f), 58-11a-302(15)(e) and (f), and 58-11a-302(18)(e) and (f), barber, cosmetology/barber, electrology, esthetics, hair design, and nail technology instructors may only teach in those areas for which they have received training and are qualified to teach.

(2) In accordance with Subsection 58-11a-102(11), an individual licensed as a cosmetology/barbering instructor may teach:

(a) barbering, basic esthetics, and hair design as part of the cosmetology/barbering or nail technology curriculums in a licensed barber school, a licensed cosmetology/barber school, a licensed hair design school, or a licensed nail technology school; and

(b) barbering and basic esthetics in an approved barber, cosmetology/barber, or nail technology apprenticeship, provided the individual can demonstrate the same experience as required in Subsection(1).

(3) An instructor may only teach the use of a mechanical or electrical apparatus for which the instructor is trained and qualified.

R156-11a-610 Standards for the Use of Acids.

In accordance with Subsections 58-11a-102(25)(b), 58-11a-102(31)(a)(i)(C), and 58-11a-501(17), the standards for the use of any acid or concentration of acids, shall be:

(1) The use of any acid or acid solution which would exfoliate the skin below the stratum corneum, including those listed in Subsections (3) and (4), is prohibited unless used under the supervision of a licensed health care practitioner.

(2) The following acids are prohibited unless used under the supervision of a licensed health care practitioner:

(a) phenol;

(b) bichloroacetic acid;

(c) resorcinol, except as provided in Subsection (4)(b); and

(d) any acid in any concentration level that requires a prescription.

(3) Limited chemical exfoliation for a basic esthetician does not include the mixing, combining, or layering of skin exfoliation products or services, but does include:

(a) alpha hydroxy acids of 30% or less, with a pH of not less than 3.0; and

(b) salicylic acid of 15% or less.

(4) Chemical exfoliation for a master esthetician includes:

(a) acids allowed for a basic esthetician;

(b) modified jessner solution on the face and the tissue immediately adjacent to the jaw line;

(c) alpha hydroxy acids with a pH of not less than 1.0 and at a concentration of 50% must include partially neutralized acids, and any acid above the concentration of 50% is prohibited;

(d) beta hydroxy acids with a concentration of not more than 30%;

(e) trichloroacetic acid, in accordance with Subsection 58-11a-501(17)(c), in a concentration of not more than 15%, but no manual, mechanical, or acid exfoliation can be used prior to treatment unless under the general supervision of a licensed health care practitioner; and

(f) vitamin-based acids.

(5) A licensee may not apply any exfoliating acid to a client's skin that has undergone microdermabrasion or microneedling within the previous seven days, unless under the general supervision of a licensed health care practitioner.

(6)(a) A licensee shall prepare and maintain current documentation of the licensee's cumulative experience in chemical exfoliation, including:

(i) courses of instruction;

(ii) specialized training;
(iii) on-the-job experience; and
(iv) the approximate percentage that chemical exfoliation represents in the licensee's overall business.
(b) A licensee shall provide the documentation required by Subsection (6)(a) to the Division upon request.
(7) A licensee may not use an acid or perform a chemical exfoliation that the licensee is not competent to use or perform through training and experience, and as documented in accordance with Subsection (6).
(8) Only commercially available products utilized in accordance with manufacturers' instructions may be used for chemical exfoliation purposes.
(9) A patch test shall be administered to each client prior to beginning any chemical exfoliation series.

R156-11a-611. Standards for Approval of Mechanical or Electrical Apparatus.

In accordance with Subsections 58-11a-102(39)(a)(i)(G)(II) and (H), the standards for approval of mechanical or electrical apparatus are:
(1) No mechanical or electrical apparatus that is considered a prescription medical device by the FDA may be used by a licensee, unless such use is completed under the appropriate level of supervision by a licensed health care practitioner acting within the licensed health care practitioner's scope of practice.
(2) Dermaplane procedures, dermabrasion procedures, blades, knives, and lancets are prohibited except for:
(a) advanced pedicures;
(b) advanced extraction of impurities from the skin; and
(c) dermaplane procedures for advanced exfoliation as defined in Subsection R156-11a-102(7) by a master esthetician under direct supervision of a health care practitioner.
(3) The use of any procedure in which human tissue is cut or altered by laser energy or ionizing radiation is prohibited for all individuals licensed under this chapter unless it is within the scope of practice for the licensee and under the appropriate level of supervision by a licensed health care practitioner acting within the licensed health care practitioner's scope of practice.
(4) To be approved, a microdermabrasion machine must:
(a) be specifically labeled for cosmetic or esthetic purposes;
(b) be a closed-loop vacuum system that uses a tissue retention device; and
(c) the normal and customary use of the machine does not result in the removal of the epidermis beyond the stratum corneum.
(5) To be approved, a microneedling device shall:
(a) be used only by a master esthetician:
(i) without supervision if needle penetration does not exceed 1.5 mm; or
(ii) with general supervision by a licensed health care practitioner if needle penetration exceeds 1.5 mm; and
(b) be used specifically for cosmetic or esthetic purposes.

R156-11a-612. Standards for Disclosure.

(1) In accordance with Subsections 58-11a-102(31)(b) and (39)(a)(i)(C), a licensee acting within the licensee's scope of practice shall inform a client of the following before applying a chemical exfoliant, using a microneedling device, or using a microdermabrasion machine:
(a) the procedure may only be performed for cosmetic and not medical purposes, unless the licensee is working under the supervision of a licensed health care practitioner, who is working within the scope of the practitioner's license; and
(b) the benefits and risks of the procedure.

R156-11a-700. Curriculum for Barber Schools.

In accordance with Subsection 58-11a-302(3)(c)(iv), the curriculum for a barber school shall consist of 1,000 hours of instruction in the following subject areas:
(1) introduction consisting of:
(a) history of barbering,
(b) an overview of the barber curriculum;
(2) personal, client, and shop safety including:
(a) aseptic techniques and sanitary procedures;
(b) disinfection and sterilization methods and procedures;
(c) health risks to the barber;
(3) business and shop management including:
(a) developing a clientele;
(b) professional image;
(c) professional ethics;
(d) professional associations;
(e) public relations;
(f) advertising;
(4) legal issues including:
(a) malpractice liability;
(b) regulatory agencies;
(c) tax laws;
(5) human immune system;
(6) diseases and disorders of the hair and scalp including:
(a) bacteriology;
(b) sanitation;
(c) sterilization;
(d) decontamination;
(e) infection control;
(7) implements, tools, and equipment for barbering;
(8) first aid;
(9) anatomy;
(10) science of barbering;
(11) chemistry for barbering;
(12) analysis of the hair and scalp;
(13) properties of the hair, skin, and scalp;
(14) basic hairstyling and hair cutting including:
(a) draping;
(b) clipper variations;
(c) scissor cutting; and
(d) wet and thermal styling;
(15) shaving and razor cutting;
(16) mustache and beard design;
(17) elective topics; and
(18) Barber Examination review.

R156-11a-701. Curriculum for Electrology Schools.

In accordance with Subsection 58-11a-302(9)(c)(iv), the curriculum for an electrology school shall consist of 600 hours of instruction in the following subject areas:
(1) introduction consisting of:
(a) the history of electrology; and
(b) an overview of the curriculum;
(2) personal, client, and salon safety including:
(a) aseptic techniques and sanitary procedures;
(b) disinfection and sterilization methods and procedures; and
(c) health risks to the electrologist;
(3) business and salon management including:
(a) developing a clientele;
(b) professional image;
(c) professional ethics;
(d) professional associations;
(e) public relations; and
(f) advertising;
(4) legal issues including:
(a) malpractice and liability;
(b) regulatory agencies; and
(c) tax laws;
(5) human immune system;

(6) diseases and disorders of hair and skin;
(7) implements, tools, and equipment for electrology;
(8) first aid;
(9) anatomy;
(10) science of electrology;
(11) analysis of the skin;
(12) physiology of hair and skin;
(13) medical definitions including:
(a) dermatology;
(b) endocrinology;
(c) angiology; and
(d) neurology;
(14) evaluating the characteristics of skin;
(15) evaluating the characteristics of hair;
(16) medications affecting hair growth including:
(a) over-the-counter preparations;
(b) anesthetics; and
(c) prescription medications;
(17) contraindications;
(18) disease and blood-borne pathogens control including:
(a) pathogenic bacteria and non-bacterial causes; and
(b) American Electrology Association (AEA) infection control standards;
(19) principles of electricity and equipment including:
(a) types of electrical currents, their measurements and classifications;
(b) Food and Drug Administration (FDA) approved needle type epilation equipment;
(c) FDA approved hair removal devices; and
(d) epilator operation and care;
(20) modalities for need type electrolysis including:
(a) needle/probe types, features, and selection;
(b) insertions, considerations, and accuracy;
(c) galvanic multi needle technique;
(d) thermolysis manual and flash technique;
(e) blend and progressive epilation technique; and
(f) one and two handed techniques;
(21) clinical procedures including:
(a) consultation;
(b) health/medical history;
(c) pre and post treatment skin care;
(d) normal healing skin effects;
(e) tissue injury and complications;
(f) treating ingrown hairs;
(g) face and body treatment;
(h) cosmetic electrology; and
(i) positioning and draping;
(22) elective topics; and
(23) Electrology Examination review.

R156-11a-702. Curriculum for Esthetics School - Basic Esthetician Programs.

In accordance with Subsection 58-11a-302(13)(c)(iv), the curriculum for an esthetics school basic esthetician program shall consist of 600 hours of instruction in the following subject areas:
(1) introduction consisting of:
(a) history of esthetics; and
(b) an overview of the curriculum;
(2) personal, client, and salon safety including:
(a) aseptic techniques and sanitary procedures;
(b) disinfection and sterilization methods and procedures; and
(c) health risks to the basic esthetician;
(3) business and salon management including:
(a) developing a clientele;
(b) professional image;
(c) professional ethics;
(d) professional associations;
(e) public relations; and
(f) advertising.
(4) legal issues including:
(a) malpractice liability;
(b) regulatory agencies; and
(c) tax laws;
(5) human immune system;
(6) diseases and disorders of the skin including:
(a) bacteriology;
(b) sanitation;
(c) sterilization;
(d) decontamination; and
(e) infection control;
(7) implements, tools, and equipment for basic esthetics including;
(a) high frequency or galvanic current; and
(b) heat lamps;
(8) first aid;
(9) anatomy;
(10) science of basic esthetics;
(11) analysis of the skin;
(12) physiology of the skin;
(13) facials, manual and mechanical;
(14) limited chemical exfoliation including:
(a) pre-exfoliation consultation;
(b) post-exfoliation treatments; and
(c) chemical reactions;
(15) chemistry for basic esthetics;
(16) temporary removal of superfluous hair by waxing;
(17) treatment of the skin;
(18) packs and masks;
(19) aroma therapy;
(20) application of makeup including:
(a) application of artificial eyelashes;
(b) arching of the eyebrows; and
(c) tinting of the eyelashes and eyebrows;
(21) medical devices;
(22) cardiopulmonary resuscitation (CPR);
(23) basic facials;
(24) chemistry of cosmetics;
(25) skin treatments, manual and mechanical;
(26) massage of the face and neck;
(27) natural nail manicures and pedicures;
(28) elective topics; and
(29) Esthetic Examination review.

R156-11a-703. Curriculum for Esthetics School - Master Esthetician Programs.

In accordance with Subsection 58-11a-302(13)(c)(iv), the curriculum for an esthetics school master esthetician program shall consist of 1,200 hours of instruction, 600 of which consist of the curriculum for a basic esthetician program, the remaining 600 of which shall be in the following subject areas:
(1) introduction consisting of:
(a) history of esthetics and master esthetics; and
(b) an overview of the curriculum;
(2) personal, client, and salon safety including:
(a) aseptic techniques and sanitary procedures;
(b) disinfection and sterilization methods and procedures; and
(c) health risks to the master esthetician;
(3) business and salon management consisting of:
(a) developing clients;
(b) professional image;
(c) professional ethics;
(d) professional associations;
(e) advertising; and
(f) public relations;
(4) legal issues including:

(a) malpractice liability;
(b) regulatory agencies; and
(c) tax laws;
(5) the human immune system;
(6) diseases and disorders of the skin including:
(a) bacteriology;
(b) sanitation;
(c) sterilization;
(d) contamination; and
(e) infection controls;
(7) implements, tools, and equipment for master esthetics;
(8) first aid;
(9) anatomy;
(10) science of master esthetics;
(11) analysis of the skin;
(12) physiology of the skin;
(13) advanced facials, manual and mechanical;
(14) chemistry for master esthetics;
(15) advanced chemical exfoliation, including:
(a) pre-exfoliation consultation;
(b) post-exfoliation treatments; and
(c) reactions;
(16) temporary removal of superfluous hair by waxing and advanced waxing;
(17) advanced pedicures;
(18) advanced aroma therapy;
(19) the aging process and its damage to the skin;
(20) medical devices;
(21) cardiopulmonary resuscitation (CPR) training;
(22) hydrotherapy;
(23) advanced mechanical and electrical devices including instruction in using:
(a) sanding and microdermabrasion techniques;
(b) galvanic or high-frequency current for treatment of the skin;
(c) devices equipped with a brush to cleanse the skin;
(d) devices that apply a mixture of steam and ozone to the skin;
(e) devices that spray water and other liquids on the skin; and
(f) any other mechanical devices, esthetic preparations, or procedures approved by the Division in collaboration with the Board for the care and treatment of the skin;
(24) elective topics;
(25) for schools teaching lymphatic massage, in accordance with Subsections 58-11a-102(39)(a)(ii) and 58-11a-302(11)(e), 200 hours of instruction is required and shall consist of:
(a) 40 hours of training in anatomy and physiology of the lymphatic system;
(b) 70 applications of one hour each in manual lymphatic massage of the full body; and
(c) 90 hours of training in lymphatic massage by other means, including but not limited to energy, mechanical devices, suction-assisted massage with or without rollers, compression therapy with equipment, or garment therapy; and
(26) Master Esthetician Examination review.

R156-11a-704. Curriculum for Nail Technology Schools.

In accordance with Subsection 58-11a-302(19)(c)(iv), the curriculum for a nail technology school shall consist of 300 hours of instruction in the following subject areas:
(1) introduction consisting of:
(a) history of nail technology; and
(b) an overview of the curriculum;
(2) personal, client, and salon safety including:
(a) aseptic techniques and sanitary procedures;
(b) disinfection and sterilization methods and procedures; and
(c) health risks to the nail technician;
(3) business and salon management including:
(a) developing clientele;
(b) professional image;
(c) professional ethics;
(d) professional associations;
(e) public relations; and
(f) advertising;
(4) legal issues including:
(a) malpractice liability;
(b) regulatory agencies; and
(c) tax laws;
(5) human immune system;
(6) diseases and disorders of the nails and skin including:
(a) bacteriology;
(b) sanitation;
(c) sterilization;
(d) decontamination; and
(e) infection control;
(7) implements, tools, and equipment for nail technology;
(8) first aid;
(9) anatomy;
(10) science for nail technology;
(11) theory of basic manicuring including hand and arm massage;
(12) physiology of the skin and nails;
(13) chemistry for nail technology;
(14) artificial nail techniques consisting of:
(a) wraps;
(b) nail tips;
(c) gel nails;
(d) sculptured and other acrylic nails; and
(e) nail art;
(15) pedicures and massaging the lower leg and foot;
(16) elective topics; and
(17) Nail Technology Examination review.

R156-11a-705. Curriculum for Cosmetology/Barber Schools.

In accordance with Subsection 58-11a-302(6)(c)(iv), the curriculum for a cosmetology/barber school shall consist of 1,600 hours of instruction in all of the following subject areas:
(1) introduction consisting of:
(a) history of barbering, cosmetology/barbering, esthetics, nail technology; and
(b) overview of the curriculum;
(2) personal, client, and salon safety including:
(a) aseptic techniques and sanitary procedures;
(b) disinfection and sterilization methods and procedures;
(c) health risks to the cosmetologist/barber;
(3) business and salon management including:
(a) developing clientele;
(b) professional image;
(c) professional ethics;
(d) professional associations;
(e) public relations; and
(f) advertising;
(4) legal issues including:
(a) malpractice liability;
(b) regulatory agencies; and
(c) tax laws;
(5) human immune system;
(6) diseases and disorders of skin, nails, hair, and scalp including:
(a) bacteriology;
(b) sanitation;
(c) sterilization;
(d) decontamination; and
(e) infection control;

(7) implements, tools, and equipment for cosmetology, barbering, basic esthetics, and nail technology, including:
(a) high frequency or galvanic current; and
(b) heat lamps;
(8) first aid;
(9) anatomy;
(10) science of cosmetology/barbering, basic esthetics, and nail technology;
(11) analysis of the skin, hair, and scalp;
(12) physiology of the human body including skin and nails;
(13) electricity and light therapy;
(14) limited chemical exfoliation including:
(a) pre-exfoliation consultation;
(b) post-exfoliation treatments; and
(c) chemical reactions;
(15) chemistry for cosmetology/barbering, basic esthetics, and nail technology;
(16) temporary removal of superfluous hair including by waxing;
(17) properties of the hair, skin, and scalp;
(18) basic hairstyling including:
(a) wet and thermal styling;
(b) permanent waving;
(c) hair coloring;
(d) chemical hair relaxing; and
(e) thermal hair straightening;
(19) haircuts including:
(a) draping;
(b) clipper variations;
(c) scissor cutting;
(d) shaving; and
(e) wigs and artificial hair;
(20) razor cutting;
(21) mustache and beard design;
(22) basic esthetics including:
(a) treatment of the skin, manual and mechanical;
(b) packs and masks;
(c) aroma therapy;
(d) chemistry of cosmetics;
(e) application of makeup including:
(i) application of artificial eyelashes;
(ii) arching of the eyebrows;
(iii) tinting of the eyelashes and eyebrows;
(f) massage of the face and neck; and
(g) natural manicures and pedicures;
(23) medical devices;
(24) cardiopulmonary resuscitation (CPR);
(25) artificial nail techniques consisting of:
(a) wraps;
(b) nail tips;
(c) gel nails;
(d) sculptured and other acrylic nails; and
(e) nail art;
(26) pedicures and massaging of the lower leg and foot;
(27) elective topics; and
(28) Cosmetology/Barber Examination review.

R156-11a-706. Curriculum for Hair Design Schools.

In accordance with Subsection 58-11a-302(16)(c)(iv), the curriculum for a hair design school shall consist of 1,200 hours of instruction in the following subject areas:
(1) introduction, consisting of:
(a) history of hair design; and
(b) overview of the curriculum;
(2) personal, client, and salon safety, including:
(a) aseptic techniques and sanitary procedures;
(b) disinfection and sterilization methods and procedures;
(c) health risks to the hair designer;
(3) business and salon management, including:
(a) developing clientele;
(b) professional image;
(c) professional ethics;
(d) professional associations;
(e) public relations; and
(f) advertising;
(4) legal issues, including:
(a) malpractice liability;
(b) regulatory agencies; and
(c) tax laws;
(5) human immune system;
(6) diseases and disorders of hair and scalp, including:
(a) bacteriology;
(b) sanitation;
(c) sterilization;
(d) decontamination; and
(e) infection control;
(7) implements, tools, and equipment for hair design, including:
(a) high frequency current; and
(b) heat lamps;
(8) first aid;
(9) anatomy;
(10) science of hair design;
(11) analysis of the hair and scalp;
(12) physiology of the human body;
(13) electricity and light therapy;
(14) chemical reactions;
(15) chemistry for hair design;
(16) properties of the hair and scalp;
(17) basic hairstyling including:
(a) wet and thermal styling;
(b) permanent waving;
(c) hair coloring;
(d) chemical hair relaxing; and
(e) thermal hair straightening;
(18) haircuts, including:
(a) draping;
(b) clipper variations;
(c) scissor cutting;
(d) shaving; and
(e) wigs and artificial hair;
(19) razor cutting;
(20) mustache and beard design;
(21) cardio-pulmonary resuscitation(CPR);
(22) elective topics; and
(23) Hair Designer Examination review.

R156-11a-707. Curriculum for Instructor Schools.

In accordance with Subsections 58-11a-302(2)(e)(i), 58-11a-302(5)(e)(i), 58-11a-302(8)(e)(i), 58-11a-302(12)(e)(i), 58-11a-302(15)(e)(i), and 58-11a-302(18)(e)(i), the curriculum for an approved instructor school shall consist of instructor training in the following subjects:
(1) motivation and the learning process;
(2) teacher preparation;
(3) teaching methods;
(4) classroom management;
(5) testing;
(6) instructional evaluation;
(7) laws, rules, and regulations; and
(8) Barber, Cosmetology/Barber, Esthetics (Master level), Electrology, Hair Designer, and Nail Technology Instructors Examination review.

R156-11a-800. Approved Barber Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(1), the

requirements for an approved barber apprenticeship shall include the following:

(1) In accordance with Subsection 58-11a-306(1)(b)(ii), an instructor is required to provide one-on-one direct supervision of their apprentice during the apprenticeship program. This does not preclude an instructor from having more than one apprentice; however, if an instructor has more than one apprentice, the instructor may not simultaneously supervise the apprentices, and the same hour or hours of instruction may not be credited toward more than one apprentice.

(2) The apprentice shall register with the Division by submitting a form prescribed by the Division.

(3) The instructor must be approved by the Division for the apprenticeship.

(4) There shall be a conspicuous sign near the work station of the apprentice stating "Apprentice in Training".

(5) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services which will document the total number of hours of training. The record shall be available to the Division upon request.

(6) A complete set of barber texts shall be available to the apprentice.

(7) An apprentice may be compensated for services performed.

(8) The instructor shall provide training and technical instruction of 1,250 hours using the curriculum defined in Section R156-11a-700.

(9) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(10) An apprentice shall not perform work on the public until the apprentice has received at least 10% of the hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-700.

(11) Any hours obtained while enrolled in a barber school or a cosmetology/barber school shall not be used to satisfy the required 1,250 hours of apprentice training.

(12) If an apprentice completes the apprenticeship and fails NIC Barber Theory Examination or NIC Barber Practical Examination three times, the apprentice and instructor must:

(a) meet with the Board at the next appropriate Board meeting;

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

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

R156-11a-801. Approved Cosmetologist/Barber Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(1), the requirements for an approved cosmetologist/barber apprenticeship include:

(1) In accordance with Subsection 58-11a-306(2)(b)(ii), an instructor is required to provide one-on-one direct supervision of their apprentice during the apprenticeship program. This does not preclude an instructor from having more than one apprentice; however, if an instructor has more than one apprentice, the instructor may not simultaneously supervise the apprentices, and the same hour or hours of instruction may not be credited toward more than one apprentice.

(2) The apprentice shall be registered with the Division by submitting a form prescribed by the Division.

(3) The instructor must be approved by the Division for the apprenticeship.

(4) There shall be a conspicuous sign near the work station of the apprentice stating "Apprentice in Training".

(5) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services which will document the total number of hours of training. The record shall be available to the Division upon request.

(6) A complete set of cosmetology/barber texts shall be available to the apprentice.

(7) An apprentice may be compensated for services performed.

(8) The instructor shall provide training and technical instruction of 2,500 hours using the curriculum defined in Section R156-11a-705.

(9) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(10) An apprentice shall not perform work on the public until the apprentice has received at least 10% of the hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-705.

(11) Hours obtained while enrolled in a cosmetology/barber school shall not be used to satisfy the required 2,500 hours of apprentice training.

(12) If an apprentice completes the apprenticeship and fails the NIC Barber/Cosmetology Theory Examination or NIC Barber/Cosmetology Practical Examination three times, the apprentice and instructor must:

(a) meet with the Board at the next appropriate Board meeting;

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

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

R156-11a-802. Approved Basic Esthetician Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(2), the requirements for an approved basic esthetician apprenticeship include:

(1) In accordance with Subsection 58-11a-306(3)(b)(ii), an instructor is required to provide one-on-one direct supervision of their apprentice during the apprenticeship program. This does not preclude an instructor from having more than one apprentice; however, if an instructor has more than one apprentice, the instructor may not simultaneously supervise the apprentice, and the same hour or hours of instruction may not be credited toward more than one apprentice.

(2) The apprentice shall be registered with the Division by submitting a form prescribed by the Division.

(3) The instructor must be approved by the Division for the apprenticeship.

(4) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training".

(5) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services, which will document the total number of hours of training. The record shall be available to the Division upon request.

(6) A complete set of esthetics texts shall be available to the apprentice.

(7) An apprentice may be compensated for services performed.

(8) The instructor shall provide training and technical instruction of 800 hours using the curriculum defined in Section R156-11a-702.

(9) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days

out of every seven consecutive days.

(10) An apprentice shall not perform work on the public until the apprentice has received at least 10% of the hours required in technical training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-702.

(11) Hours obtained while enrolled in an esthetics school or a cosmetology/barber school shall not be used to satisfy the required 800 hours of apprentice training.

(12) If an apprentice completes the apprenticeship and fails the NIC Esthetics Theory Examination or NIC Esthetics Practical Examination three times, the apprentice and instructor must:

(a) meet with the Board at the next appropriate Board meeting;

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

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

R156-11a-803. Approved Master Esthetician Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(3), the requirements for an approved master esthetician apprenticeship include:

(1) In accordance with Subsection 58-11a-306(4)(b)(ii), an instructor is required to provide one-on-one direct supervision of their apprentice during the apprenticeship program. This does not preclude an instructor from having more than one apprentice; however, if an instructor has more than one apprentice, the instructor may not simultaneously supervise the apprentices, and the same hour or hours of instruction may not be credited toward more than one apprentice.

(2) The apprentice shall be registered with the Division by submitting a form prescribed by the Division.

(3) The instructor must be approved by the Division for the apprenticeship.

(4) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training."

(5) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services, which will document the total number of hours of training. The record shall be available to the Division upon request.

(6) A complete set of esthetics texts shall be available to the apprentice.

(7) An apprentice may be compensated for services performed.

(8) The instructor shall provide training and technical instruction of 1,500 hours using the curriculum defined in Section R156-11a-703.

(9) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(10) An apprentice shall not perform work on the public until the apprentice has received at least 10% of the required hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Subsection R156-11a-703.

(11) Hours obtained while enrolled in an esthetics school or a cosmetology/barber school shall not be used to satisfy the required 1,500 hours of apprentice training.

(12) If an apprentice completes the apprenticeship and fails the NIC Master Esthetics Theory Examination or NIC Master Esthetics Practical Examination three times, the apprentice and instructor must:

(a) meet with the Board at the next appropriate Board meeting;

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

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

R156-11a-804. Approved Nail Technician Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(4), the requirements for an approved nail technician apprenticeship include:

(1) In accordance with Subsection 58-11a-306(5)(b)(iii), an instructor is required to provide one-on-two direct supervision of their apprentices during the apprenticeship program. This does not preclude an instructor from having more than two apprentices; however, if an instructor has more than two apprentices, the instructor may not simultaneously supervise more than two apprentices, and the same hour or hours of instruction may not be credited toward more than two apprentices.

(2) The apprentice shall be registered with the Division by submitting a form prescribed by the Division.

(3) The instructor must be approved by the Division for the apprenticeship.

(4) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training."

(5) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services, which will document the total number of hours of training. The record shall be available to the Division upon request.

(6) A complete set of nail technician texts shall be available to the apprentice.

(7) An apprentice may be compensated for services performed.

(8) The instructor shall provide training and technical instruction of 375 hours using the curriculum defined in Section R156-11a-704.

(9) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(10) An apprentice shall not perform work on the public until the apprentice has received at least 10% of the hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Subsection R156-11a-704.

(11) Hours obtained while enrolled in a nail technology school or a cosmetology/barber school shall not be used to satisfy the required 375 hours of apprentice training.

(12) If an apprentice completes the apprenticeship and fails the NIC Nail Technology Theory Examination or NIC Nail Technology Practical Examination three times, the apprentice and instructor must:

(a) meet with the Board at the next appropriate Board meeting;

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

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

R156-11a-805. Conflicts of Interest.

An apprentice instructor may not be an employee of an apprentice or be involved in any relationship with an apprentice or others that would interfere with the instructor's ability to teach and train the apprentice.

R156-11a-901. Standards for an On-the-Job Training

Internship.

In accordance with Subsection 58-11a-304(8), students enrolled in a licensed cosmetology/barber school may participate in an on-the-job training internship if they meet the following requirements:

(1) The on-the-job training intern shall have completed at least 1,000 hours of the training contracted with a cosmetology/barber school, of which 400 hours shall be clinical hours.

(2) There shall be a conspicuous sign near the work station of the on-the-job training intern stating "Intern in Training".

(3) A licensed "on-site" cosmetology/barber shall supervise only one on-the-job training intern at a time.

(4) An on-the-job training intern, while working under the direct supervision of an "on-site" licensed cosmetologist/barber, may perform the following procedures:

(a) draping;
(b) shampooing;
(c) roller setting;
(d) blow drying styling;
(e) applying color;
(f) removing color by rinsing and shampooing;
(g) removing permanent chemicals;
(h) removing permanent rods;
(i) removing rollers;
(j) applying temporary rinses, reconditioners, and rebuilders;
(k) acting as receptionists;
(l) doing retail sales;
(m) sanitizing the salon;
(o) doing inventory and ordering supplies; and
(p) handing equipment to the cosmetologist/barber supervisor.

(5) The "on-site" cosmetologist/barber supervisor shall have in the supervisor's possession a letter, which must be updated on a quarterly basis, from the school where the on-the-job training intern is enrolled stating that the on-the-job training intern is currently in good standing at the school and is complying with school requirements.

(6) Hours of training spent while performing on-the-job training as an intern shall not apply towards credits required for graduation.

R156-11a-902. Standards for an On-the-Job Instructor Training.

(1) In accordance with Subsections 58-11a-302(2)(e)(ii), 58-11a-302(5)(e)(ii), 58-11a-302(8)(e)(ii), 58-11a-302(12)(e)(ii), 58-11a-302(15)(e)(ii), and 58-11a-302(18)(e)(ii), an employee of a licensed barber, cosmetology/barber, electrology, esthetics, hair design or nail technology school may obtain on-the-job training to become a licensed instructor if they meet the following requirements of this section.

(2) The on-the-job instructor training shall be under the supervision of an instructor licensed as an instructor in the same category as the trainee, except that an instructor providing on-the-job instructor training supervision for basic esthetics instruction shall be licensed as a master esthetician.

(3) The instructor trainee shall have an active license in the same category for which the instructor trainee is seeking licensure to instruct, except an instructor trainee receiving on-the-job training to instruct basic esthetics shall be licensed as a master esthetician.

(4) The on-the-job instructor training shall include all of the following categories:

(a) motivation and the learning process;
(b) teacher preparation;
(c) teaching methods;
(d) classroom management;
(e) testing;
(f) instructional evaluation;
(g) laws, rules, and regulations; and
(h) Barber, Cosmetology/Barber, Esthetics (Master level), Electrology, Hair Design and Nail Technology Instructors Examination review.

(5) The instructor trainee shall not count toward the instructor-to-student ratio.

(6) The on-the-job instructor training shall be completed within one year, unless the instructor trainee provides documentation of extenuating circumstances justifying an extension.

KEY: cosmetologists/barbers, estheticians, electrologists, nail technicians

June 7, 2018	**58-11a-101**
Notice of Continuation January 19, 2017	**58-1-106(1)(a)**
	58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-70a. Physician Assistant Practice Act Rule.
R156-70a-101. Title.

This rule is known as the "Physician Assistant Practice Act Rule".

R156-70a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 70a, as used in this rule:

(1) "Full time equivalent" or "FTE" means the equivalent of 2,080 hours of staff time for a one-year period.

R156-70a-103. Authority - Purpose.

This rule is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 70a.

R156-70a-104. Organization - Relationship to Rule R156-1.

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

R156-70a-302. Qualification for Licensure - Examination Requirements.

In accordance with Subsection 58-70a-302(5), the examination requirement for licensure as a physician assistant is a passing score on the National Commission on Certification of Physician Assistants (NCCPA) examination.

R156-70a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 70a is established by rule in Section R156-1-308a.

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

R156-70a-304. Continuing Education.

In accordance with Subsection 58-70a-304(1)(a), the requirements for qualified continuing professional education (CPE) are as follows:

(1) CPE shall consist of 40 hours during each two-year licensure cycle. A licensee's documentation to the Division of current national certification by NCCPA shall be deemed to meet the requirements in this section.

(2) Licensees may fulfill up to 15% of their CPE requirement by providing volunteer services within the scope of their license at a qualified location, in accordance with Section 58-13-3. For every four documented hours of volunteer services, the licensee may earn one hour of CPE credit.

(3) A minimum of 34 hours shall be in category 1 offerings as established by the Accreditation Council for Continuing Medical Education (ACCME).

(4) Approved providers for ACCME offerings include the following:

(a) approved programs sponsored by the American Academy of Physician Assistants (AAPA); or

(b) programs approved by other health-related continuing education approval organizations, provided the continuing education is nationally recognized by a healthcare accredited agency and the education is related to the practice as a physician assistant.

(5) A maximum of six CPE hours may be recognized for non-ACCME offerings of continuing education provided by the Division of Occupational and Professional Licensing.

(6) CPE under this section shall:

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

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

(c) have a method of verification of attendance and completion.

(7) CPE credit shall be recognized in 50 minute hour blocks of time for education completed in formally established classroom courses, seminars, lectures, conferences or training sessions which meet the criteria listed in Subsection (6) above).

(8) A licensee shall maintain competent records of completed continuing professional education for a period of four years after close of the two-year licensure period. It is the responsibility of the licensee to demonstrate that their continuing education meets the requirements of this section.

(9) Continuing professional education for licensees who have not been licensed for the entire two-year period shall be prorated from the date of licensure.

R156-70a-305. Exemptions from Licensure.

"Temporary basis", as used in Subsection 58-70a-305(1)(b)(ii), shall be limited as defined by the Delegation of Service Agreement and shall include the following:

(1) the circumstances and purpose under which any temporary supervision is permitted;

(2) the temporary supervision duties to be performed by the physician assistant;

(3) the amount of temporary supervision that is allowed; and

(4) how the physician will review the activities of students while under temporary supervision.

R156-70a-501. Working Relationship and Delegation of Duties.

In accordance with Section 58-70a-501, the working relationship and delegation of duties between the supervising physician and the physician assistant are specified as follows:

(1) The supervising physician shall provide supervision to the physician assistant to adequately serve the health care needs of the practice population and ensure that the patient's health, safety and welfare will not be adversely compromised. Physician assistants may authenticate with their signature any form that may be authenticated by a physician's signature.

(2) There shall be a method of immediate consultation by electronic means whenever the physician assistant is not under the direct supervision of the supervising physician.

(3) The physician and physician assistant shall review sufficient practice information which may include patient charts and medical records to ensure that the patient's health, safety, and welfare will not be adversely compromised. The Delegation of Services Agreement, maintained at the site of practice, shall outline specific parameters for quality review that are appropriate for the working relationship.

(4) A supervising physician may not supervise more than four full time equivalent (FTE) physician assistants without the prior approval of the division in collaboration with the board, and only for extenuating circumstances with a written request with justification. The supervising physician shall ensure that patient health, safety, and welfare is not adversely compromised by supervising more physician assistants than the physician can competently supervise.

KEY: licensing, physician assistants

June 21, 2018	**58-70a-101**
Notice of Continuation November 3, 2016	**58-1-106(1)(a)**
	58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-71. Naturopathic Physician Practice Act Rule.
R156-71-101. Title.

This rule is known as the "Naturopathic Physician Practice Act Rule."

R156-71-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 71, as used in Title 58, Chapters 1 and 71, or this rule:

(1) "Approved clinical experience program" or "residency program" as used in Subsections 58-71-302(1)(e) and 58-71-304.2(1)(b), means a Council of Naturopathic Medical Education (CNME) approved residency program (i.e. a residency program under the auspices of a CNME-accredietd or CNME candidate Naturopathic Doctorate (ND) program that is recognized by the CNME as a residency program sponsor), that is at a minimum one year in length.

(2) "Direct supervision" as used in Subsection 58-71-304.2(1)(b), means the supervising naturopathic physician, physician and surgeon, or osteopathic physician is responsible for the naturopathic activities and services performed by the naturopathic physician intern and is normally present in the facility and when not present in the facility is available by voice communication to direct and control the naturopathic activities and services performed by the naturopathic physician intern.

(3) "Direct and immediate supervision" of a medical naturopathic assistant ("assistant") as used in Subsections 58-71-102(6) and 58-71-305(7), means that the licensed naturopathic physician is responsible for the activities and services performed by the assistant and will be in the facility and immediately available for advice, direction and consultation.

(4) "Distance learning" means the acquisition of knowledge and skills through information and instruction encompassing all technologies and other forms of learning at a distance, including internet, audio/visual recordings, mail or other correspondence.

(5) "Naturopathic physician intern" or "intern" means an individual who qualifies for a temporary license under Section 58-71-304.2 to engage in a naturopathic physician residency program recognized by the division under the direct supervision of an approved naturopathic physician, physician and surgeon, or osteopathic physician.

(6) "NPLEX" means the Naturopathic Physicians Licensing Examinations.

(7) "Primary health care", as referenced in Subsection 58-71-102(12), means basic or general health care provided at the patient's first contact with the naturopathic physician.

(8) "Qualified continuing education," as used in this rule, means continuing education that meets the standards set forth in Subsection R156-71-304.

(9) "Unprofessional conduct," as defined in Title 58, Chapters 1 and 71, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-71-502.

R156-71-103. Authority - Purpose.

This rule is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 71.

R156-71-104. Organization - Relationship to Rule R156-1.

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

R156-71-202. Naturopathic Physician Formulary.

(1) In accordance with Subsections 58-71-102(8) and (12)(a) and Section 58-71-202, the naturopathic physician formulary which consists of noncontrolled substance legend medications deemed appropriate for the primary health care of patients within the scope of practice of naturopathic physicians, the prescription of which is approved by the Division in collaboration with the Naturopathic Formulary Advisory Peer Committee, consists of the following legend drugs, listed by category, with reference numbers identified in the American Hospital Formulary Service (AHFS), published by the American Society of Health System Pharmacists, 2008 edition or the current edition available on AHFS Drug Information website, which is http://www.ahfsdruginformation.com:

4:00 Antihistamines
8:08 Antihelminthics
8:12 Antibacterials, limited to oral, topical and intramuscular administration
8:14 Antifungals, oral and topical forms
8:16.92 Miscellaneous Antimycobacterials
8:18 Antivirals limited to oral and topical dosage forms, excluding:
8:18:08 Antiretrovirals
8:18:20 Interferons
8:18:24 Monoclonal Antibodies
8:18:32 Nucleosides and Nucleotides
8:30.04 Amebicides
8:30.92 Miscellaneous Antiprotozoals excluding those whose primary indication is the treatment of infection in immunosuppressed patients (i.e. Pentamidine and Trimetrexate)
8:36 Urinary anti-infectives
12:12.08.12 Selective Beta 2 Adrenergic Agonists
12:12.12 Alpha and Beta Adrenergic Agonists
12:16 Sympatholytic (Adrenergic Blocking) Agents, limited to ergot derivatives
12:20 Skeletal Muscle Relaxants, excluding scheduled medications
20:12.04.16 Heparins
20:24 Hemorrheologic Agents
24:04.08 Cardiotonic Agents - limited to Digoxin
24:06 Antilipemic Agents
24:08 Hypotensive Agents - limited to oral dosage forms
24:20 Alpha Adrenergic Blocking Agents
24:24 Beta Adrenergic Blocking Agents - limited to oral dosage forms
24:28 Calcium Channel Blocking Agents - limited to oral dosage forms
24:32 Renin-Angiotensive-Aldosterone System Inhibitors - limited to oral dosage forms
28:08 Analgesics and Antipyretics, excluding scheduled medications
28:10 Opiate Antagonists
28:16.04.16 Selective Serotonin - and Norepinephrine-Reuptake Inhibitors
28:16.04.20 Selective-Serotonin Reuptake Inhibitors
28:16.04.24 Serotonin Modulators
28:16.04.28 Tricyclics and Other Norepinephrine-Reuptake Inhibitors
28:16.04.92 Antidepressants, Miscellaneous
28:32.28 Selective Serotonin Agonists
40:00 Electrolytic, Caloric, and Water Balance
40:18.92 Other Ion-removing Agents
40:28 Diuretics
44:00 Enzymes, limited to digestive and proteolytic
48:10.24 Leukotriene Modifiers
48:10.32 Mast-Cell Stabilizers
48:16 Expectorants
52:08 Corticosteroids (oral, topical, and injectable), Anti-Inflammatory Agents and DMARDS
52:24 Mydriatics
56:22 Antiemetics
56:28 H2 Blockers, Anti-ulcer Agents and Acid Suppressants
56:36 Anti-inflammatory Agents
64:00 Heavy Metal Antagonists, in addition to DMPS (2,3-

Dimercapto-1-propanesulfonic acid)
68:12 Contraceptives, except implants and injections
68:16.04 Estrogens
68:16.08 Antiestrogens, limited to Anastrozole for use in the setting of hormon replacement therapy
68:16.12 Estrogen Agonists-Antagonists, limited to Raloxifene
68:18 Gonadotropins; limited to Gonadotropin, Chorionic
68:20.02 Alpha-Glucosidase Inhibitors
68:20.04 Biguanides
68:20.08 Insulins
68:20.20 Sulfonylureas
68:24 Parathyroid
68:32 Progestins
68:36 Thyroid and Antithyroid Agents, including Thyroid of glandular extract
72:00 Local Anesthetics
76:00 Oxytocics, limited to Oxytocin
80:00 Serums, Toxoids, Vaccines
84:00 Skin and Mucous Membrane Agents, excluding Depigmenting and Pigmenting Agents (reference number 84:50)
84:92 Skin and Mucous Membrane Agents, Miscellaneous, excluding Isotretinoin
88:00 Vitamins
92:00 Miscellaneous Therapeutic Agents, limited to Botulinum Toxin type A (limited to superficial injections)
92:08 5-Alpha-Reductase Inhibitors
92:16 Antigout Agents

(2) In addition, the following items or substances, although not listed in Subsection (1), are approved for primary health care:

(a) Amino Acids;
(b) Minerals;
(c) Oxygen;
(d) Silver Nitrate;
(e) DHEA (dihydroepiandrosterone);
(f) Pregnenolone; and
(g) Allergy Testing Agents.

(3) In accordance with Subsections 58-71-102(8) and (12)(a) and Section 58-71-202, the naturopathic physician formulary includes a single controlled substance with the reference number identified in the AHFS, published by the American Society of Health System Pharmacists, 2008 edition:
68:08 Testosterone.

(4) New categories or classes of drugs will need to be approved as part of the formulary prior to prescribing/administering.

(5) The licensed naturopathic physician has the responsibility to be knowledgeable about the medication being prescribed or administered.

R156-71-302. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-71-302(1)(f) and (2)(c), the licensing examination sequence required for licensure is as follows:

(1) NPLEX Basic Science Series, the State of Washington Basic Science Series or the State of Oregon Basic Science Series;
(2) NPLEX Clinical Series; and
(3) NPLEX Minor Surgery.

R156-71-302a. Qualifications for Licensure - Education Requirements for Graduates of Naturopathic Physician Programs or Schools Located Outside the United States.

The satisfactory documentation of compliance with the licensure requirement set forth in Subsection 58-71-302(2)(b) shall be a report submitted to the Division by the International Credentialing Associates, Inc. (ICA) confirming that the applicant's naturopathic physician program or school has met the accreditation standards.

R156-71-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licensees under Title 58, Chapter 71 is established by rule in Section R156-1-308a(1).

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

R156-71-304. Qualified Continuing Education.

(1) To be qualified continuing education, a continuing education course shall meet the following standards:

(a) the course shall consist of clinically oriented seminars, lectures, conferences, workshops, mediated instruction, or programmed learning provided by one of the following:

(i) a professional health care licensing agency, hospital, or institution accredited by the Accreditation Council of Continuing Medical Education (ACCME);

(ii) a program sponsored by the American Council of Pharmaceutical Education (ACPE);

(iii) an accredited college or university;

(iv) a professional association or organization representing a licensed profession whose program objectives are related to naturopathic training; or

(v) any other provider providing a program related to naturopathic education, if the provider has submitted an application to and received approval from the Utah Naturopathic Physicians Licensing Board;

(b) the learning objectives of the course shall be reasonably and clearly stated;

(c) the teaching methods shall be clearly stated and appropriate;

(d) the faculty shall be qualified both in experience and in teaching expertise;

(e) there shall be a written post course or program evaluation;

(f) the documentation of attendance shall be provided; and

(g) the content of the course shall be relevant to naturopathic practice and consistent with the laws and rules of this state.

(2) In accordance with Section 58-71-304, qualified continuing education shall consist of 48 hours of qualified continuing professional education in each preceding two year period of licensure, 20 hours of which shall be specific to pharmacy or pharmacology as it pertains to the Naturopathic Physician Formulary, Section R156-71-202. A minimum of ten of the 20 hours of continuing education specific to pharmacy or pharmacology must be recognized as category 1 credit hours as established by the ACCME in each preceding two year licensure cycle. No more than 20 hours of continuing education in each two-year period of licensure may be through distance learning.

(3) If a licensee allows his license to expire and the application for reinstatement is received by the division within two years after the expiration date the applicant shall:

(a) submit documentation of having completed 48 hours of qualified continuing professional education required for the previous renewal period. The required hours shall meet the criteria set forth in Subsection (2); and

(b) submit documentation of having completed a pro rata amount of qualified continuing professional education based upon one hour of qualified continuing professional education for each month the license was expired for the current renewal period.

(4) If the application for reinstatement is received by the division more than two years after the date the license expired, the applicant shall complete a minimum of 48 hours of qualified continuing professional education and additional hours as

determined by the board to clearly demonstrate the applicant is currently competent to engage in naturopathic medicine. The required hours shall meet the criteria set forth in Subsection (2).

(5) Audits of a licensee's continuing education hours may be done on a random basis by the division in collaboration with the board.

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

(7) The division in collaboration with the board may grant a waiver of continuing education requirements to a waiver applicant who documents he is engaged in full time activities or is subjected to circumstances which prevent the licensee from meeting the continuing professional education requirements established under this section. A waiver may be granted for a period of up to four years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

R156-71-502. Unprofessional Conduct.

"Unprofessional conduct" includes failure to comply with the approved formulary.

KEY: licensing, naturopaths, naturopathic physician

June 7, 2018	**58-71-101**
Notice of Continuation August 25, 2016	**58-1-106(1)(a)**
	58-1-202(1)(a)

R277. Education, Administration.
R277-113. LEA Fiscal and Auditing Policies.
R277-113-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law;

(c) Subsection 53E-3-501(1)(e)(i), which directs the Board to establish rules and minimum standards for school productivity and cost effectiveness measures;

(d) Subsection 53E-3-501(1)(e)(iv), which allows the Board to adopt rules regarding financial, statistical, and student accounting requirements;

(e) Section 53E-3-602, which allows the Board to approve auditing standards for school boards; and

(f) Section 53E-3-603, which requires the Board to verify accounting procedures of school board for the purpose of determining the allocation of Uniform School Funds.

(2) The purpose of this rule is to:

(a) require LEAs to formally adopt and implement policies regarding the management and use of public funds;

(b) provide minimum standards, procedures and definitions for LEA policies;

(c) 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;

(d) require LEAs to train employees in:

(i) appropriate financial practices;

(ii) necessary accounting procedures; and

(iii) ethical financial practices; and

(e) specify uniform budgeting, accounting, and auditing procedures for LEAs consistent with GAAP and GAAS.

R277-113-2. Definitions.

(1) "Accrual basis of accounting" means a basis of accounting that records:

(a) revenue when earned and expenses when incurred; and

(b) transactions irrespective of the dates on which any associated cash flows occur.

(2) "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.

(3) "Exclusive contract or arrangement" means an agreement requiring a buyer to purchase or exchange all needed goods or services from one seller.

(4) "FASB" means the Financial Accounting Standards Board whose purpose is to establish GAAP for nongovernmental entities within the United States.

(5) "GAAP" means Generally Accepted Accounting Principles or a common framework of accounting rules and standards for financial reporting promulgated by either FASB or GASB, as applicable to the reporting entity.

(6) "GAAS" means Generally Accepted Auditing Standards or a set of auditing standards and guidelines promulgated by the Auditing Standards Board of the American Institute of Certified Public Accountants.

(7) "GASB" means the Governmental Accounting Standards Board whose purpose is to establish GAAP for state and local governments within the United States.

(8) "Internal controls" means a process, implemented by an entity's governing body, management, or other personnel, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:

(a) Effectiveness and efficiency of operations;

(b) Reliability of reporting for internal and external use; and

(c) Compliance with applicable laws and regulations.

(9) "LEA" includes, for purposes of this rule, the Utah Schools for the Deaf and the Blind.

(10) "Management" means:

(a) an LEA superintendent or director;

(b) a deputy or associate;

(c) a business administrator or manager; or

(d) other educational administrator or designated staff.

(11) "Modified accrual basis of accounting" means a basis of accounting, commonly used by government agencies, that recognizes revenues when they become available and measurable and recognizes expenditures when liabilities are incurred.

(12) "Non-operating LEA" means an LEA that has not received minimum school program funds or federal funds and is not providing educational services during a fiscal year, such as an LEA in a start-up period.

(13) "Operating LEA" means an LEA that has received state minimum school program funds or federal funds and is providing educational services during a fiscal year.

(14) "Public funds" has the same meaning as that terms is defined in Subsection 51-7-3(26).

(15) "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, according to local board policy, and satisfies at least one of the following conditions:

(a) the activity is managed or supervised by an LEA or public school, or LEA or public school employee;

(b) the activity uses the LEA or public school's facilities, equipment, or other school resources; or

(c) the activity is supported or subsidized, more than inconsequentially, by public funds, including the public school's activity funds or minimum school program dollars.

(16) "Title IX" refers to that portion of the United States Education Amendments of 1972 codified as 20 U.S.C. 1681 through 20 U.S.C. 1688.

(17) "Utah Public Officers' and Employees' Ethics Act," means Title 67, Chapter 16, which 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 public duties and private interests.

R277-113-3. Superintendent Responsibilities.

(1) The Superintendent shall provide training, informational materials, and model policies for use by LEAs in developing LEA and public school-specific financial policies.

(2) The Superintendent 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.

(3) The Superintendent shall provide and establish a cycle for state review of LEA fiscal policies and standards.

(4) The Superintendent shall work with and provide information upon request to the Utah State Auditor's Office, the Legislative Fiscal Auditors, and other state agencies with the right to information from the Board.

R277-113-4. LEA Fiscal Responsibilities.

(1)(a) An LEA shall develop and implement written fiscal policies, subject to approval by the LEA's board, as required by R277-113-5.

(b) An LEA shall review the LEA's fiscal policies annually.

(2) An LEA shall develop a plan for annual training of LEA and public school employees on policies enacted by the

LEA specific to job function.

(3) LEA policies shall be available at each LEA main office, at individual public schools, and on the LEA's website.

(4) LEA fiscal policies and training may have different components, specificity, and levels of complexity for public elementary and secondary schools.

(5) An LEA may have one or more policies to satisfy the minimum requirements of this R277-113.

(6) 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.

(7) An LEA governing board shall have the following responsibilities:

(a) ensure that LEA management properly develops and adheres to a sound system of documented internal controls consistent with R277-113-6.

(b) develop a process to regularly review:

(i) LEA management's budget and financial reporting practices;

(ii) financial statements;

(iii) LEA financial position; and

(iv) LEA and individuals school records;

(c) make monthly reports on the fiscal position of the LEA to the LEA board;

(d) monitor LEA contract services by:

(i) determining the appropriate scope of contracts with management companies that provide business services and student services;

(ii) managing the procurement process in compliance with Title 63G, Chapter 6a;

(iii) making recommendations to the LEA board on the results of the procurement process;

(iv) assessing the performance of management companies; and

(v) ensuring management implements sufficient internal controls over the functions of management companies;

(e) monitor procurement and use of systems and software applications for compliance with financial and student privacy laws; and

(f) monitor LEA expenditure of restricted funds to ensure compliance with applicable laws and grant terms and conditions.

(8) A public education foundation established by an LEA shall follow the requirements set forth in Section 53E-3-403.

R277-113-5. LEA Audit Responsibilities.

(1) An LEA governing board shall designate board members to serve on an audit committee, consistent with Subsection 53G-7-401(1).

(2) An LEA audit committee shall:

(a) if required by Section 53G-7-402, establish an internal audit program that provides internal audit services for the programs administered by the LEA;

(b) receive a report of the risk assessment process undertaken by the LEA management in collaboration with the internal audit department;

(c) monitor the internal and external audit process by:

(i) determining the appropriate scope of the independent external audit;

(ii) determining the appropriate scope of non-audit services to be performed by the independent auditor;

(iii) managing the audit procurement process in compliance with Title 63G, Chapter 6a, State Procurement Code;

(iv) making recommendations to the LEA board on the results of the procurement process;

(v) facilitating regular direct communication with independent external auditors;

(vi) receiving independent external audit report and financial statements;

(vii) ensuring management implements corrective actions;

(viii) assessing performance of the independent auditors;

(ix) reviewing disagreements between independent auditors and management;

(x) prioritizing the internal audit plan based on risk;

(xi) receiving audit reports from internal auditors, contractors providing internal audit services, and other regulatory bodies; and

(xii) providing an independent forum for internal auditors, internal audit contractors, and other regulatory bodies to report findings of fraud, waste, abuse, non-compliance, or control weaknesses, particularly if management is involved;

(d) conduct or advise the LEA board in an annual evaluation of internal audit personnel or contractors providing internal audit services;

(e) ensure that issues and exceptions reported by internal auditors, or other regulatory bodies are resolved in a timely manner;

(f) present the audit reports of external auditors, internal auditors or other regulatory bodies to the LEA board;

(g) receive reports of reviews or audits conducted by the Superintendent and ensure appropriate corrective actions is taken in a timely manner; and

(h) advise the local LEA board in the appointment of an audit director or in contracting services for internal audit services in accordance with Subsection 53G-7-402(3).

(3)(a) An LEA shall follow the internal auditing requirements of Title 53G, Chapter 7, Part 4, Internal Audits.

(b) An LEA internal audit director may not have responsibilities for management or operations of the LEA.

(c) If an LEA internal audit director contracts with a consultant, any contractual agreement with the consultant shall comply with the LEA's procurement policy.

(4) An LEA shall obtain all audits and financial reports required by Section 51-2a-201.

R277-113-6. Required LEA Fiscal Policies.

(1)(a) An LEA shall ensure that the LEA's fiscal policies address all applicable Utah Code references or Board Rules.

(b) The requirements set forth in this Section R277-113-6 are minimum requirements.

(c) An LEA may include other related items, provide LEA specific policy and guidance, and set polices that are more restrictive and inclusive than the minimum provisions established by Board rule.

(2) LEA fiscal policies shall include the following:

(a) a cash handling policy, which shall address cash receipts (cash, checks, credit cards, and other items) collected at the LEA and individual public schools and shall include:

(i) establishment of internal controls and procedures over the collection, deposit, and reconciliation of cash receipts received; and

(ii) compliance with Utah Code 51-4-2(2) regarding deposits.

(b) an expenditure policy, which shall address all expenditures made by the LEA and individual public schools and shall include:

(i) establishment of internal controls and procedures over the initiation, approval and monitoring of expenditures, including:

(A) credit, debit, or purchase card transactions;

(B) employee reimbursements;

(C) travel; and

(D) payroll;

(ii) establishment of internal controls and procedures to record transactions when they occur in the proper program utilizing the following codes as established by the Board approved chart of accounts:

(A) fund;
(B) function;
(C) location;
(D) program; and
(E) object or revenue code as applicable;
(iii) directives regarding the appropriate use of the LEA's tax exempt status number;
(iv) compliance with Section 63G-6a-1204 regarding length of multi-year contracts;
(v) compliance with:
(A) Title 63G, Chapter 6a;
(B) Board rule regarding construction and improvements; and
(C) Title IX;
(vi) requirements for LEA contracts, including:
(A) inclusion of specific scope of work language;
(B) inclusion of federal requirements;
(C) inclusion of language regarding data privacy and use, where appropriate; and
(D) legal review prior to LEA approval; and
(vii) 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.
(c) a fundraising policy that:
(i) establishes procedures for LEA and public school fundraising in general;
(ii) establishes an approval process for fundraising activities for school sponsored activities;
(iii) provides for compliance with school fee and fee waiver provisions; and
(iv) includes:
(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's 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, 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) Provisions establishing compliance with:
(I) Utah Constitution, Article X, Section 2, establishing a free public education system;
(II) R277-407; and
(III) Title IX;
(v) An LEA may include procedures governing:
(A) student participation and incentives offered to students;
(B) allowable types of fundraising activities; and
(C) participation in school sponsored activities by volunteer or outside organizations;
(d) an LEA donation and gift policy that includes:
(i) an acceptance and approval process for:
(A) monetary donations;
(B) donations and gifts with donor restrictions;
(C) donations of gifts, goods, materials, or equipment; and
(D) donation of funds or items designated for construction or improvements of facilities;
(ii) establishment of internal controls and procedures over the acceptance and approval of donations and gifts and compliance with associated cash handling and expenditure policies;
(iii) directives regarding the appropriate use of the LEA's tax exempt status number, and issuance of charitable donation receipts;
(iv) 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;
(v) procedures governing LEA or public school employee conduct with parents, donors, and nonschool sponsored organizations;
(vi) procedures establishing provisions for direct donations or gifts to the LEA or LEA programs, individual public school or public school programs;
(vii) provisions restricting donations from being directed at specific LEA employees, individual students, vendors, or brand name goods or services;
(viii) compliance with:
(A) Title 63G, Chapter 6a;
(B) state law and Board rule regarding construction and improvements;
(C) IRS regulations and tax deductible directives; and
(D) Title IX;
(ix) procedures for:
(A) accepting donations and gifts through an LEA's legally organized foundation, if applicable;
(B) recognition of donors; or
(C) granting naming rights; and
(e) an LEA Financial Reporting policy, which shall include the following:
(i) a requirement that the LEA shall ensure financial reporting in accordance with GAAP and audits of LEA financial reporting in accordance with GAAS;
(ii)(A) a requirement that the LEA shall provide financial reporting in a manner consistent with the basis of accounting as required by GAAP, as applicable to the entity; and
(B) if an LEA follows FASB standards, a requirement that the LEA shall provide reconciliation between the accrual basis of accounting and modified accrual basis of accounting; and
(iii) a requirement that the LEA shall provide data and information consistent with budgeting, accounting, including the uniform chart of accounts for LEAs, and auditing standards for Utah LEAs provided online annually by the Superintendent.
(3) The Superintendent shall maintain a School Finance website with applicable Utah statutes, Board rules, and uniform rules for:
(a) budgeting;
(b) financial accounting, including a chart of accounts required for an LEA;
(c) student membership and attendance accounting;
(d) indirect costs and proration;
(e) financial audits;
(f) statistical audits; and
(g) compliance and performance audits.

R277-113-7. School Sponsored Activities.

(1)(a) If an activity, fundraising event, clinic, club, camp, or activity does not meet the definition of school sponsored and is organized by a third party, then the requirements of Subsection R277-113-4(11) do not apply.
(b) All transactions pertaining to nonschool sponsored events shall be conducted at arm's length.
(c) Revenues and expenditures from nonschool sponsored events may not be commingled with public funds.
(2) For nonschool sponsored events, funds may only be managed or held by a public school employee consistent with Rule R277-107.

(3) The definition of school sponsored and requirements of Subsection R277-113-4(11) do not apply to non-curricular clubs specifically authorized and meeting all criteria of Sections 53G-7-704 through 53G-7-707.

(4) An LEA or individual public school shall comply with the following regarding school and nonschool sponsored activities:

(a) An LEA may establish LEA specific rules or polices designating categories of school sponsored activities or groups and establishing LEA policy regarding use of facilities or LEA resources.

(b) An LEA may enter into contractual agreements to allow for fundraising and use of LEA facilities.

(i) An agreement under Subsection (4)(a) shall take into consideration the LEA's fiduciary responsibility for the management and use of public funds.

(ii) An LEA should consult with the LEA's insurer or legal counsel, or both, to ensure risks are adequately considered and managed;

(c) An LEA 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;

(d) An LEA shall ensure that revenues raised from school sponsored activities and funds expended from the proceeds are classified and processed as public funds;

(e) An LEA shall maintain adequate records to verify that funds collected from or during school sponsored activities are in compliance with LEA cash handling policies as required by Section R277-113-5;

(f) An LEA 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 Section R277-113-5; and

(g) An LEA shall:

(i) make records of activities available to parents, students, and donors;

(ii) maintain records in sufficient detail to track individual contributions and expenditures, as well as overall financial outcome.

(iii) restrict access to records as required by state or federal law.

R277-113-8. LEA Policies and Compliance with State and Federal Law.

(1) An LEA is responsible to ensure that its policies comply with the following state laws and Board Rules:

(a) Utah Constitution Article X, Section 3;

(b) Title 63G, Chapter 6a, Utah Procurement Code;

(c) Title 51, Chapter 4, Deposit of Funds Due State;

(d) Title 67, Chapter 16, Utah Public Officers' and Employees' Ethics Act;

(e) Family Educational Rights and Privacy Act, 20 U.S.C. 1232g;

(f) Title 63G, Chapter 2, Government Records Access and Management Act;

(g) Title 53G, Chapter 7, Fees and Textbooks;

(h) Section 53A-4-205, Public Education Foundations;

(i) Title 53G, Chapter 7, Part 7, Student Clubs Act;

(j) Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal Organizations, and Other Local Entities Act;

(k) Additional state legal compliance guides for operating LEAs and non-operating LEAs as published by the office of the state Auditor;

(l) Subsection 51-7-3(26), Definition of Public Funds;

(m) Title 53G, Chapter 7, Part 4, Internal Audits;

(n) Rule R277-407, School Fees;

(o) Rule R277-107, Educational Services Outside of Educator's Regular Employment;

(p) Rule R277-515, Utah Educator Standards;

(q) Rule R277-605, Coaching Standards and Athletic Clinics.

(2) An LEA shall include the following requirements of Title IX in LEA policies:

(a) Fundraising shall equitably benefit males and females;

(b) Males and females shall have reasonably equal access to facilities, fields, and equipment;

(c) School sponsored activities shall be reasonably equal for males and females.

KEY: school sponsored activities, public funds, fiscal policies and procedures, audit committee

June 22, 2018 **Art X, Sec 3**
53E-3-401(4)
53E-3-501(1)(e)

R277. Education, Administration.
R277-406. K-3 Reading Improvement Program and the State Reading Goal.
R277-406-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution, Article X Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules in accordance with its responsibilities; and

(c) Subsection 53F-2-503(14)(a), which directs the Board to develop rules for implementing the K-3 Reading Improvement Program.

(2) The purpose of this rule is to outline the responsibilities of the Superintendent and LEAs for implementation of Section 53F-2-503, K-3 Reading Improvement Program, and Section 53E-4-306, State Reading Goal-Reading Achievement Plan.

R277-406-2. Definitions.

(1) "Benchmark assessment" means an assessment that:

(a) is given three times each year at:

(i) the beginning of the school year;

(ii) the midpoint of the school year; and

(iii) the end of the school year;

(b) gives teachers information to:

(i) plan appropriate instruction; and

(ii) evaluate the effects of instruction; and

(c) provides data about the extent to which students are prepared to be successful on the end of year Criterion Referenced Test.

(2) "Grade level in reading" means that a student gains adequate meaning from independently reading texts designed for instruction at that grade level.

(3) "LEA plan" means the K-3 Reading Achievement Program Plan submitted by a public school district or a charter school.

(4) "Midpoint of school year" means January 31 of the school year.

(5) "Program" means the K-3 Reading Improvement Program.

(6) "Program money" means the same as that term is defined in Section 53F-2-503.

(7) "School plan" means the K-3 Reading Achievement Program Plan submitted by a public school or a charter school.

R277-406-3. Board/Superintendent Responsibilities.

(1) The Board shall approve a program plan submitted by an LEA pursuant to Subsection R277-406-4(1).

(2) In accordance with Subsection 53F-2-503, the uniform standard for a growth goal is that the goal:

(a) signifies the percentage of third grade students who made typical, above typical, or well-above typical progress from the beginning of the year to the end of the year in third grade as measured by the benchmark assessment; and

(b) sets the target percentage of third graders making typical progress or better at 47.83 percent.

(3) The Superintendent shall use the information provided by an LEA described in Subsection R277-406-4(3) to determine the progress of each student in grade 3 within the following categories:

(i) well-above typical;

(ii) above typical;

(iii) typical;

(iv) below typical; or

(v) well-below typical.

R277-406-4. Responsibilities of LEAs.

(1) To receive Program money, a school with K-3 grade levels shall submit a school plan to its local board or charter board, and each LEA shall submit an LEA plan to the Board for reading proficiency improvement that incorporates the components described in Subsections 53E-4-306(3)(d) and 53F-2-503(4)(a).

(2) The school plan shall be created:

(a) for a school in a district, under the direction of the school community council;

(b) for a charter school, under the direction of the charter school governing board.

(3)(a) An LEA shall complete the report required by Subsections 53F-2-503(13)(a) and 53F-2-503(14)(b)(i) within timelines set by the Superintendent.

(b) The report shall include:

(i) the information described in Subsection 53F-2-503(16)(a) for kindergarten, first grade, second grade, and third grade, including information from the previous five years; and

(ii) the composite scores on the benchmark assessment of students in grades 1 through 3 to the Superintendent:

(A) through UTREx; and

(B) on or before July 1 of each year.

(4) An LEA that loses Program money due to a failure to meet its goal of increasing the percentage of third grade students at grade level may reapply for the Program money upon submission of a revised K-3 Reading Improvement Plan after one year of not receiving Program money.

KEY: reading, improvement, goals

October 8, 2015	**Art X Sec 3**
Notice of Continuation June 7, 2018	**53E-3-401(4)**
	53F-2-503(14)(a)

R277. Education, Administration.
R277-477. Distributions of Funds from the Trust Earnings Account and Administration of the School LAND Trust Program.
R277-477-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53F-2-404(4), which allows the Board to adopt rules regarding the time and manner in which a student count shall be made for allocation of funds; and

(c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The Board is the primary beneficiary representative and advocate for the beneficiaries of the School Trust corpus and the School LAND Trust Program.

(3) The purpose of this rule is to:

(a) provide financial resources to a public school to implement a component of a school's improvement plan or charter document in order to enhance and improve student academic achievement;

(b) provide a means to involve a parent of a school's student in decision-making regarding the expenditure of School LAND Trust Program funds allocated to the school;

(c) provide direction in the distribution of funds from the Trust Earnings Account, as funded in Subsection 53F-2-404(3);

(d) provide for appropriate and adequate oversight of the expenditure and use of funds by a designated local board of education, an approving entity, and the Board;

(e) provide for proper allocation of funds as stated in Subsections 53F-2-404(3) and (4), and the appropriate and timely distribution of the funds;

(f) enforce compliance with statutory and rule requirements, including the responsibility for a school community council to notify school community members regarding the use of funds; and

(g) define the roles, duties, and responsibilities of the School Children's Trust Director within the USOE.

R277-477-2. Definitions.

(1) "Approving entity" means an LEA governing board, university, or other legally authorized entity that may approve or reject a plan for a district or charter school.

(2)(a) "Charter trust land council" means a council comprised of a two person majority of elected parents of students attending the charter school convened to act in lieu of the school community council for the charter school.

(b) "Charter trust land council" includes a charter school governing board if:

(i) the council meets the two-parent majority requirement; and

(ii) the charter school governing board chooses to serve as the charter trust land council.

(3) "Council" means a school community council or a charter trust land council.

(4) "Digital citizenship" means the same as that term is defined in Section 53G-7-1202.

(5) "Fall enrollment report" means the audited census of students registered in Utah public schools as reported in the audited October 1 Fall Enrollment Report of the previous year.

(6) "Funds" means School LAND Trust program funding as defined in Subsection 53F-2-404(3)(a).

(7) "Most critical academic need" means an academic need identified in a school's improvement plan or school's charter.

(8)(a) "Principal" means an administrator licensed as a principal in the state and employed in that capacity at a school.

(b) "Principal" includes the director of a charter school.

(9) "Satellite charter school" has the same meaning as that term is defined in R277-482.

(10) "School Children's Trust Director" means the Director appointed by the Board under Section 53E-3-514.

(11) "Student" means a child in public school grades kindergarten through 12 counted on the fall enrollment report of a school district, charter school, or USDB.

(12) "Trust Earnings Account" means the restricted account within the Uniform School Fund created under Subsection 53F-9-201(2).

R277-477-3. Distribution of Funds - Local Board or Local Charter Board Approval of School LAND Trust Plans.

(1) A public school receiving School LAND Trust Program funds shall have:

(a) a school community council as required by Section 53G-7-1202 and Rule R277-491;

(b) a charter school trust land council as required by Subsection 53F-2-404(9); or

(c) an approved exemption under this rule.

(2) A public school receiving School LAND Trust Program funds shall submit a principal assurance form, as described in Section R277-491-5 and Subsection 53F-2-404(5)(c), prior to the public school receiving a distribution of School LAND Trust Program funds.

(3) A charter school that elects to receive School LAND Trust funds shall:

(a) have a charter trust land council;

(b) be subject to Section 53G-7-1203 if the charter trust land council is not a charter school governing board; and

(c) receive training about Section 53G-7-1203.

(4) A charter school that is a small or special school may receive an exemption from the charter land trust council composition requirements contained in Subsection 53F-2-404(9) upon application to the Board if the small or special school demonstrates and documents a good faith effort to recruit members to the charter trust land council.

(5) The principal of a charter school that elects to receive School LAND Trust funds shall submit a plan to the School Children's Trust Section on the School LAND Trust website:

(a) no later than April 1; or

(b) for a newly opening charter school, no later than November 1 in the school's first year in order to receive funding in the year the newly opening charter school opens.

(6)(a) An approving entity:

(i) shall consider a plan annually; and

(ii) may approve or disapprove a school plan.

(b) If an approving entity does not approve a plan, the approving entity shall:

(i) provide a written explanation why the approving entity did not approve the plan; and

(ii) request that the school revise the plan, consistent with Section 53F-2-404.

(7)(a) To receive funds, the principal of a public school shall submit a School LAND Trust plan to the School Children's Trust Section annually through the School LAND Trust website using the form provided.

(b) The Board may grant an exemption from a school using the Superintendent-provided form, described in Subsection (7)(a), on a case-by-case basis.

(8) In addition to the requirements of Subsection (6), the School LAND Trust plan described in Subsection (7)(a) shall include the date the council voted to approve the plan.

(9)(a) The principal of a school shall ensure that a council member has an opportunity to provide a signature indicating the member's involvement in implementing the current School LAND Trust plan and developing the school plan for the upcoming year.

(b) The principal shall collect a council member's

signature, as described in Subsection (9)(a), digitally or through a paper form created by the Membership Form on the website and uploaded to the database.

(c) An LEA or district school, upon the permission of the LEA's governing board, may design the LEA or district school's own form to collect the information required by this Subsection (9).

(10)(a) An approving entity shall establish a timeline, including a deadline, for a school to submit a school's School LAND Trust plan.

(b) A timeline described in Subsection (10)(a) shall:

(i) require a school's School LAND Trust plan to be submitted to the approving entity with sufficient time so that the approving entity may approve the school's School LAND Trust plan no later than May 15 of each year; and

(ii) allow sufficient time for a council to reconsider and amend the council's School LAND Trust plan if the approving entity rejects the school's plan and still allow the school to meet the May 15 approving entity's approval deadline.

(c) After an approving entity has completed the approving entity's review, the approving entity shall notify the School Children's Trust Section that the review is complete.

(11)(a) Prior to approving a plan, an approving entity shall review a School LAND Trust plan under the approving entity's purview to confirm that a School LAND Trust plan contains:

(i) academic goals;

(ii) specific steps to meet the academic goals described in Subsection (11)(a)(i);

(iii) measurements to assess improvement; and

(iv) specific expenditures focused on student academic improvement.

(b) The approving entity shall determine whether a School LAND Trust plan is consistent with the approving entity's pedagogy, programs, and curriculum.

(c) Prior to approving a School LAND Trust plan, the president or chair of the approving entity shall provide training annually on the requirements of Section 53F-2-404 to the members of the approving entity.

(12)(a) After receiving the notice described in Subsection (10)(c), the School Children's Trust Section shall review each School LAND Trust plan for compliance with the law governing School LAND Trust plans.

(b) The School Children's Trust Section shall report back to the approving entity concerning which School LAND Trust plans were found to be out of compliance with the law.

(c) An approving entity shall ensure that a School LAND Trust plan that is found to be out of compliance with the law by the School Children's Trust Section is amended or revised by the council to bring the school's School LAND Trust plan into compliance with the law.

(13) If an approving entity fails to comply with Subsection (12)(c), the School Children's Trust Director shall report the failure to the Audit Committee of the Board as described in Section R277-477-9.

R277-477-4. Appropriate Use of School LAND Trust Program Funds.

(1) Parents, teachers, and the principal, in collaboration with an approving entity, shall use School LAND Trust Program funds in data-driven and evidence-based ways to improve educational outcomes, including:

(a) strategies that are measurable and show academic outcomes with multi-tiered systems of support; and

(b) counselors and educators working with students and families on academic and behavioral issues when a direct impact on academic achievement can be measured.

(2) School LAND Trust Program expenditures are required to have a direct impact on the instruction of students in the particular school's areas of most critical academic need.

(3) A school may not use School LAND Trust Program funds for the following:

(a) to cover the fixed costs of doing business;

(b) for construction, maintenance, facilities, overhead, security, or athletics; or

(c) to pay for non-academic in-school, co-curricular, or extracurricular activities.

(4) A school district or local school board may not require a council or school to spend the school's School LAND Trust Program funds on a specific use or set of uses.

(5)(a) A council may budget and spend no more than $7,000 for in-school civic and character education, including student leadership skills training and digital citizenship training as described in Section 53G-7-1202.

(b) A school may designate School LAND Trust Program funds for an in-school civic or character education program or activity only if the plan clearly describes how the program or activity has a direct impact of the instruction of students in school's areas of most critical academic need.

(6) Notwithstanding other provisions in this rule, a school may use funds as needed to implement a student's Individualized Education Plan.

(7) Student incentives implemented as part of an academic goal in the School LAND Trust Program may not exceed $2 per awarded student in an academic school year.

R277-477-5. Distribution of Funds - Determination of Proportionate Share.

(1)(a) A local school board or charter school governing board shall report the prior year expenditure of distributions for each school.

(b) The total expenditures each year described in Subsection (1)(a) may not be greater than the total available funds for any school or school district.

(c) A school district shall adjust the current year distribution of funds received from the School LAND Trust Program as described in Section 53F-2-404, as necessary to maintain an equal per student distribution within a school district based on school openings and closings, boundary changes, and other enrollment changes occurring after the fall enrollment report.

(2) A charter school and each of the charter school's satellite charter schools are a single LEA for purposes of public school funding.

(3)(a) For purposes of this Subsection (3) and Subsection (4), "qualifying charter school" means a charter school that:

(i) would receive more funds from a per pupil distribution than the charter school receives from the base payment described in Subsection (2)(c); and

(ii) is not a newly opening charter school as described in Subsection (3).

(b) The Superintendent shall distribute the funds allocated to charter schools as described in this Subsection (2).

(c) The Superintendent shall first distribute a base payment to each charter school that is equal to the product of:

(i) an amount equal to the total funds available for all charter schools; and

(ii) at least 0.4%.

(d) After the Superintendent distributes the amount described in Subsection (2)(c), the Superintendent shall distribute the remaining funds to qualifying charter schools on a per pupil basis.

(4)(a) The Superintendent shall distribute an amount of funds to a newly opening charter school that is equal to the greater of:

(i) the base payment described in Subsection (2)(c); or

(ii) a per pupil amount based on the newly opened charter school's projected October 1 enrollment count.

(b) The Superintendent shall increase or decrease a newly

opening charter school's first year distribution of funds in the school's second year to reflect the newly opening charter school's actual first year October 1 enrollment.

(5) If a school chooses not to apply for funds or does not meet the requirements for receiving funds, the USOE shall retain the funds allocated for that school and include those funds in the statewide distribution for the following school year.

R277-477-6. School LAND Trust Program - Implementation of Plans and Required Reporting.

(1) A school shall implement a plan as approved.

(2)(a) The principal shall submit a plan amendment authorized by Subsection 53F-2-404(6)(d)(iii) through the School LAND Trust website for approval, including the date the council approved the amendment and the number of votes for, against, and absent.

(b) The approving entity shall:

(i) consider the amendment for approval; and

(ii) approve an amendment before the school uses funds according to the amendment.

(c) The School Children's Trust Section shall review an amendment for compliance with statute and rule before the school uses funds according to the amendment.

(3)(a) A school shall provide an explanation for any carryover that exceeds one-tenth of the school's allocation in a given year in the School LAND Trust Plan or final report.

(b) The USOE shall consider a district or school with a consistently large carryover balance over multiple years as not making adequate and appropriate progress on an approved plan.

(c) The Board may take corrective action to remedy excessive carryover balances as outlined in Section R277-477-9.

(4) By approving a plan on the School LAND Trust website, the approving entity affirms that:

(a) the entity has reviewed the plan; and

(b) the plan meets the requirements of statute and rule.

(5)(a) A district or charter school business official shall enter prior year audited expenditures by specific category on the School LAND Trust website on or before October 1.

(b) The expenditure data shall appear in the final report submitted online by a principal, as required by Section 53F-2-404.

(6) A principal shall submit a final report on the School LAND Trust website by October 20 annually.

R277-477-7. School LAND Trust Program - School Children's Trust Section to Review Compliance.

(1)(a) The School Children's Trust Section shall review each school's final report for consistency with the approved school plan.

(b) The School Children's Trust Section shall create a list of all schools whose final reports indicate that funds from the School LAND Trust Program were expended inconsistent with the statute, rule, or the school's approved plan.

(c) The School Children's Trust Section shall annually report a school described in Subsection (1)(b) to the school district contact person, district superintendent, and president of the local board of education or charter board, as applicable.

(2) The School Children's Trust Section may visit a school receiving funds from the School LAND Trust Program to discuss the program, receive information and suggestions, provide training, and answer questions.

(3)(a) The School Children's Trust Director shall supervise annual compliance reviews to review expenditure of funds consistent with the approved plan, allowable expenses, and the law.

(b) The School Children's Trust Director shall report annually to the Board Audit Committee on compliance review findings and other compliance issues.

(c) After receiving the report described in Subsection (3)(b) and any other relevant information requested by the committee, the Board Audit Committee may make a determination regarding questioned expenditures and corrective action as outlined in Section R277-477-9.

R277-477-8. School Children's Trust Director - Other Provisions.

(1)(a) The School Children's Trust Director is an employee of the Board, pursuant to Section 53E-3-514 and Board bylaws.

(b) The School Children's Trust Director shall report to the Board Audit Committee monthly.

(c) The School Children's Trust Director shall report day-to-day to the Superintendent or the Superintendent's designee.

(2)(a) The School Children's Trust Director shall submit a draft section budget to the Board Audit Committee annually, consistent with Subsection 53E-3-514(5)(a).

(b) The School Children's Trust Director shall include in the draft budget a proposed School LAND Trust Program and training schedule, as described in Subsection 53E-514(13).

(3) In addition to the duties established in 53E-3-514, the School Children's Trust Director shall:

(a) assist the Board as needed as its designee in fulfilling its duties as primary beneficiary representative for school trust lands and funds;

(b) provide independent oversight of an agency managing school trust lands and the permanent State School Fund to ensure the trust assets are managed prudently, profitably, and in the best interest of the beneficiaries;

(c) review and approve a charter school plan on behalf of the State Charter School Board;

(d) provide notice as necessary to the State Charter School Board of changes required of charter schools for compliance with state statute and rule;

(e) review and approve a plan submitted by the USDB governing board as necessary; and

(f) carry out the policy direction of the Board under law and faithfully adhere to the Board-approved budget.

(4) The employees of the School Children's Trust Section report to the School Children's Trust Director.

R277-477-9. Failure to Comply with Rule.

(1) If a local school board, school district, district or charter school, or council fails to comply with the provisions of this rule, the School Children's Trust Director may report the failure to the Audit Committee of the Board.

(2) If the Audit Committee of the Board finds that any local school board, school district, district or charter school, or council failed to comply with statute or rule, the Audit Committee may recommend that the Board take any or all of the following actions:

(a) in cooperation with the local school board or charter school governing board, develop a corrective action plan for the school district, district or charter school, or council;

(b) require the school to reimburse the School LAND Trust Program for any inappropriate expenditures;

(c) reduce, eliminate, or withhold future funding; or

(d) any other necessary and appropriate corrective action.

(3) The Board may, by majority vote, take any of the actions outlined in Subsection (2) to correct or remedy a violation of statute or rule by a local school board, school district, district or charter school, or council.

KEY: schools, school community councils, trust lands funds
June 7, 2018 Art X Sec 3
Notice of Continuation August 13, 2015 53A-16-101.5(4)
53A-1-401

R277. Education, Administration.
R277-493. Kindergarten Supplemental Enrichment Program.
R277-493-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(c) Subsection 53F-4-205(7), which directs the Board to adopt rules to implement the kindergarten supplemental enrichment program.

(2) The purpose of this rule is to make rules to establish reporting procedures and administer Section 53F-4-205 Kindergarten Supplemental Enrichment Program.

R277-493-2. Definitions.

(1)(a) "Eligible school" has the same meaning as defined in Subsection 53F-4-205.

(b) "Eligible school" does not include a school that receives funds under Section 53F-2-507, Enhanced kindergarten early intervention program.

(2) "Kindergarten supplemental enrichment program" has the same meaning as defined in Subsection 53F-4-205.

R277-493-3. Program Administration.

(1) An LEA with an eligible school may apply for kindergarten supplemental enrichment program by filing a grant application following a form approved by the Superintendent no later than May 15 annually.

(2) An application filed in accordance with Subsection (1) shall include:

(a) evidence of an eligible school's overall need for a kindergarten supplemental enrichment program based on the results of the eligible school's current kindergarten entry assessments and programming;

(b) a description of how the eligible school will use the Board approved uniform entry assessment to determine which students to target for the kindergarten supplemental enrichment program;

(c) a description of how the eligible school's program will coordinate with the Superintendent and LEA personnel to meet the annual reporting requirements of this rule;

(d) a description of how the eligible school will use funds to meet the requirements of Subsection 53F-4-205(4);

(e) if an eligible school is applying based on their percentage of students experiencing intergenerational poverty, a description of the learning strategies the school will employ to design and implement a program that is developed with the unique needs of students experiencing intergenerational poverty in mind; and

(f) other information as requested by the Superintendent.

(3)(a) If an eligible school has previously received funding through the kindergarten supplemental enrichment program, an application under Subsection (1) shall also include data from Board entry and exit exams to establish success in changing student outcomes in comparison to similarly situated peers who weren't able to receive the benefit of the kindergarten supplemental enrichment program.

(b) If an LEA submits a renewal application for a school that has previously been deemed eligible and received funding through the kindergarten supplemental enrichment program, the Superintendent may continue to deem the school as eligible based on the school's eligibility described in Subsection 53F-4-205(1)(b) from its initial application year.

(4) The Superintendent shall recommend distribution of funds by the Board in accordance with Subsection 53F-4-205(2).

(5) An eligible school that receives kindergarten supplement enrichment program funds shall comply with the assessment and reporting requirements of Section R277-489-5.

(6) The Superintendent shall require an eligible school that receives funds in accordance with this rule to demonstrate compliance with federal supplanting requirements.

KEY: kindergarten, supplementals, enrichments
June 7, 2018 **Art X Sec 3**
53E-3-401
53F-4-205(7)

R277. Education, Administration.
R277-523. Teacher Salary Supplement Program.
R277-523-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Section 53F-2-504, which directs the Board to make rules regarding the administration of the Teacher Salary Supplement Program.

(2) The purpose of this rule is to establish application and appeal procedures for administration of the Teacher Salary Supplement Program.

R277-523-2. Definitions.

(1) "Certificate teacher" means the same as that term is defined in Subsection 53F-2-504(1)(b).

(2) "Eligible teacher" means the same as that term is defined in Subsection 53F-2-504(1)(c).

(3) "Substantially equivalent" means commonly recognized by a Utah university for a degree in a specific subject.

(4) "Teacher Salary Supplement Program" or "TSSP" means the salary supplement program authorized by the Legislature in Section 53F-2-504.

R277-523-3. Program Administration.

(1) The Superintendent shall allocate funds for salary supplements to eligible teachers and certificate teachers in accordance with Subsection 53F-2-504(3).

(2) The Superintendent shall maintain an online application system for the TSSP and make it available to educators no later than October 1 each school year.

(3) An applicant for the TSSP shall apply to the Superintendent by the following deadlines:

(a) Trimester payments, prior to November 15;

(b) Semester payments, prior to January 31; and

(c) Annual payments, prior to April 30.

(4) A Title I certificate teacher shall receive a partial award if the certificate teacher has a partial assignment in a Title I school or works less than the full school year, which shall be proportional to the teacher's assignment, the portion of the assignment worked in a Title I school, and the overall portion of the school year worked.

(5)(a) If an applicant is denied funds under this Section R277-523-3, the applicant may submit a written appeal to the Superintendent prior to June 1.

(b) An appeal under Subsection (5)(a) is limited to the following issues:

(i) whether the applicant has a degree or degree major with course requirements that are substantially equivalent to the course requirements for a degree listed in Section 53F-2-504;

(ii) whether the applicant holds a current National Board Certification;

(iii) whether the applicant was assigned to teach at a Title I school during the period covered by the TSSP award;

(iv) whether the Superintendent's initial denial was inconsistent with Section 53F-2-504 or this Rule R277-523; or

(v) whether the Superintendent's initial denial was based on inaccurate or missing information.

(c) The Superintendent may designate a panel of at least two Board staff members to review an appeal made under Subsection (5)(a) and make a recommendation to the Superintendent.

(i) A panel designated in accordance with Subsection (5)(c) shall make a recommendation in accordance with the provisions of Section 53F-2-504 or this Rule R277-523.

(ii) The panel shall make a recommendation on an appeal within 30 days of receipt of the written appeal.

(6) The Superintendent shall issue a ruling on an appeal within 15 days of receipt of the panel's recommendation.

(d) The decision of the Superintendent on an appeal is the final Board administrative action.

(7) If the appropriation for TSSP is insufficient to cover all eligible teachers and certificate teachers entitled to awards, the Superintendent shall reduce all awards by the same ratio and proportion.

KEY: TSSP, salary
June 7, 2018 **Art X Sec 3**
53E-3-401
53F-2-504

R277. Education, Administration.
R277-525. Special Educator Stipends.
R277-525-1. Definitions.

A. "After the school year" means two weeks after the final day of the required contract period, as determined by the employer. For year-round schools, "after the school year" means off-track periods, but not vacation periods.

B. "Before the school year" means two weeks before the first day of the required contract period, as determined by the employer.

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

D. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes information such as:

(1) personal directory information;

(2) educational background;

(3) endorsements;

(4) employment history; and

(5) a record of disciplinary action taken against the educator.

E. "Duties related to the IEP process" means;

(1) duties/responsibilities provided in 53A- 17a-156(4);

(2) preparing paperwork related to the implementation of IDEA; and

(3) other duties or responsibilities related to the IEP process, as determined by the special educator.

Duties related to the IEP process do not include:

(1) professional development;

(2) district level planning; and

(3) direct student instruction.

F. "Federal law regulating students with disabilities" means the Individual with Disabilities Education Act (IDEA), Title 1, Part A, Section 602.

G. "LEA" means a local education agency, including local school boards/public school districts and charter schools.

H. "Special educator," for purposes of this rule, means:

(1) a licensed special education teacher as defined under 53A-17a-158(c); or

(2) a licensed speech-language pathologist as defined under Section 53A-17a-158(c).

I. "Special education teacher" means an individual who has a Utah educator license with a special education area of concentration and whose primary assignment is the instruction of students with disabilities who are eligible for special education services.

J. "Speech-language pathologist" means an individual who has a Utah educator license with a speech-language pathologist area of concentration or a speech-language pathologist license and whose primary assignment is the instruction of students with disabilities who are eligible for special education services.

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

L. "Work day for special educator" means the special educator's contract day as determined by the employer. Stipends shall only be paid for actual days worked. A teacher shall not be paid if days/hours are not actually worked. Days are not transferable among teachers.

R277-525-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-158 which requires the Board to distribute money appropriated for stipends for special educators for additional days of work.

B. The purpose of this rule is provide standards and procedures for distributing money appropriated for stipends for special educators for additional days of work:

(1) in recognition of the added duties and responsibilities assumed by special educators to comply with federal law regulating the education of students with disabilities; and

(2) the need to attract and retain qualified special educators.

R277-525-3. LEA Responsibilities.

A. LEAs shall contract with individual special educators, defined under R277-525-1F, and request in writing from the special educators:

(1) the number of days (not to exceed 10 or the number of days established by the Board) that the special educator commits to work consistent with R277-525-1G and H; and

(2) the time period (before the school year begins or after the school year ends) that the special educator commits to working the additional days.

B. Special educators hired by LEAs after October 15 shall receive funding for extra days to the extent of funds available.

C. LEAs shall maintain a record of the number of days worked by special educators on CACTUS as follows:

(1) no later than October 1 for special educators who worked before the school year began; and

(2) no later than June 30 for special educators who worked after the school year ended.

D. LEAs shall submit a final report to the USOE no later than June 30 annually that provides:

(1) the number of contract days worked by designated special educators; and

(2) other assessment or evaluation information requested from the USOE.

R277-525-4. Board/USOE Responsibilities.

A. The Board shall annually review this program and determine, based upon the annual appropriation, the number of special education days that shall be funded.

B. To simplify accounting and evaluation requirements for LEAs, the USOE shall:

(1) provide model tracking and accounting materials to LEAs;

(2) provide a checklist of appropriate duties or tasks for special educators consistent with R277-525-1E;

(3) distribute funds to participating LEAs for eligible special educators on a semiannual basis; and

(4) request and collect data based on the number of work days reported on CACTUS by October 1 and June 30 or both, as requested by the Board.

KEY: special educators, stipends

January 8, 2014	**Art X Sec 3**
Notice of Continuation June 7, 2018	**53A-1-401(3)**
	53A-17a-158

R277. Education, Administration.
R277-533. Educator Evaluation Systems.
R277-533-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Title 53G, Chapter 11, Part 5, Educator Evaluations, which requires the Board to make rules to establish a framework for the evaluation of educators and set policies and procedures related to educator evaluations; and

(c) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law.

(2) The purpose of this rule is to:

(a) specify the requirements for district Educator Evaluation Systems Policies;

(b) describe the required components of district Educator Evaluation Systems; and

(c) establish requirements for how the Annual Summative Educator Evaluation Rating is reported for districts and charter schools.

R277-533-2. Definitions.

(1) "Administrator" has the same meaning as that term is defined in Subsection 53G-11-501(1).

(2) "Certified rater" means an educator who has been trained in evaluating educator performance and has demonstrated competency in using an educator evaluation tool to rate educator effectiveness according to established standards.

(3) "Educator" has the same meaning as that term is defined in Subsection 53G-11-501(6).

(4) "Evaluator" means a person who is responsible for an educator's overall evaluation, including:

(a) professional performance;

(b) student growth;

(c) stakeholder input; and

(d) other indicators of professional improvement.

(5) "Rater" means a person who conducts an observation of an educator related to an educator's evaluation.

(6) "School district" includes the Utah Schools for the Deaf and the Blind.

(7) "System" means a school district's educator evaluation system.

R277-533-3. School District Educator Evaluation Systems.

(1) A local school board shall adopt a district educator evaluation system in consultation with a joint committee established by the local school board as described in Section 53G-11-506.

(2) A district educator evaluation system shall:

(a) include the components required in Section 53G-11-507;

(b) include the following four differentiated levels of performance:

(i) highly effective;

(ii) effective;

(iii) emerging/minimally effective; and

(iv) not effective;

(c) use multiple lines of evidence in evaluation, including:

(i) professional performance, as described in Section R277-533-4;

(ii) student academic growth, as described in Section R277-533-5;

(iii) stakeholder input, as described in Section R277-533-5; and

(iv) other indicators of professional improvement as required by the school district;

(d) provide a process for an educator to request a review of the implementation of the educator's evaluation, as described in:

(i) Section 53G-11-508; and

(ii) Section R277-533-8;

(e) include multiple observations as described in Section R277-533-4; and

(f) provide a description of the methods for gathering, using, and protecting educator data.

(3) To form the school district's system, a local school board may adopt:

(a) the Utah Model Educator Evaluator System established by the Board;

(b) an adapted system; or

(c) a school district-developed system, consistent with Rules R277-530, R277-531, and this rule.

(4) An educator is responsible for:

(a) improving the educator's performance, using resources offered by the school district; and

(b) demonstrating acceptable levels of improvement in any designated area of deficiency.

R277-533-4. Evaluators and Standards for Education Observations.

(1) A school district's system shall include observations.

(2) The school district shall use observation tools that:

(a) are aligned with the Utah Effective Educator Standards described in Rule R277-530 at the indicator level; and

(b) include multiple supervisor observations at appropriate intervals.

(3) A school district's evaluation system shall include an opportunity for an educator to contribute additional information to inform their rating at several intervals throughout the process.

(4) To ensure a valid evaluation system, a school district shall establish a school district rater reliability process that:

(a) creates standardized ratings established by a committee of expert raters to be used for rater professional development and certification;

(b) provides professional development opportunities to all raters and evaluators of licensed educators to:

(i) improve a rater or evaluator's abilities; and

(ii) give the rater or evaluator an opportunity to demonstrate the rater's abilities to rate an educator in accordance with the Utah Effective Educator Standards described in Rule R277-530;

(c) designates qualified raters as certified;

(d) assures that an educator is rated by a certified rater;

(e) requires a school district to offer a rater opportunities to improve the rater's skills through instruction and practice; and

(f) maintains high standards of rater accuracy.

R277-533-5. Student Academic Growth and Stakeholder Input.

(1) A school district shall ensure that a student academic growth measurement includes the following three required components:

(a) learning goals measuring long-term outcomes linked to the appropriate specific content knowledge and skills from the Utah Core Standards;

(b) assessments; and

(c) targets for incremental monitoring of student academic growth.

(2)(a) A school district's system shall include stakeholder input for educators, principals, and administrators, including annual input from students and parents.

(b) In addition to the stakeholder input described in Subsection (2)(a), stakeholder input for principals and other administrators shall include input from teachers and support professionals.

R277-533-6. Computing the Annual Summative Rating.

(1) A school district shall base an educator's component ratings on:

(a) actual observations of the educator's performance; and

(b) educator, evaluator, student academic growth, or other stakeholder data gathered, calculated, or observed that is aligned with standards and rubrics.

(2) A school district shall report summative scores annually for all educators using the following approved terminology for reporting:

(d) highly effective 3;

(c) effective 2;

(b) minimal/emerging effective 1; and

(a) not effective 0.

R277-533-7. Minimal or Emerging Effective Category.

If an evaluator rates an educator's performance within the minimal or emerging effective category, the rater shall:

(1) designate an educator as emerging effective if:

(a) the educator:

(i) holds a Level 1 educator license; or

(ii) is being served by the school district's Entry Years Enhancement (E.Y.E.) program described in Rule R277-522; or

(b) the educator:

(i) received a new or different teaching or leadership assignment within the last school year; or

(ii) is developing in that area; or

(2) designate an educator as minimally effective if the educator:

(a) holds a Level 2 educator license; and

(b) is teaching or leading in a familiar assignment.

R277-533-8. Evaluation Reviews.

(1) An educator who is not satisfied with a summative evaluation may request a review in writing of the summative evaluation within 15 calendar days after receiving the written summative evaluation.

(2) A school district shall conduct a review of an educator's summative evaluation:

(a) as described in this section; and

(b) the requirements of Section 53G-11-508.

(3) A review described in Subsection (2) shall be conducted:

(a) by a certified rater:

(i) with experience evaluating educators; and

(ii) not employed by the school district; and

(b) in accordance with the Utah Effective Educator Standards described in Rule R277-530.

(4) A certified rater described in Subsection (3) shall:

(a) review:

(i) the school district's educator evaluation policies and procedures;

(ii) the evaluation process conducted for the educator;

(iii) the evaluation data from the professional performance, student growth, and stakeholder input components; and

(iv) an educator's written response, if submitted as described in Subsection 53G-11-508(1)(b); and

(b) report the certified rater's findings, in writing, to the school district's superintendent for action.

(5) The school district shall determine if the initial educator evaluation was issued in accordance with:

(a) the school district's educator evaluation policies;

(b) the requirements of the performance standards;

(c) Title 53G, Chapter 11, Employees;

(d) Rule R277-531; and

(e) this rule.

R277-533-9. Educator Evaluation Data.

(1) A school district shall report information described in Section 53G-11-511 to the Superintendent annually on or before June 30 to be included in the Superintendent's annual report as required by Section 53G-11-511.

(2) Data reported in accordance with Subsection (1) shall be classified as private under Title 63G, Chapter 2, Government Records Access and Management Act.

R277-533-10. Applicability to Charter Schools.

A charter school shall comply with the requirements of Subsection R277-533-6(2) and Section R277-533-9.

KEY: educators, evaluations
June 7, 2018 **Art X, Sec 3**
53A-1-401

R277. Education, Administration.
R277-617. Smart School Technology Program.
R277-617-1. Definitions.

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

B. "Independent Evaluating Committee" means the committee established under Section 53A-1-709(5).

C. "Smart School Technology Program (Program)" means a three-year program developed by a selected technology provider for a customized whole-school technology deployment plan individualized for each school selected by the Board.

D. "Technology," for purposes of this rule, means technology provided as examples under Section 53A-1-709(7) or other technology approved by the independent evaluating committee.

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

R277-617-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests the general control and supervision of public education in the Board, by Section 53A-1-401(3) which authorizes the Board to adopt rules in accordance with its responsibilities, and by Section 53A-1-709(8)(d) that directs the Board to make rules specifying procedures and criteria to be used for selecting schools that may participate in the Program.

B. The purpose of this rule is to provide criteria and procedures for the Board to select schools to participate in the Smart School Technology Program.

R277-617-3. School Selection Criteria.

A. Public schools that include any combination of grades K-12 shall be eligible for the Program

B. An applicant school shall provide a technology implementation plan with its application. At a minimum, the plan shall:

(1) identify technology (or technologies) that the school will employ;

(2) estimate numbers of technology devices needed based on numbers of students expected to be in the school for identified school years;

(3) explain, including explaining the use of technology and providing supporting documentation, about how technology will support the improvement of student achievement with respect to the core curriculum;

(4) explain how technology will improve students' skill using technology;

(5) explain what filtering devices or protections will be used by the school to protect students from inappropriate technology use and sites;

(6) agree that the school will provide all data and information required by the USOE for evaluation purposes, as requested by the USOE;

(7) explain the current technology capabilities and equipment available at the applicant school; and

(8) provide additional information requested by the USOE on the application.

R277-617-4. Required Matching Funds.

A. The USOE application form will provide specific information about the level or amount of matching funds or resources that the school must provide and when the matching funds must be available.

B. The application shall explain how the school or LEA will provide matching funds to satisfy the requirement of Section 53A-1-709 (8)(d) for matching funds.

C. The applicant school shall assure the USOE that it will meet the requirement for matching local funds through the duration of the Program or may be obligated to repay the state funds to the USOE.

R277-617-5. School Selection and Evaluation.

A. The USOE shall provide an application for the Program before May 15, 2013.

B. Completed applications shall be returned to the USOE before June 1, 2013.

C. The USOE shall screen all applications for compliance with all state laws, R277-617 and application requirements.

D. The USOE shall seek the participation and advice of the independent evaluating committee in selecting final applications to recommend for funding. The Board shall make final school selections.

E. To the extent possible, selected applicants shall represent geographic, economic and demographic diversity, in addition to other criteria provided in the USOE application.

F. Funded applicants shall be selected and notified before June 30, 2013.

G. Selection timelines may be modified by mutual agreement between the USOE and the independent evaluating committee.

H. The Board and the education technology provider shall evaluate the Program consistent with Section 53A-1-709(9).

KEY: schools, technology

August 7, 2013	**Art X Sec 3**
Notice of Continuation June 7, 2018	**53A-1-401(3)**
	53A-1-709(8)(d)

R277. Education, Administration.
R277-801. Services for Students who are Deaf, Hard of Hearing, Blind, Visually Impaired, and Deaf-Blind.
R277-801-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to make rules to execute the Board's duties and responsibilities under the Utah Constitution and state law; and

(c) Section 53E-8-201, which creates USDB, and authorizes USDB to provide services to qualifying students.

(2) The purpose of this rule is to establish rules for LEAs and USDB to provide services to students who are deaf, hard of hearing, blind, visually impaired, and deaf-blind.

R277-801-2. Definitions.

(1) "504 plan" means a plan required by Section 504, which is designed to accommodate an individual who has been determined, as a result of an evaluation, to have a physical or mental impairment that substantially limits one or more major life activities.

(2)(a) "Intensive services" means services requiring vision, deaf-blind, or hearing services:

(i) in excess of 180 minutes per day for k-12 or post-high school students; or

(ii) in excess of 90 minutes per day for pre-school students.

(b) "Intensive services does not include services that are not vision, deaf-blind, or hearing specific.

(3) "Intervener" means a specially trained paraprofessional who provides access to information and communication and facilitates the development of social and emotional well-being for children who are deaf-blind.

(4) "Medicaid time study" means the primary mechanism for identifying and categorizing Medicaid administrative activities performed by an LEA's staff, which serves as the basis for developing claims for the costs of administrative activities that may be properly reimbursed under Medicaid.

(5) "Minimum school program" or "MSP" means the same as that terms is defined in Section 53F-2-102.

(6) "Qualifying student" means a student who is deaf, hard of hearing, blind, visually impaired, or deaf-blind who qualifies for services in accordance with Subsection 53E-8-401(1).

(7) "Section 504" means Section 504 of the Rehabilitation Act of 1973.

(8) "Utah eTranscript and Record Exchange" or "UTREx" means a system that allows individual detailed student records to be exchanged electronically among LEAs and the Board, and allows electronic transcripts to be sent to any post-secondary institution, private or public, in-state or out-of-state, that participates in the e-transcript service.

(9) "Weighted pupil unit" or "WPU" means the basic per pupil unit used to calculate the amount of state funds for which a school district is eligible.

R277-801-3. Responsibilities of LEAs.

(1)(a) An LEA is the single point of entry for USDB services for qualifying students.

(b) A qualifying student may not enroll in a USDB program without a referral from an LEA.

(c) When evaluating services for a qualifying student, an LEA and the USDB shall consider:

(i) primary disabilities;

(ii) secondary disabilities; and

(iii) other factors, including:

(A) transportation needs; and

(B) length of time the student would spend in transport daily.

(2) Notwithstanding Subsection (1), a qualifying student may enroll directly in USDB if:

(a) the student's previous primary instruction was in American sign language; and

(b) USDB's program most closely matches the qualifying student's prior program of instruction.

(3) A qualifying student may receive services under:

(a) IDEA;

(b) Section 504; or

(c) a USDB Preschool Services Plan.

(4) An LEA shall annually provide to the Superintendent the name and contact information for any student with vision loss or hearing loss, even if it isn't the student's primary disability.

(5)(a) An LEA has the responsibility for the design and implementation of and IEP or Section 504 plan for qualifying students.

(b) Specific details of required intensive services for a student shall be defined within the student's IEP.

(c) A qualifying student who enrolls in a Utah school district or charter school may be eligible to receive intensive services from sensory specialists employed by USDB, if appropriately designated as specialized instruction or a related services as part of an IEP or Section 504 plan.

(6)(a) An LEA with greater than 3% of the student population statewide may elect to contract with USDB to provide outreach services.

(b) An LEA may employ their own sensory specialists to meet the IEP or 504 plan needs of qualifying students.

(7)(a) An LEA is responsible for the development of a qualifying student's IEP, including any assessments necessary for initial placement.

(b) Notwithstanding Subsection (7)(a), an LEA may not commit USDB to provide services to qualifying students unless USDB has participated in the IEP.

(c)(i) An LEA and USDB shall consider least restrictive environment, as well as intensive services needs of a qualifying student in determining an appropriate placement.

(ii) In the case of deaf or hard of hearing students, an IEP team should consider the opportunity for a student to have direct communication with teachers and peers.

(8) Notwithstanding Subsection (7), if a qualifying student enrolls directly with USDB in accordance with Subsection (2), USDB shall develop the student's IEP, including any assessments necessary for initial placement.

(9) If an LEA is working with USDB staff:

(a) the LEA shall provide internet access and technical support to permit USDB staff to access the internet through technology and hardware;

(b) the LEA and USDB technology staff will jointly determine procedures to ensure access to LEA technology systems; and

(c) USDB shall provide and maintain all needed hardware and software provided to USDB staff.

(10) An LEA shall provide an assistive technology device a student if the assistive technology device is required for the implementation of the student's IEP.

R277-801-4. Designation of USDB as an LEA.

(1)(a) In order to meet the educational needs of qualifying students, an IEP team may enroll a qualifying student in a USDB program and may designate USDB as the LEA for the qualifying student.

(b) If USDB is designated as the LEA under Subsection (1)(a), the USDB program shall be treated as a placement option within the LEA continuum, and the referring LEA staff shall continue to attend IEP meetings.

(2)(a) If USDB is designated as a qualifying student's

LEA, USDB is responsible from that point on for the design and implementation of the student's IEP, 504 Plan, or USDB Preschool Service Plan.

(b) USDB shall provide all special education and related services and costs documented in an IEP for a qualifying student described in Subsection (2)(a).

(c) USDB may request consultation from the referring LEA for the design of services that are required by the student beyond the student's sensory needs.

R277-801-5. Correlation of Responsibilities.

(1) For qualifying students currently enrolled with an LEA and receiving services through USDB outreach programs, an LEA will provide a list of students and their IEP due dates for the upcoming school year to the USDB Assistant Superintendent no later than June 30.

(2) An LEA shall invite USDB staff to attend IEP or 504 plan meetings for qualifying students, including meetings for:

(a) students transitioning from Part C to Part B;

(b) students moving from out of state; and

(c) students transferring between LEAs.

(3)(a) For qualifying students enrolled in an LEA and receiving no services from USDB, an LEA shall invite USDB to attend any meeting where USDB services may be considered for that student.

(b) If a change of placement is considered:

(i) both the referring LEA and USDB will participate and establish a timeline to ensure a successful transition for the student.

(ii) both the referring LEA and USDB will participate in the IEP or 504 meeting.

(4) IEP or 504 plan meetings shall be held at a mutually agreed upon time and location, with appropriate notification to all parties.

(5)(a) The Board and USDB shall provide ongoing interpreter training toward certification and mentoring for all interpreters, as requested by individual LEAs.

(b) Training provided under Subsection (7)(a) shall provide certified interpreters with the opportunity to improve skills and move up to a higher level of certification.

(c) An LEA may contract with USDB to provide interpreter services for students attending the LEA or an LEA school where a USDB extension classroom is located.

(6)(a) Each LEA, including USDB as the designated LEA, is responsible for ensuring the timely provision of textbooks and material as required by the IDEA.

(b) The Board shall:

(i) annually provide information to LEAs regarding the costs of accessible materials in the state; and

(ii) determine an equitable cost-sharing plan.

R277-801-6. Services for Qualifying Students.

(1) If a qualifying student is enrolled with USDB as the designated LEA:

(a) USDB shall include the qualifying student in all Board-required enrollment reports including:

(i) fall enrollment counts;

(ii) the child count of students with disabilities; and

(iii) the end-of-year enrollment report;

(b) Any agreements between the referring LEA and USDB shall be documented as part of a written agreement, which shall be reviewed at least annually;

(c)(i) A qualifying student's IEP team shall determine the student's transportation needs;

(ii) USDB shall provide transportation as a related service in an IEP or if required to implement a 504 plan; and

(iii) A referring LEA shall combine resources with USDB, whenever possible, to provide within-LEA transportation;

(d)(i) USDB shall annually administer all Board-required assessments.

(ii) USDB may provide alternate tests in accordance with a student's IEP and state law; and

(e) USDB shall develop and implement all programs, policies, and procedures required of an LEA by the Board and state law.

(2) If a qualifying student attends USDB extension classrooms located within an LEA:

(a) the student shall be enrolled in the general education program of the LEA school the student is attending;

(b) the LEA school shall be designated as the "school of record" for the student;

(c) the student shall be included by the LEA school or district in all required reports and uploads to UTREx;

(d) the student shall be counted in the LEA school or district total enrollment, and will be included in the calculation of all funding formulas, including Weighted Pupil Units and Minimum School Program;

(e) the student shall receive access to LEA programs and services consistent with their IEP or 504 plan, consistent with services available to other students enrolled in the student's school;

(f) the student may not be enrolled in the special education program of the LEA school the student is attending;

(g) USDB shall ensure the student receives a free appropriate public education;

(h) USDB shall ensure the student receives all special education and related services, including interpreting services, as required on the student's IEP or 504 plan;

(i) the LEA school shall generate general education funding or WPU for the student;

(j) USDB shall receive federal IDEA funding in accordance with USDB's legislative line item funding;

(k) the LEA school shall receive no state or federal special education funding for the student;

(l)(i) USDB shall provide transportation for the student as a related service when it is included in an IEP.

(ii) an LEA school shall combine resources with USDB, whenever possible, to provide within-LEA transportation; and

(m) an LEA school and USDB shall jointly ensure that any portable classrooms have access to intercom and phone service.

(3) If a qualifying student receives USDB outreach or consulting services:

(a) the student shall be enrolled in the general and special education programs of the LEA school the student attends;

(b) the LEA shall included the student in the calculation of state special education and IDEA funds for the school district or charter school; and

(c) USDB may not submit the students to UTREx and may not receive state or federal special education funding.

(4) USDB shall provide the following services free of charge to every LEA, regardless of size, exclusive of additional related services:

(a) Educational Resource Center resources, including loaner equipment;

(b) USIMAC materials;

(c) Interpreter training;

(d) Professional development;

(e) Expanded core curriculum;

(f) Enrichment programs and activities;

(g) Consultations;

(h) Psychological assessments for the Deaf and the Blind;

(i) Speech assessments for Deaf students;

(j) Behavioral intervention and supports;

(k) Deaf-Blind Specialists; and

(l) Deaf-Blind Interveners.

(5) USDB may offer to provide the following other services to LEAs for Deaf, Blind, and Deaf-Blind qualifying students, exclusive of additional related services:

(a) Teachers of the Blind and Visually Impaired or "TVI;"
(b) Orientation and Mobility or "O & M;"
(c) Educational and Assistive Technology;
(d) Vision Screenings;
(e) Low vision support and evaluations;
(f) Extended School Year services in accordance with R277-751;
(g) Teachers for the Deaf and Hard of Hearing;
(h) Audiological services; and
(i) American Sign Language/English interpreters.

(6) USDB shall provide all funded outreach services at no cost for qualifying students within an LEA with less than 3% of the student population statewide.

(7) An LEA with greater than 3% of the student population statewide shall provide services for qualifying students.

(a) An LEA may contract with USDB to provide services for students if an LEA has greater than 3% of the student population statewide.

(i) An LEA and USDB shall sign contracts prior to initiation of services.

(ii) An LEA shall make payments in two installments, in January and June.

(iii) The Board may assist USDB in collection of outstanding balances upon request.

(b) An LEA with greater than 3% of the student population statewide may opt out and transfer responsibilities for providing services to USDB subject to legislative appropriation of funds.

(8) The Superintendent shall provide a list of LEAs that exceed the 3% threshold by December 15 for the upcoming school year.

(9) An LEA and USDB may contract for services beyond those specified in this Rule R277-801.

(10) Notwithstanding this Section R277-801-6, USDB shall maintain all funded outreach services offered to each LEA, as of the 2017-18 school year.

(11)(a) USDB may participate in Medicaid time studies for services provided directly by USDB.

(b) An LEA may not include services provided directly by USDB in the LEA's Medicaid time studies.

(c) If an LEA contracts with USDB for payable services, an LEA shall include those services in the LEA's Medicaid time study.

KEY: deaf, blind, students, services
June 7, 2018 **Art X Sec 3**
53E-3-401(4)
53E-8-401

R305. Environmental Quality, Administration.
R305-4. Clean Fuels and Vehicle Technology Fund Grant and Loan Program.
R305-4-1. Authorization and Purpose.

(1) As authorized by Section 19-1-404, this rule establishes procedures for:

(a) providing loans and grants to government agencies and private sector businesses to convert vehicles to run on a clean fuel or purchase OEM vehicles to provide air pollution reduction benefits; and

(b) providing loans and grants for the purchase of clean fuel refueling equipment for a private sector business vehicle or government vehicle as provided under Section 19-1-403.

(2) As authorized by Section 19-1-404, this rule establishes criteria and conditions for:

(a) awarding grant and loan program monies; and

(b) loan repayment and the collection of loans.

R305-4-2. Definitions.

"Clean fuel" means clean fuel as defined in Subsection 19-1-402(1).

"Clean-fuel vehicle" means clean-fuel vehicle as defined in Subsection 19-1-402(2).

"Department" means the Utah Department of Environmental Quality.

"Fund" means fund as defined in Subsection 19-1-403.

"Government vehicle" means government vehicle as defined in Subsection 19-1-402(5).

"Grant" means monies awarded to an applicant from the fund that do not have to be repaid.

"Electric-hybrid vehicle" means electric-hybrid vehicle as defined in Subsection 19-1-402(3).

"OEM vehicle" means OEM vehicle as defined in Subsection 19-1-402(7).

"Private sector business vehicle" means private sector business vehicle as defined in Subsection 19-1-402(8).

"Refueling equipment" means refueling equipment as defined in Subsection 19-1-402(9).

R305-4-3. Grant and Loan Eligibility.

Eligibility for grants and loans from the fund is limited to projects for government vehicles and private sector business vehicles that meet the eligibility requirements set forth in R307-123, and for refueling equipment dispensing a clean fuel as provided for in Subsection 19-1-403-2(d) within the state of Utah.

R305-4-4. Preliminary Approval Application Procedure.

(1) All grant and loan applicants shall apply on forms provided by the Department as required by Subsection 19-1-404(1)(b)(vii)(A), and shall provide additional project information as requested by the Department.

(2) All private sector businesses applying for a grant or loan shall also complete a financial application that includes the following information:

(a) a current credit report from a reporting bureau authorized by the Department;

(b) a completed balance sheet of the personal or real property that will be used to secure the loan;

(c) copies of federal and state income tax returns for the last two years for the corporation and the applicant; and

(d) additional information as requested by the Department.

(3) All Applicants:

(a) may be charged an application fee of $140 for vehicle loans, $280 for grants, and $350 for infrastructure loans as authorized in Subsection 19-1-403(3)(a);

(b) shall sign a statement acknowledging that:

(i) approved projects must meet all the eligibility requirements listed in R307-123; and

(ii) applicants that are pre-approved are not guaranteed project reimbursement by the Department; and

(c) shall agree in writing to the provisions in Subsections 19-1-404(1)(b)(vii)(B) through (E), and

(d) shall, in the event that a vehicle converted or purchased using loan or grant proceeds becomes inoperable through mechanical failure or accident:

(i) continue to repay the loan whether or not the vehicle is repairable; or

(ii) appeal to the Department for a resolution as provided for in Subsection 19-1-404(1)(b)(vii)(C).

(A) Applicants that wish to appeal to the Department shall:

1. provide reasonable documentation that the vehicle converted or purchased is inoperable through mechanical failure or accident; and

2. propose a course of action that may include adjusting the loan repayment schedule or terms of the loan or grant.

(B) Any remedy pursued by the Department will be handled on a case-by-case basis and at the discretion of the Department.

(4) Once the Department has deemed that the application is complete and the proposed project complies with this rule, the application shall be reviewed by a committee consisting of at least the following:

(a) the DAQ Grant and Loan Program Coordinator or designee;

(b) the DAQ Mobile Section Manager or designee;

(c) two DAQ technical specialists chosen by the Department; and

(d) other members as designated at the discretion of the Department.

(5) The committee will evaluate each application according to the criteria provided in Sections R305-4-6 and 7.

(6) When considering grant and loan applications, the Department may modify the dollar amount or project scope for which a grant or loan is awarded.

(7) Submission of an application under this program and this rule constitutes the applicant's acceptance of the criteria and procedures of this rule.

R305-4-5. Final Approval Procedure and Payment Process.

(1) Once an applicant's project has been pre-approved to receive a grant or loan, the applicant shall provide:

(a) for vehicles, the demonstration of eligibility requirements in R307-123-3 through 5; and

(b) for refueling equipment, the following documentation:

(i) the name of the facility (including facility and/or unit number, if applicable) where refueling equipment will be installed and used;

(ii) the address of the facility where refueling equipment will be installed and used;

(iii) the government-issued building permit for the site at which the refueling equipment will be installed and used;

(iv) an original or copy of the bill of sale or sales contract from the purchase of the refueling equipment;

(2) Once an applicant has obtained final approval to receive a grant or loan, including signed contract documents, monies from the fund will be issued as reimbursements for the applicant's project costs.

(3) The approved applicant shall continue to comply with the provisions of this rule.

R305-4-6. Prioritization of Awards for Grant Applications.

As required by Subsection 19-1-404(1)(b)(iv), the Department will consider the following criteria in prioritizing and awarding grants:

(1) The feasibility and practicality of the project;

(2) The financial need of the applicant including its financial condition and the availability of other grants, rebates,

or low-interest loans for the project; and

(3) Whether and to what extent the project is leveraged; and

(4) The environmental and other benefits to the state and local community attributable to the project.

(5) When determining feasibility, the committee established in Subsection R305-4-4(4) may consider but are not limited to the following criteria:

(a) the cost of the project relative to market cost information; and

(b) the length of time proposed to complete the project.

(6) When determining practicality, the committee established in Subsection R305-4-4(4) may consider but are not limited to the following criteria:

(i) the technology selected for the project; and

(ii) the location of the project.

(7) When determining the environmental and other benefits to the state and local community attributable to the project, the committee established in Subsection R305-4-4(4) may consider but is not limited to the following criteria:

(a) the pollution reduction benefits attributable to the project;

(b) the location of the project;

(c) the ratio of the total project cost to the environmental and other benefits attributable to the project; and

(d) the accessibility and openness of any refueling equipment to the public, if applicable.

R305-4-7. Prioritization of Awards for Loan Applications.

As required by Subsection 19-1-404(1)(b)(iv), the Department will consider the following criteria in prioritizing and awarding loans:

(1) The feasibility and practicality of the project;

(2) The financial need of applicant including its financial condition and the availability of other grants, rebates, or low-interest loans for the project;

(3) Whether and to what extent the project is leveraged;

(4) The environmental and other benefits to the state and local community attributable to the project; and

(5) The applicant's creditworthiness.

(6) When determining feasibility, the committee established in Subsection R305-4-4(4) may consider but are not limited to the following criteria:

(a) the cost of the project relative to market cost information; and

(b) the length of time proposed to complete the project.

(7) When determining practicality, the committee established in Subsection R305-4-4(4) may consider but are not limited to the following criteria:

(a) the technology selected for the project; and

(b) the location of the project.

(8) When determining the environmental and other benefits to the state and local community attributable to the project, the committee established in Subsection R305-4-4(4) may consider but are not limited to the following criteria:

(a) pollution reduction benefits attributable to the project;

(b) the location of the project;

(c) the accessibility and openness of any refueling equipment to the public, if applicable; and

(d) the ratio of the total project cost to the environmental and other benefits attributable to the project.

R305-4-8. Grant Program Limitations.

(1) Grant applications shall not be approved if:

(a) awarding a grant to an applicant would result in the Department's inability to fulfill its obligations under this program or this rule;

(b) the applicant does not meet the approval requirements of Sections R305-4-4 and 5, and the project eligibility requirements of R307-123;

(c) the fund balance is zero;

(d) awarding a grant to an applicant would result in the fund balance being less than zero;

(e) the OEM vehicle purchased with the grant funds has previously been titled, registered, or driven more than 7,500 miles by a person or entity other than the applicant.

(f) the amount of a grant for any vehicle will exceed the provisions in Subsections 19-1-403(2)(c); or

(g) the total amount awarded for the purchase of vehicle refueling equipment will exceed the actual cost of the refueling equipment.

(2) The annual combined total for all grants approved shall not exceed a maximum of $500,000 as authorized by Subsection 19-1-404(1)(b)(i).

(3) The maximum number of vehicles purchased, converted, or retrofitted using grant funds by any fleet operator shall not exceed 100 vehicles, as authorized by Subsection 19-1-404(1)(b)(iii).

(4) The maximum amount that may be approved by the Department for a grant is $100,000; the minimum amount that may be approved is $5,000.

(5) Awards for applicants for both a grant and loan will not exceed the actual cost of the approved project, minus the amount of any tax credit claimed under Sections 59-7-605 or 59-10-1009.

R305-4-9. Loan Program Limitations.

(1) Loan application shall not be approved if:

(a) awarding a loan to an applicant would result in the Department's inability to fulfill its obligations under this program or this rule;

(b) the applicant does not meet the approval requirements of Sections R305-4-4 and 5, and the project eligibility requirements of R307-123;

(c) the fund balance is zero;

(d) awarding a loan to an applicant would result in the fund balance being less than zero;

(e) the OEM vehicle purchased with the loan funds has previously been titled, registered, or driven more than 7,500 miles by a person or entity other than the applicant;

(f) the amount of a loan for any vehicle will exceed the provisions in 19-1-403(2)(b) minus the amount of any tax credit claimed under Sections 59-7-605 or 59-10-1009; or

(g) the amount to be loaned for the purchase of vehicle refueling equipment will exceed the provisions in Subsection 19-1-403(2)(d)(ii).

(2) The maximum amount that may be approved by the Department for a loan is $200,000; the minimum amount that may be approved is $5,000.

(3) Awards for applicants applying for both a grant and loan will not exceed the actual cost of the approved project, minus the amount of any tax credit claimed under Sections 59-7-605 or 59-10-1009.

R305-4-10. Servicing the Loans and Loan Repayment.

(1) Loan repayment schedules shall:

(a) not exceed ten years, as required by Subsection 19-1-404(2)(b);

(b) be based on the financial situation and income circumstances of each borrower;

(c) be amortized with equal payment amounts;

(d) be of such amount to pay all interest and principal in full; and

(e) consider projected savings from use of the clean fuel vehicle as required by Subsection 19-1-404(2)(a). In determining projected savings, the Department may use all current and relevant market cost information.

(2) The initial installment payment is due on a date

established by the Department.

(3) Subsequent installment payments are due:

(a) on the first day of each month for private sector businesses; or

(b) as determined by the Department for government entities.

(4) A notice of payment and due date shall be sent for each subsequent payment. Non-receipt of the statement of account or notice of payment shall not be a defense for non-payment or late payment.

(5) Loans made from the fund for a government vehicle shall be made with no interest rate as required by Subsection 19-1-404(2)(d).

(6) Loans made from the fund for a private sector vehicle shall be made at an interest rate provided by Subsection 19-1-404(2)(c).

(7) Any changes in interest rates, re-negotiation of contract terms or elimination of debt must receive approval by the Department.

(8) Loan payments received shall be applied first to penalty, next to interest, and then to principal.

(9) Loan payments may be made in advance or the remaining principal balance of the loan may be paid in full at any time without penalty.

(10) Penalties for late loan payments shall be:

(a) ten percent of the payment due;

(b) assessed and payable on payments received by the Department more than 15 days after the due date;

(c) assessed only once per scheduled payment; and

(d) noticed to the borrower with the amounts of penalty and the total payment due.

(11) Payments shall be considered received the day of the U.S. Postal Service post mark date or receipted date for payments delivered to the Department by methods other than the U.S. Postal Service.

(12) If a loan payment check is returned due to insufficient funds, a service charge in the amount allowed by law shall be added to the payment amount due.

(13) Notice of loans paid in full shall be sent after all penalties, interest, and principal have been paid.

R305-4-11. Recovering on Defaulted Loans.

(1) Loans may be considered in default when three consecutive payments are past due by 30 days or more.

(2) If the loan is determined to be in default under R305-4-11(1), the Department or Division of Finance may declare the full amount of the defaulted loan, penalty, and interest immediately due.

(3) The Department or Division of Finance need not give notice of default prior to declaring the full amount due and payable.

(4) The borrower shall be liable for attorney's fees and collection costs for defaulted loans, whether incurred before or after court action.

R305-4-12. Review.

The Department reserves the right to review all data and applicants for continued compliance with this rule during the period the approved applicant has an outstanding loan obligation. The Department further reserves the right to request supplemental information it may deem necessary from an applicant in order to effectively administer the program and this rule.

R305-4-13. Indemnification.

The state government of Utah, any subdivision, or any agent of state government with responsibility for or obligation to the program cannot be held liable for injury or damage to persons, vehicles or other property caused by or involved with any equipment or vehicle purchased or converted to use a clean fuel or retrofitted in this program.

KEY: air pollution, alternative fuels, grants and loans, motor vehicles
July 8, 2014 19-1-401
Notice of Continuation June 13, 2018

R307. Environmental Quality, Air Quality.
R307-110. General Requirements: State Implementation Plan.
R307-110-1. Incorporation by Reference.

To meet requirements of the Federal Clean Air Act, the Utah State Implementation Plan (SIP) must be incorporated by reference into these rules. Copies of the SIP are available on the division's website.

R307-110-2. Section I, Legal Authority.

The Utah State Implementation Plan, Section I, Legal Authority, as most recently amended by the Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-3. Section II, Review of New and Modified Air Pollution Sources.

The Utah State Implementation Plan, Section II, Review of New and Modified Air Pollution Sources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-4. Section III, Source Surveillance.

The Utah State Implementation Plan, Section III, Source Surveillance, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-5. Section IV, Ambient Air Monitoring Program.

The Utah State Implementation Plan, Section IV, Ambient Air Monitoring Program, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-6. Section V, Resources.

The Utah State Implementation Plan, Section V, Resources, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-7. Section VI, Intergovernmental Cooperation.

The Utah State Implementation Plan, Section VI, Intergovernmental Cooperation, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-8. Section VII, Prevention of Air Pollution Emergency Episodes.

The Utah State Implementation Plan, Section VII, Prevention of Air Pollution Emergency Episodes, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-9. Section VIII, Prevention of Significant Deterioration.

The Utah State Implementation Plan, Section VIII, Prevention of Significant Deterioration, as most recently amended by the Utah Air Quality Board on March 8, 2006, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-10. Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part A, Fine Particulate Matter, as most recently amended by the Utah Air Quality Board on December 2, 2015, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-11. Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part B, Sulfur Dioxide, as most recently amended by the Utah Air Quality Board on January 5, 2005, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-12. Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part C, Carbon Monoxide, as most recently amended by the Utah Air Quality Board on June 6, 2018, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-13. Section IX, Control Measures for Area and Point Sources, Part D, Ozone.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part D, Ozone, as most recently amended by the Utah Air Quality Board on January 3, 2007, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-14. Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part E, Nitrogen Dioxide, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-15. Section IX, Control Measures for Area and Point Sources, Part F, Lead.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part F, Lead, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-16. (Reserved.)

Reserved.

R307-110-17. Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits.

The Utah State Implementation Plan, Section IX, Control Measures for Area and Point Sources, Part H, Emission Limits and Operating Practices, as most recently amended by the Utah Air Quality Board on December 7, 2016, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-18. Reserved.

Reserved.

R307-110-19. Section XI, Other Control Measures for Mobile Sources.

The Utah State Implementation Plan, Section XI, Other Control Measures for Mobile Sources, as most recently amended by the Utah Air Quality Board on February 9, 2000, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-20. Section XII, Transportation Conformity Consultation.

The Utah State Implementation Plan, Section XII, Transportation Conformity Consultation, as most recently amended by the Utah Air Quality Board on May 2, 2007, pursuant to 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-21. Section XIII, Analysis of Plan Impact.

The Utah State Implementation Plan, Section XIII, Analysis of Plan Impact, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-22. Section XIV, Comprehensive Emission Inventory.

The Utah State Implementation Plan, Section XIV, Comprehensive Emission Inventory, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-23. Section XV, Utah Code Title 19, Chapter 2, Air Conservation Act.

Section XV of the Utah State Implementation Plan contains Utah Code Title 19, Chapter 2, Air Conservation Act.

R307-110-24. Section XVI, Public Notification.

The Utah State Implementation Plan, Section XVI, Public Notification, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-25. Section XVII, Visibility Protection.

The Utah State Implementation Plan, Section XVII, Visibility Protection, as most recently amended by the Utah Air Quality Board on March 26, 1993, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-26. Section XVIII, Demonstration of GEP Stack Height.

The Utah State Implementation Plan, Section XVIII, Demonstration of GEP Stack Height, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-27. Section XIX, Small Business Assistance Program.

The Utah State Implementation Plan, Section XIX, Small Business Assistance Program, as most recently amended by the Utah Air Quality Board on December 18, 1992, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-28. Regional Haze.

The Utah State Implementation Plan, Section XX, Regional Haze, as most recently amended by the Utah Air Quality Board on December 2, 2015, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-29. Section XXI, Diesel Inspection and Maintenance Program.

The Utah State Implementation Plan, Section XXI, Diesel Inspection and Maintenance Program, as most recently amended by the Utah Air Quality Board on July 12, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-30. Section XXII, General Conformity.

The Utah State Implementation Plan, Section XXII, General Conformity, as adopted by the Utah Air Quality Board on October 4, 1995, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-31. Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-32. Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part B, Davis County, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-33. Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County, as most recently amended by the Utah Air Quality Board on October 6, 2004, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-34. Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-35. Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part E, Weber County, as most recently amended by the Utah Air Quality Board on December 5, 2012, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-36. Section X, Vehicle Inspection and Maintenance Program, Part F, Cache County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part F, Cache County, as most recently adopted by the Utah Air Quality Board on November 6, 2013, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

R307-110-37. Section XXIII, Interstate Transport.

The Utah State Implementation Plan, Section XXIII, Interstate Transport, as most recently adopted by the Utah Air Quality Board on February 7, 2007, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

KEY: air pollution, PM10, PM2.5, ozone
June 7, 2018 **19-2-104**
Notice of Continuation January 27, 2017

R307. Environmental Quality, Air Quality.
R307-343. Wood Furniture Manufacturing Operations.
R307-343-1. Purpose.

The purpose of R307-343 is to limit volatile organic compound (VOC) emissions from wood furniture manufacturing operations.

R307-343-2. Applicability.

(1) R307-343 applies to wood furniture manufacturing coating operations located in Box Elder, Cache, Davis, Salt Lake, Tooele, Utah and Weber counties.

(2) Before September 1, 2018, R307-343 applies to wood furniture manufacturing operations that have the potential to emit 2.7 tons per year or more of VOC, including related cleaning activities.

(3) Effective September 1, 2018, R307-343 shall apply to wood furniture manufacturing operations that use a combined 20 gallons or more of coating products and associated solvents per year.

R307-343-3. Definitions.

The following additional definitions apply to R307-343:

"As applied" means the volatile organic compound and solids content of the finishing material that is actually used for coating the substrate. It includes the contribution of materials used for in-house dilution of the finishing material.

"Control system" means the combination of capture and control devices used to reduce emissions to the atmosphere.

"Conventional Air Spray" means a spray coating method in which the coating is atomized by mixing it with compressed air at an air pressure greater than ten pounds per square inch (gauge) at the point of atomization. Airless, air assisted airless spray technologies, and electrostatic spray technology are not considered conventional air spray.

"Finishing material" means a coating used in the wood furniture industry, including basecoats, stains, washcoats, sealers, and topcoats.

"Finishing Operation" means those activities in which a finishing material is applied to a substrate and is subsequently air-dried, cured in an oven, or cured by radiation.

"Sealer" means a finishing material used to seal the pores of a wood substrate before additional coats of finishing material are applied. A washcoat used to optimize aesthetics is not a sealer.

"Solids" means the part of the coating that remains after the coating is dried or cured; solids content is determined using data from EPA Method 24.

"Stain" means any color coat having a solids content by weight of no more than 8.0% that is applied in single or multiple coats directly to the substrate, including nongrain raising stains, equalizer stains, sap stains, body stains, no-wipe stains, penetrating stains, and toners.

"Topcoat" means the last film-building finishing material applied in a finishing system. Non-permanent final finishes are not topcoats.

"Touch-up and Repair" means the application of finishing materials to cover minor finishing imperfections.

"Washcoat" means a transparent special purpose coating having a solids content by weight of 12.0% or less that is applied over initial stains to protect and control color and to stiffen the wood fibers in order to aid sanding.

"Washoff operations" means those operations in which organic solvent is used to remove coating from a substrate.

"Wood furniture" means any product made of wood that is manufactured under any of the following standard industrial classification codes: 2434, 2511, 2512, 2517, 2519, 2521, 2531, 2541, 2599, or 5712. This includes wood products such as rattan or wicker and engineered wood products such as particleboard.

"Wood furniture manufacturing operations" means the finishing, cleaning, and washoff operations associated with the production of wood furniture or wood furniture components.

R307-343-4. VOC Content Limits.

(1) No owner or operator shall apply coatings with a VOC content in excess of the amounts specified in Table 1, unless the owner or operator uses an add-on control device as specified in R307-343-6.

Table 1

WOOD MANUFACTURING COATING LIMITS
(values in pounds VOC per pound of solids, minus water and exempt solvents (compounds not classified as VOC as defined in R307-101-2), as applied)

Coating Category	VOC Content Limit (lb/lb)
Topcoat	0.4
Single component, non-catalyzed sealer	0.9
Single component, non-catalyzed topcoat	0.9
Acid -- cured single and 2 component sealer	1.2
Acid -- cured single and 2 component topcoat	1.0
2 component polyurethane topcoat	1.0
2 component polyurethane sealer	1.0
Cobalt peroxide cured polyester sealer/topcoat	1.0
Formaldehyde free acid catalyzed sealer/topcoat	1.0
Strippable spray booth coatings	0.8

(2) The limits in Table 1 do not apply to canned aerosol coating products used exclusively for touch-up or repair.

R307-343-5. Application Equipment Requirements.

(1) All coatings shall be applied using equipment having a minimum 65% transfer efficiency, except as allowed under R307-343-5(3) and operated according to the equipment manufacturer specifications. Equipment meeting the transfer efficiency requirement includes:

(a) Brush, dip, or roll coating;

(b) Electrostatic application; and

(c) High volume, low pressure (HVLP) spray equipment.

(2) Other coating application methods that achieve transfer efficiency equivalent to HVLP or electrostatic spray application methods may be used.

(3) Conventional air spray methods may be used under the following circumstances:

(a) To apply finishing materials that have no greater than 1.0 pound of VOC per pound of solids, as applied;

(b) For touch-up and repair under the following circumstances:

(i) The touch-up and repair occurs after completion of the finishing operation; or

(ii) The touch-up and repair occurs after the application of stain and before the application of any other type of finishing material, and the materials used for touch-up and repair are applied from a container that has a volume of no more than 2.0 gallons;

(c) When the spray gun is aimed and operated automatically, not manually;

(d) When the emissions from the finishing application station are directed to a control device as specified in R307-343-6;

(e) When the conventional air gun is used to apply no more than 10% of the total gallons of finishing material used during the calendar year; or

(f) When the conventional air gun is used to apply stain on a part for which it is technically or economically infeasible to use any other spray application technology. The following criteria shall be used, either independently or in combination, to support the affected source's claim of technical or economic infeasibility:

(i) The production speed is too high or the part shape is too complex for one operator to coat the part and the application station is not large enough to accommodate an additional operator; or

(ii) The excessively large vertical spray area of the part makes it difficult to avoid sagging or runs in the stain.

R307-343-6. Add-on Controls Systems Operations.

(1) If an add-on control system is used, the owner or operator shall install and maintain the add-on emission control system in accordance with the manufacturer recommendations and maintain 85% or greater capture and control efficiency. The overall capture and control efficiency shall be determined using EPA approved methods, as follows.

(a) The capture efficiency of a VOC emission control system's VOC collection device shall be determined according to EPA's "Guidelines for Determining Capture Efficiency," January 9, 1995 and 40 CFR Part 51, Appendix M, Methods 204-204F, as applicable.

(b) The control efficiency of a VOC emission control system's VOC control device shall be determined using test methods in Appendices A-1, A-6, and A-7 to 40 CFR Part 60, for measuring flow rates, total gaseous organic concentrations, or emissions of exempt compounds, as applicable.

(c) An alternative test method may be substituted for the preceding test methods after review and approval by the EPA Administrator.

R307-343-7. Work Practices.

(1) Control techniques and work practices for coatings shall be implemented at all times to reduce VOC emissions. Control techniques and work practices shall include:

(a) Storing all VOC-containing coatings, thinners, and coating-related waste materials in closed containers;

(b) Ensuring that mixing and storage containers used for VOC-containing coatings, thinners, and coating-related waste material are kept closed at all times except when depositing or removing these materials;

(c) Minimizing spills of VOC-containing coatings, thinners, and coating-related waste materials; and

(d) Conveying VOC-containing coatings, thinners, and coating-related waste materials from one location to another in closed containers or pipes.

(2) The work practices for cleaning materials shall be implemented at all times to reduce VOC emissions. The work practices shall include:

(a) Storing all VOC-containing cleaning materials and used shop towels in closed containers;

(b) Ensuring that storage containers used for VOC-containing cleaning materials are kept closed at all times except when depositing or removing these materials;

(c) Minimizing spills of VOC-containing cleaning materials;

(d) Conveying VOC-containing cleaning materials from one location to another in closed containers or pipes; and

(e) Minimizing VOC emissions from cleaning of application, storage, mixing, and conveying equipment by ensuring that equipment cleaning is performed without atomizing the cleaning solvent and all spent solvent is captured in closed containers.

(3) Solvent cleaning operations shall be performed using cleaning materials having a VOC composite vapor pressure no greater than 1 mm Hg or less at 20 degrees Celsius, unless an add-on control device is used as specified in R307-343-6.

R307-343-8. Recordkeeping.

(1) The owner or operator shall maintain records of the following:

(a) Records that demonstrate compliance with R307-343. Records must include, but are not limited to, inventory and product data sheets of all coatings and solvents subject to R307-343.

(b) If an add-on control device is used, records of key system parameters necessary to ensure compliance with R307-343-6.

(i) Key system parameters shall include, but are not limited to, temperature, pressure, flow rates, and an inspection schedule.

(ii) Key inspection parameters shall be in accordance with the manufacturer's recommendations, and as required to demonstrate operations are providing continuous emission reduction from the source during all periods that the operations cause emissions from the source.

(2) All records shall be maintained for a minimum of 2 years.

(3) Records shall be made available to the director upon request.

KEY: air pollution, wood furniture, coatings
December 6, 2017 19-2-104(1)(a)
Notice of Continuation January 27, 2017 19-2-104(3)(e)

R384. Health, Disease Control and Prevention, Health Promotion.
R384-201. School-Based Vision Screening for Students in Public Schools.
R384-201-1. Authority.

(1) This rule is authorized by section 53A-11-203.

(2) The Department of Health is authorized under the rule to set standards and procedures for vision screening required by this chapter, which shall include a process for notifying the parent or guardian of a child who fails a vision screening or is identified as needing follow-up care; and provide the Division with copies of rules, standards, instructions; and recommendation for test charts necessary for conducting vision screening.

R384-201-2. Definitions.

(1) Division -- Division of Services for the Blind and Visually Impaired, State Office of Education.

(2) Eye care professional -- Ophthalmologist or optometrist

(3) LEA -- Local education agency

(4) Photoscreening -- Automated screening technique that facilitates vision screening in children, especially those that are difficult to screen (infants, toddlers, and children with developmental delays). It screens for a range of eye problems including most refractive errors, alignment errors, opacities (such as cataracts), and other visible eye abnormalities.

(5) Screening certificate -- Written documentation of vision screening or comprehensive eye examination by a licensed physician, or eye care professional that have been given within one year of entering a public school are acceptable.

(6) Sure Sight -- A vision screening auto-refractor that identifies nearsightedness, farsightedness, astigmatism and the difference between eyes.

(7) Significant visual impairment -- A visual impairment severe enough to interfere with learning. The term is the designation required for a child to receive services from district vision or Utah Schools for the Deaf and Blind (USDB).

(8) Screener -- Pediatricians, family practitioners, nurses, or trained medical staff can perform vision screening at regular well child office visits. In addition, school volunteers and groups are trained to support vision screening programs for children. A licensed health professional providing vision care to private patients may participate as a screener in a school vision screening program for a child nine years of age or older.

(9) USDB -- Utah Schools for the Deaf and Blind

(10) UDOH -- Utah Department of Health

(11) Vision Screening School Vision Screening programs are an efficient and cost-effective method to identify children with significant visual impairment so that a referral can be made to an appropriate eye care professional for further evaluation and treatment. School Vision Screenings must use devices and procedures approved by the Division and UDOH. The procedures for conducting screening may include, age or grade levels to be screened, tests to be used, criteria for referral and documentation of findings.

R384-201-3. Purpose.

The purpose of school based vision screening is to set standards and procedures for vision screening for students in public schools. This is necessary to detect vision difficulties in school age children in public schools so that follow-up for potential concerns may be done by the child's parent or guardian. Vision screening is not a substitute for a complete eye exam and vision evaluation by an eye care professional.

R384-201-4. Students Eligible for Free Screening.

The following students in an LEA may receive free vision screenings to include: distance visual acuity and other age appropriate tests that may detect visual problems upon request.

(1) Students entering pre-kindergarten, kindergarten and any student age eight and under entering school for the first time in Utah;

(2) Vision screening may be conducted for all school age children in grades pre-kindergarten through 12. The UDOH and the Division recommend screening students every other year after pre-kindergarten and kindergarten screenings, to include grades 1, 3, 5, 7, and 9 or 10 and annually for students with hearing impairment and any student referred by school personnel, parent or self to rule out vision as a reason for learning problems;

(3) Tenth grade students may be screened as part of their driver's education class; and

(4) Students who are currently receiving services from the Utah Schools for the Deaf and Blind (USDB) or LEA vision staff who have a diagnosed significant visual impairment will be exempt from screening.

R384-201-5. Required Screening.

Required screening for students identified with disabilities in an LEA are as follows:

(1) Vision issues have to be ruled out as reasons for learning problems before Specific Learning Disability can be used as eligibility criteria and

(2) Every three years, a student must be reevaluated for eligibility for special education in all areas of suspected disability, including vision.

R384-201-6. Proof of Screening.

Certificate or health form from a licensed physician, nurse practioner, eye care professional documenting a visual screening or examination given within one year of entering a public school are acceptable for school entry. All children age eight and under entering a public school for the first time without proof of screening mentioned above, may be screened during that school year by a trained vision screener.

R384-201-7. Training of Screeners.

(1) A training session shall be provided by the LEA to all volunteer vision screeners prior to the start of annual vision screenings.

(2) Trainings in compliance with Division materials should be provided by the LEA.

(3) The Department of Health in collaboration with the Division shall provide train the trainer vision screening training materials.

(4) Training vision screening materials will be shared with groups that provide free vision screening services in Utah schools.

R384-201-8. Screening.

(1) Screenings are to be performed following criteria developed by the UDOH in collaboration with the Division.

(2) It is recommended that vision screenings are done early in the school session to provide time in that school year for adequate referral and follow-up to be done.

(3) Parents/legal guardian of a child have the right not to participate in vision screening due to personal beliefs. All parents must be notified of scheduled vision screenings by the public school to provide an opportunity to opt out of screening for their child utilizing the vision screening exemption form, available at the public school, to document a personally held belief.

(4) A public school staff member should be present at all times during vision screenings performed by any volunteer(s) including those done by an eye care professional. If the school nurse is not present, the school nurse should be available for consultation and re-screening.

(5) Screenings are to be done using material and procedures approved by the UDOH in collaboration with the Division. Standards and procedures are based on guidance of American Academy of Pediatrics and the American Academy of Ophthalmology and National School Nurse Association.

(6) An eye care professional providing vision care to private patients may participate as a screener in a free vision screening program for students nine years of age or older.

(a) An eye care professional screener may not market, advertise or promote their business in conjunction with the free screening at public school.

(b) The eye care professional will provide results of vision screening to public school in a format (paper or electronic) as required by the Division.

(7) Any group that provides free vision screening services in the LEA will provide results of vision screening to the public school on forms required by the Division.

R384-201-9. Documentation and Follow-up.

All vision screening findings are to be documented in the student's permanent school record. Screening failures and follow-up results for students age eight and under, who are entering school for the first time in this state, are to also be reported to the Division by the LEA.

Reported information to the Division shall include:

(1) The LEA shall report to the division students who fail vision screening and referral follow-up results for children age eight and under, who are entering school for the first time in this state.

(2) Follow up information from an eye examination referral if available may be included with written permission obtained by the public school from the parent or guardian permission;

(3) Follow-up results and screening findings are to be documented in a format approved by the UDOH in collaboration with the Division;

(4) Screening results and follow-up information shall be sent to the Division on or before June 15 for all screenings performed during that school year;

(5) The Division is responsible to maintain a state database/registry only accessible by authorized Division staff of students who fail vision screening and who are referred for follow-up.

(6) In the interest of family privacy, the Division shall not contact a parent or guardian for information related to follow-up referral for professional eye examination unless assistance is requested in writing by the LEA.

R384-201-10. Requirements for Referral.

(1) Children who fail initial age appropriate school vision screening may be re-screened by a school nurse to confirm results before notification to student's parent or guardian of any impairment disclosed by the vision screening recommending further evaluation by an eye care professional. If the screening of a child 9 or older was administered in the public school by an eye care professional, the school nurse does not have to rescreen.

(2) The public school shall notify, in writing within 30 days from vision screening, a student's parent or guardian of any impairment disclosed by the vision screening recommending further evaluation by an eye care professional.

(3) An LEA may provide information to a parent or guardian of availability of follow up vision services for students.

(4) A student diagnosed by an eye care professional with a significant visual impairment shall be referred to the LEA vision consultant or teacher of the visually impaired prior to referral to the USDB.

R384-201-11. Photoscreening.

Preschool, kindergarten children, and special education students who are not candidates for regular vision screening may be screened by a school nurse using a sure sight scanner,another device approved by the Division or by Division staff with a photo screening type device. The Division is available for assistance and consultation for photo screening. Prior to photo screening by the Division or other outside agencies approved by the Division, the public school shall obtain written permission from the parent or guardian.

References:

National Association of School Nurses (2006) Vision Screening, schools.

S. Proctor (2005) To See or not to See screening the Vision of Children in School. National Association of School Nurses.

Pediatrics Vol. 111 No.4 April 2003, pp. 902-907 at 2003 American Academy of Pediatrics ICPC-2 Category F.Eye.

KEY: eye exams, school vision, vision evaluations
July 1, 2013 53A-11-203
Notice of Continuation June 7, 2018

R384. Health, Disease Control and Prevention; Health Promotion.
R384-210. Co-prescription Guidelines -- Reporting.
R384-210-1. Authority and Purpose.

This rule establishes scientifically based guidelines for controlled substance prescribers to co-prescribe an opiate antagonist to a patient pursuant to Section 26-55-108.

R384-210-2. Guidelines for the Issuance of a Prescription for an Opioid Antagonist Along with a Prescription for an Opioid.

(1) Co-prescribing guidelines are applicable when prescribing opioids.

(2) Prescribers are encouraged to co-prescribe and opioid antagonist, such as naloxone; and to provide education on how to recognize an opioid overdose to patients, patient's household members and/or close contacts, when available, if factors exist that increase risk for opioid overdose, and households where preschool age children live or visit, whenever opiate medication is prescribed. Risks for opioid overdose include:

(a) a known history of overdose;

(b) a known history of substance use disorder;

(c) a mental health condition that could make a patient susceptible to overdose;

(d) a risk for returning to a high dose to which they are no longer tolerant (e.g., patients recently released from prison);

(e) unstable medical conditions, such as respiratory disease, sleep apnea, cognitive decline medical conditions, or other comorbidities that make a patient susceptible to opioid toxicity, respiratory distress or overdose;

(f) higher opioid dosages such as a dose greater than or equal to 50 Morphine Milligram Equivalents/day; and

(g) concurrent benzodiazepine use.

KEY: naloxone, opioid antagonist, co-prescribing
June 7, 2018 26-55

R396. Health, Disease Control and Prevention, Immunization.
R396-100. Immunization Rule for Students.
R396-100-1. Purpose and Authority.

(1) This rule implements the immunization requirements of Title 53A, Chapter 11, Part 3. It establishes minimum immunization requirements for attendance at a public, private, or parochial kindergarten, elementary, or secondary school through grade 12, nursery school, licensed day care center, child care facility, family home care, or Head Start program in this state. It establishes:

(a) required doses and frequency of vaccine administration;

(b) reporting of statistical data; and

(c) time periods for conditional enrollment.

(2) This rule is required by Section 53A-11-303 and authorized by Section 53A-11-306.

R396-100-2. Definitions.

As used in this rule:

"Department" means the Utah Department of Health.

"Early Childhood Program" means a nursery or preschool, licensed day care center, child care facility, family care home, or Head Start program.

"Exemption" means a relief from the statutory immunization requirements by reason of qualifying under Sections 53A-11-302 and 302.5.

"Parent" means a biological or adoptive parent who has legal custody of a child; a legal guardian, or the student, if of legal age.

"School" means a public, private, or parochial kindergarten, elementary, or secondary school through grade 12.

"School entry" means a student, at any grade, entering a Utah school or an early childhood program for the first time.

"Student" means an individual enrolled or attempting to enroll in a school or early childhood program.

R396-100-3. Required Immunizations.

(1) A student born before July 1, 1993 must meet the minimum immunization requirements of the ACIP prior to school entry for the following antigens: Diphtheria, Tetanus, Pertussis, Polio, Measles, Mumps, and Rubella.

(2) A student born after July 1, 1993 must meet the minimum immunization requirements of the ACIP prior to school entry for the following antigens: Diphtheria, Tetanus, Pertussis, Polio, Measles, Mumps, Rubella, and Hepatitis B.

(3) A student born after July 1, 1993, must also meet the minimum immunization requirements of the ACIP prior to entry into the seventh grade for the following antigens: Tetanus, Diphtheria, Pertussis, Varicella, and Meningococcal.

(4) A student born after July 1, 1996 must meet the minimum immunization requirements of the ACIP prior to school entry for the following antigens: Diphtheria, Tetanus, Pertussis, Polio, Measles, Mumps, Rubella, Hepatitis B, Hepatitis A, and Varicella.

(5) To attend a Utah early childhood program, a student must meet the minimum immunization requirements of the ACIP for the following antigens: Diphtheria, Tetanus, Pertussis, Polio, Measles, Mumps, Rubella, Haemophilus Influenza Type b, Hepatitis A, Hepatitis B, Pneumococcal, and Varicella vaccines prior to school entry.

(6) The vaccinations must be administered according to the recommendations of the United States Public Health Service's Advisory Committee on Immunization Practices (ACIP) as listed below which are incorporated by reference into this rule:

(a) General Recommendations on Immunization: MMWR, December 1, 2006/Vol. 55/No. RR-15;

(b) Immunization of Adolescents: MMWR, November 22, 1996/Vol. 45/No. RR-13;

(c) Combination Vaccines for Childhood Immunization: MMWR, May 14, 1999/Vol. 48/No. RR-5;

(d) Use of Diphtheria Toxoid-Tetanus Toxoid-Acellular Pertussis Vaccine as a Five-Dose Series: Supplemental Recommendations of the Advisory Committee on Immunization Practices: MMWR November 17, 2000/Vol. 49/No. RR-13;

(e) Updated Recommendations for Use of Tetanus Toxoid, Reduced Diphtheria Toxoid and Acellular Pertussis (Tdap) Vaccine from the Advisory Committee on Immunization Practices, 2010: MMWR, January 14, 2011/Vol. 60/No. 1;

(f) A Comprehensive Strategy to Eliminate Transmission of Hepatitis B Virus Infection in the United States: MMWR, December 23, 2005/Vol. 54/No. RR-6;

(g) Haemophilus b Conjugate Vaccines for Prevention of Haemophilus influenza Type b Disease Among Infants and Children Two Months of Age and Older: MMWR, January 11, 1991/Vol. 40/No. RR-1;

(h) Recommendations for Use of Haemophilus b Conjugate Vaccines and a Combined Diphtheria, Tetanus, and Pertussis, and Haemophilus b Vaccine: MMWR, September 17, 1993/Vol. 42/No. RR-13;

(i) Updated Recommendations of the Advisory Committee on Immunization Practices (ACIP) for the Control and Elimination of Mumps: MMWR, June 9, 2006/Vol. 55/No. RR-22;

(j) Updated Recommendations of the Advisory Committee on Immunization Practices (ACIP) Regarding Routine Poliovirus Vaccination: MMWR, August 7, 2009/Vol. 58/No. 30;

(k) Prevention of Varicella: MMWR, June 22, 2007/Vol. 56/No. RR-4;

(l) Prevention of Hepatitis A Through Active or Passive Immunization: MMWR, May 29, 2006/Vol. 55/No. RR-7;

(m) Licensure of a 13-Valent Pneumococcal Conjugate Vaccine (PCV13) and Recommendations for Use Among Children-Advisory Committee on Immunization Practices, (ACIP), 2010: MMWR March 12, 2010/Vol. 59/No. 09; and

(n) Prevention and Control of Meningococcal Disease: Recommendations of the Advisory Committee on Immunization Practices (ACIP): March 22, 2013/62(RR02);1-22.

R396-100-4. Official Utah School Immunization Record (USIR).

(1) Schools and early childhood programs shall use the official Utah School Immunization Record (USIR) form as the record of each student's immunizations. The Department shall provide copies of the USIR to schools, early childhood programs, physicians, and local health departments upon each of their requests.

(2) Each school or early childhood program shall accept any immunization record provided by a licensed physician, registered nurse, or public health official as certification of immunization. It shall transfer this information to the USIR with the following information:

(a) name of the student;

(b) student's date of birth;

(c) vaccine administered; and

(d) the month, day, and year each dose of vaccine was administered.

(3) Each school and early childhood program shall maintain a file of the USIR for each student in all grades and an exemption form for each student claiming an exemption.

(a) The school and early childhood programs shall maintain up-to-date records of the immunization status for all students in all grades such that it can quickly exclude all non-immunized students if an outbreak occurs.

(b) If a student withdraws, transfers, is promoted or otherwise leaves school, the school or early childhood program shall either:

(i) return the USIR and any exemption form to the parent of a student; or

(ii) transfer the USIR and any exemption form with the student's official school record to the new school or early childhood program.

(4) A representative of the Department or the local health department may examine, audit, and verify immunization records maintained by any school or early childhood program.

(5) Schools and early childhood programs may meet the record keeping requirements of this section by keeping its official school immunization records in the Utah Statewide Immunization Information System (USIIS).

R396-100-5. Exemptions.

A parent claiming an exemption to immunization for medical, religious or personal reasons, as allowed by Section 53A-11-302, shall provide to the student's school or early childhood program the required completed forms. The school or early childhood program shall attach the forms to the student's USIR.

R396-100-6. Reporting Requirements.

(1) Each school and early childhood program shall report the following to the Department in the form or format prescribed by the Department:

(a) by November 30 of each year, a statistical report of the immunization status of students enrolled in a licensed day care center, Head Start program, and kindergartens;

(b) by November 30 of each year, a statistical report of the two-dose measles, mumps, and rubella immunization status of all kindergarten through twelfth grade students;

(c) by November 30 of each year, a statistical report of tetanus, diphtheria, pertussis, hepatitis B, varicella, and the two-dose measles, mumps, and rubella immunization status of all seventh grade students; and

(d) by June 15 of each year, a statistical follow-up report of those students not appropriately immunized from the November 30 report in all public schools, kindergarten through twelfth grade.

(2) The information that the Department requires in the reports shall be in accordance with the Centers for Disease Control and Prevention guidelines.

R396-100-7. Conditional Enrollment and Exclusion.

A school or early childhood program may conditionally enroll a student who is not appropriately immunized as required in this rule. To be conditionally enrolled, a student must have received at least one dose of each required vaccine and be on schedule for subsequent immunizations. If subsequent immunizations are one calendar month past due, the school or early childhood program must immediately exclude the student from the school or early childhood program.

(1) A school or early childhood program with conditionally enrolled students shall routinely review every 30 days the immunization status of all conditionally enrolled students until each student has completed the subsequent doses and provided written documentation to the school or early childhood program.

(2) Once the student has met the requirements of this rule, the school or early childhood program shall take the student off conditional status.

R396-100-8. Exclusions of Students Who Are Under Exemption and Conditionally Enrolled Status.

(1) A local or state health department representative may exclude a student who has claimed an exemption to all vaccines or to one vaccine or who is conditionally enrolled from school attendance if there is good cause to believe that the student has a vaccine preventable disease or:

(a) has been exposed to a vaccine-preventable disease; or

(b) will be exposed to a vaccine-preventable disease as a result of school attendance.

(2) An excluded student may not attend school until the local health officer is satisfied that a student is no longer at risk of contracting or transmitting a vaccine-preventable disease.

R396-100-9. Penalties.

Enforcement provisions and penalties for the violation or for the enforcement of public health rules, including this Immunization Rule for Students, are prescribed under Section 26-23-6.

KEY: immunizations, rules and procedures
December 5, 2014 53A-11-303
Notice of Continuation June 7, 2018 53A-11-306

R398. Health, Family Health and Preparedness, Children with Special Health Care Needs.
R398-2. Newborn Hearing Screening.
R398-2-1. Purpose and Authority.

(1) The purpose of this rule is to facilitate early detection, prompt referral, and early habilitation of infants with significant, permanent hearing loss.

(2) Authority for the Newborn Hearing Screening program and promulgation of rules to implement the program are found in Section 26-10-6.

R398-2-2. Definitions.

(1) "Hearing loss" means a dysfunction of the auditory system of any type or degree that is sufficient to interfere with the acquisition and development of speech and language skills.

(2) "Screening" means the completion of an objective, physiological test or battery of tests administered to determine the infant's hearing status and the need for further diagnostic testing by an audiologist or physician with the Department approved instrumentation, protocols and pass/refer criteria.

(3) "Auditory brainstem response" means an objective electrophysiologic measurement of the brainstem's response to acoustic stimulation of the ear.

(4) "Automated auditory brainstem response" means objective electrophysiologic measurement of the brainstem's response to acoustic stimulation of the ear, obtained with equipment which automatically provides a pass/refer outcome.

(5) "Evoked otoacoustic emissions" means a specific test method which elicits a physiologic response from the cochlea, and may include Transient Evoked Otoacoustic Emissions and Distortion Products Otoacoustic Emissions test procedures.

(6) "Diagnostic procedures" means audiometric and medical procedures required to diagnose hearing loss.

(7) "Department" means the Utah Department of Health.

(8) "Audiologist" means a person who is licensed by the state where services are provided.

(9) "Follow-up" means appropriate services and procedures relating to the confirmation of hearing loss and appropriate referrals for newborn children with abnormal or inconclusive screening results.

(10) "Referral" means to direct a newborn to a health care professional for appropriate diagnostic procedures to diagnose and determine the existence and extent of a hearing loss; and for appropriate habilitation of a hearing loss.

(11) "Tracking" means the use of information about the infant's newborn hearing screening status to ensure that the infant receives timely and appropriate services to complete the screening and referral process.

(12) "Lost to follow-up" means those newborns who cannot be identified through tracking, and who have not completed the screening and referral process.

(13) "Institution" means a facility licensed by the State of Utah for birthing babies.

(14) "Primary care provider" means the newborn or infant's primary medical caregiver.

(15) "Parent" means a natural biological parent, a step-parent, adoptive parent, legal guardian, or other legal custodian of a child.

R398-2-3. Implementation.

Each newborn in the state of Utah shall submit to the Newborn Hearing Screening testing, except as provided in Section 26-10-6(1).

R398-2-4. Responsibility for Screening.

(1) Each institution shall designate a person to be responsible for the newborn hearing screening program in that institution.

(2) An audiologist who is licensed by the State of Utah shall oversee each newborn hearing screening program. This audiologist may be full or part time, on or off site, an employee of the institution, or under contract or other arrangement that allows him/her to oversee the newborn hearing screening program. This audiologist shall advise the institution about all aspects of the newborn hearing screening program, including screening, tracking, follow-up, and referral for diagnosis.

(3) Beginning July 1, 1998, if the newborn is born in an institution with 100 or more births annually, and beginning July 1, 1999, if the newborn is born in an institution with less than 100 births annually, the institution must provide hearing screening services as required by this rule prior to discharge, unless the infant is transferred to another institution before screening is completed.

(4) Beginning July 1, 1998, if the newborn is transferred to another institution before screening is completed, the receiving institution must provide hearing screening services as required by this rule prior to discharge.

(5) Beginning July 1, 1999, if the newborn is born outside of an institution, the person in attendance at the birth must arrange for the infant's hearing screening as required by this rule.

(6) Beginning July 1, 1999, if there is no person in attendance at the birth, a parent must have the infant's hearing screened, according to Department protocols, by the time the infant is one month of age.

(7) Newborn hearing screening shall be performed by a person who is appropriately trained and supervised, according to rules as may be established by the Newborn Hearing Screening Committee.

R398-2-5. Information to Parents and Primary Care Providers.

(1) Institutions or persons primarily responsible for births shall provide information about newborn hearing screening to parents and primary care providers of newborns. This shall include:

(a) information, which shall be available to parents at the time of birth, about the purpose of newborn hearing screening, the procedures used for screening, the benefits of newborn hearing screening, and the consequences of hearing loss;

(b) whether each live birth was screened prior to discharge from the institution,

(c) the results of the completed newborn hearing screening procedure;

(d) what follow-up screening procedures, if any, are recommended and where those procedures can be obtained.

(2) For babies who require additional procedures to complete the screening after being discharged from the birthing institution, the institution shall provide parents and the primary care providers with written notice about the availability and importance of the additional screening procedures. For babies who do not complete additional hearing screening procedures, the institution shall send a second written notice to the parents and the primary care provider.

(3) For babies who do not pass the complete newborn hearing screening procedure, the institution or the provider who completes the screening procedure shall provide the parents and the primary care provider with written notice about the results of the screening, recommended diagnostic procedures, where those procedures can be obtained, and resources available for infants and toddlers with hearing loss.

(4) For babies who need additional procedures to complete the screening due to a missed test, inconclusive results, or a failure to pass, and who do not return for the needed screening procedures within 15 days, or for babies who are "lost to follow-up," the institution shall make reasonable efforts within 30 days to locate the parents and inform them of the need for a test. To be considered a reasonable effort, the institution must have

documentation of at least two attempts to contact the infant's parents by mail or phone, and at least one attempt to contact the infant's primary care provider. If necessary, the institution must use information available from its own records, adoption agencies, and the newborn's primary care provider. Contact with the parent may be made by mail, telephone, primary care provider, or public health worker.

R398-2-6. Reporting to Utah Department of Health.

(1) All institutions or persons in attendance at births shall submit information to the Department about the newborn hearing screening procedures being used, the results of the screening, and other information necessary to ensure timely referral where necessary. This information shall be provided to the Department at least monthly. This information shall include:

(a) for each live birth, identifying information for the baby and the hearing screening status, e.g., passed, referred, refused, missed, transferred;

(b) for babies who did not pass the newborn hearing screening or who were not screened, the mother's name, address, telephone number if known, and primary care provider;

(c) any information the institution or practitioner has about the results of follow-up screening or diagnostic procedures, including whether the infant has been "lost to follow-up."

(2) All institutions or persons in attendance at births shall submit information to the Department a summary of the procedures used by the institution or screening program to do newborn hearing screening, including the name of the program director, equipment, screening protocols, referral criteria, and parent education materials. This information shall be provided to the Utah Department of Health bi-annually and within 30 days of any changes to the existing procedures.

(3) Persons who conduct any procedure necessary to complete an infant's hearing screening or audiological diagnostic assessment as a result of a referral from an institution or primary care provider, shall report the results of these procedures to the institution where the infant was born and to the Department.

(4) The Utah Department of Health shall have access to infant's medical records to obtain information necessary to ensure the provision of timely and appropriate follow-up diagnostic and intervention services.

R398-2-7. Penalty for Violation of Rule.

Any person who violates any provision of this rule may be assessed a penalty as provided in Section 26-23-6.

KEY: newborn hearing screening
March 15, 2010 **26-10-6**
Notice of Continuation June 19, 2018

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-42. Telemedicine.
R414-42-1. Introduction and Authority.

This rule outlines eligibility, access requirements, coverage, limitations, and reimbursement for telemedicine. This rule is authorized by Section 26-18-13.

R414-42-2. Definitions.

(1) "Telemedicine" is two-way, real-time interactive communication between the member and the physician or authorized provider at the distant site. This electronic communication uses interactive telecommunications equipment that includes, at a minimum, audio and video equipment.

(2) "Authorized provider" means a provider in compliance with requirements as specified in Section I: General Information of the Utah Medicaid Provider Manual, Chapter 3, Provider Participation and Requirements.

(3) "Distant site" is the location of the provider when delivering the service via the telecommunications system.

(4) "Originating site" is the location of the Medicaid member at the time the service is furnished via a telecommunications system.

(5) "Telepsychiatric consultation" means a consultation between a physician and a board-certified psychiatrist that utilizes:

(a) the health records of the patient, provided from the patient or the referring physician; and

(b) a written, evidence-based patient questionnaire.

R414-42-3. Covered Services.

Covered services may be delivered by means of telemedicine, as clinically appropriate. Services include consultation services, evaluation and management services, mental health services, substance use disorder services, and telepsychiatric consultations.

R414-42-4. Limitations.

(1) Telemedicine encounters must comply with privacy and security measures set forth under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act, Pub. L. No. 111-5, 123 Stat. 226, 467, as amended, to ensure that all patient communications and records, including recordings of telemedicine encounters, are secure and remain confidential. The provider is responsible to ensure the encounter is HIPAA compliant. Security measures for transmission may include password protection, encryption, and other reliable authentication techniques.

(2) Compliance with the Utah Health Information Network (UHIN) standards for telehealth must be maintained. These standards provide a uniform standard of billing for claims and encounters delivered via telehealth.

(3) The originating site receives no reimbursement for the use of telemedicine.

R414-42-5. Reimbursement of Services.

The Department pays the lesser of the amount billed or the rate on the fee schedule. A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private pay patients.

KEY: Medicaid
July 1, 2018 **26-18-13**
Notice of Continuation September 17, 2013

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-60A. Drug Utilization Review Board.
R414-60A-1. Introduction and Authority.

(1) The Drug Utilization Review Board (DURB) aids in pharmacy policy oversight and drug utilization.

(2) The DURB is authorized under 42 CFR 456.716 and Sections 26-18-2, 3, and 102.

R414-60A-2. DURB Composition and Membership Requirements.

(1) The Director of the Division of Medicaid and Health Financing (DMHF) shall act on behalf of the Executive Director of the Utah Department of Health regarding all DURB issues, and shall appoint membership to the DURB in accordance with Section 26-18-102. In addition, the Director shall appoint one pharmacist from recommendations received from the Accountable Care Organizations (ACOs).

(2) Membership Requirements.

(a) An appointee may not serve more than two consecutive terms in one of the board positions listed in Section 26-18-102. Terms separated by an interruption of more than two months are not consecutive.

(b) If DMHF does not receive recommendations to fill a vacant position within 30 days of a request, DMHF may appoint a qualified individual to fill the vacancy.

(c) If there are no willing nominees for appointment when an appointed term has expired, the DMHF Director may reappoint members on the board to additional non-consecutive terms as needed.

(3) When a vacancy occurs on the board, the Director shall appoint a replacement for the unexpired term of the vacating member.

(4) DURB members serve at the discretion of the DMHF Director.

(5) The DURB shall be managed by a non-voting board manager appointed from the pharmacy group within DMHF.

(6) Other individuals of the DMHF pharmacy team are non-voting ex-officio advisory members of the DURB.

R414-60A-3. Responsibilities and Functions.

(1) The DURB shall meet in a public forum, except when meeting in executive session or in petitions subcommittee.

(2) The board shall meet at least four times per year.

(3) The DURB chairperson shall conduct all meetings. The DURB manager shall conduct meetings if the chairperson is not present.

(4) The DURB manager shall schedule meetings, set agendas, provide meeting materials, keep minutes, record DURB business, notify DMHF when vacancies occur, provide meeting notices, and coordinate functions between the DURB and DMHF.

(5) The DURB may consider recommendations, criteria, and standards produced by the Pharmacy and Therapeutics (P&T) Committee.

KEY: Medicaid
June 27, 2018 **26-18-3**
Notice of Continuation June 13, 2017 **26-1-5**
26-18 Part 2

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-60B. Preferred Drug List.
R414-60B-1. Introduction and Authority.

(1) The Division of Medicaid and Health Financing (DMHF) has established a Preferred Drug List (PDL) to operate within the pharmacy program and at the Division's discretion.

(2) The Preferred Drug List is authorized under Section 26-18-2.4.

R414-60B-2. Client Eligibility Requirements.

A PDL is available to categorically and medically needy individuals.

R414-60B-3. Program Access Requirements.

A PDL is established for certain therapeutic classes of drugs and is available through the point of sale system of any Medicaid provider. At its discretion, DMHF establishes and implements the scope and therapeutic classes of drugs.

R414-60B-4. Service Coverage.

(1) Upon the recommendation of the Pharmacy and Therapeutics (P&T) Committee, DMHF pharmacy staff select the therapeutic classes and select the most clinically effective and cost effective drug or drugs within each class.

(2) The prescriber must obtain prior authorization from the Department to dispense drugs designated as "non-preferred" in each class, through the Department's current prior authorization system. Criteria for a Non-preferred Prior Authorization (NPA) is established by the Department in consultation with the P&T Committee.

(3) A prior authorization is not placed on any preferred drugs under Section R414-60B-4. Nevertheless, a prior authorization may apply if set by the Drug Utilization Review Board (DURB).

(4) For NPA requests submitted during normal business hours, Monday through Friday, 8 a.m. to 5 p.m., the prior authorization system shall provide either telephone or fax approval or denial within 24 hours of the receipt of the request.

(5) In an emergency situation for a prior authorization needed outside of normal business hours, a 72-hour supply of a non-preferred drug may be dispensed and the Department shall issue an NPA for the 72-hour supply on the next business day. Further quantity requests shall be subject to all NPA requirements.

R414-60B-5. P&T Committee Composition and Membership Requirements.

(1) There is created a P&T Committee within DMHF. The DMHF Director shall appoint the members of the P&T Committee for a two-year term. DMHF has the option of making the appointments renewable.

(2) DMHF staff request nominations for appointees from professional organizations within the state. These nominations are then given to the Director for selection and appointment.

(a) If there are no recommendations within 30 days of a request, DMHF may submit a list of potential candidates to professional organizations for consideration.

(b) If there are no willing nominees for appointment from professional organizations, the Director may seek recommendations from DMHF staff.

(3) The P&T Committee consists of one physician from each of the following specialty areas:

(a) Internal Medicine;
(b) Family Practice Medicine;
(c) Psychiatry; and
(d) Pediatrics.

(4) The P&T Committee consists of one pharmacist from each of the following areas:

(a) Pharmacist in Academia;
(b) Independent Pharmacy;
(c) Chain Pharmacy; and
(d) Hospital Pharmacy.

(5) DMHF shall appoint one voting committee manager.

(6) Up to two non-voting ad hoc specialists participate on the committee at the committee's invitation.

(7) An individual considered for nomination must demonstrate no direct connection to and must be independent of the pharmaceutical manufacturing industry.

(8) The P&T Committee shall elect a chairperson to a one-year term from among its members. The chairperson may serve consecutive terms if reelected by the committee.

(9) When a vacancy occurs on the committee, the Director shall appoint a replacement for the unexpired term of the vacating member.

(10) P&T Committee members serve at the discretion of the DMHF Director.

R414-60B-6. P&T Committee Responsibilities and Functions.

(1) The P&T Committee functions as a professional and technical advisory board to DMHF in the formulation of a PDL.

(2) P&T Committee recommendations must:

(a) represent the majority vote at meetings in which a majority of voting members are present; and

(b) include votes by at least one committee member from the group identified in Subsection R414-60B-5(3) and one member from the group identified in Subsection R414-60B-5(4)

(3) The P&T Committee manager shall schedule meetings, set agendas, provide meeting materials, keep minutes, record committee business, notify the Director when vacancies occur, provide meeting notices, and coordinate functions between the committee and DMHF.

(4) Notice for a P&T Committee meeting shall be given in accordance with applicable law.

(5) The P&T Committee chairperson shall conduct all meetings. The P&T Committee manager shall conduct meetings if the chairperson is not present.

(6) P&T Committee meetings shall occur at least quarterly.

(7) P&T Committee meetings shall be open to the public except when meeting in executive session.

(8) The committee shall:

(a) review drug classes and make recommendations to DMHF for PDL implementation;

(b) review new drugs, new drug classes or both, to make recommendations to DMHF for PDL implementation;

(c) review drugs or drug classes as DMHF assigns or requests;

(d) review drugs within a therapeutic class and make a recommendation to DMHF for the preferred drug or drugs within the therapeutic class; and

(e) review evidence based criteria and drug information.

R414-60B-7. Clinical and Cost-Related Factors.

The P&T Committee shall base its determinations on the following factors as established by the DURB:

(1) If clinical and therapeutic considerations are substantially equal, then the P&T Committee shall recommend to DMHF that it consider only cost.

(2) In making its recommendations to DMHF, the P&T Committee may also consider whether the clinical, therapeutic effects, and medical necessity requirements justify the cost differential between drugs within a therapeutic class.

KEY: Medicaid
June 27, 2018 **26-18-2.4**
Notice of Continuation June 14, 2017 **26-18-3**
26-1-5

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-401. Nursing Care Facility Assessment.
R414-401-1. Introduction and Authority.

(1) This rule implements the assessment imposed on certain nursing care facilities by Utah Code Title 26, Chapter 35a.

(2) The rule is authorized by Section 26-1-30 and Utah Code Title 26, Chapter 35a.

R414-401-2. Definitions.

(1) The definitions in Section 26-35a-103 apply to this rule.

(2) The definitions in R414-1 apply to this rule.

R414-401-3. Assessment.

(1) The collection agent for the nursing care facility assessment shall be the Department, which is vested with the administration and enforcement of the assessment.

(2) The uniform rate of assessment for every facility is $23.04 per non-Medicare patient day provided by the facility, except that intermediate care facilities for people with intellectual disabilities shall be assessed at the uniform rate of $9.71 per patient day. Swing bed facilities shall be assessed the uniform rate for nursing facilities. The Utah State Veteran's Home is exempted from this assessment and this rule.

(3) Each nursing care facility must pay its assessment monthly on or before the last day of the next succeeding month.

(4) The Department shall extend the time for paying the assessment to the next month succeeding the federal approval of a Medicaid State Plan Amendment allowing for the assessment, and consequent reimbursement rate adjustments.

R414-401-4. Reporting and Auditing Requirements.

(1) Each nursing care facility shall, on or before the end of the succeeding month, file with the Department a report for the month, and shall remit with the report the assessment required to be paid for the month covered by the report.

(2) Each report shall be on the Department-approved form, and shall disclose the total number of patient days in the facility, by designated category, during the period covered by the report.

(3) Each nursing care facility shall supply the data required in the report and certify that the information is accurate to the best of the representative's knowledge.

(4) Each nursing care facility subject to this assessment shall maintain complete and accurate records. The Department may inspect each nursing care facility's records and the records of the facility's owners to verify compliance.

(5) Separate nursing care facilities owned or controlled by a single entity may combine reports and payments of assessments provided that the required data are clearly set forth for each separately reporting nursing care facility.

(6) The Department shall extend the time for making required reports to the next month succeeding the federal approval of a Medicaid State Plan Amendment allowing for the assessment, and consequent reimbursement rate adjustments.

(7) Providers may update previously submitted patient day assessment reports for 90 days following the original submission date.

R414-401-5. Penalties and Interest.

(1) The penalties for failure to file a report, to pay the assessment due within the time prescribed, to pay within 30 days of a notice of deficiency of the assessment are provided in Section 26-35a-105. The Department shall suspend all Medicaid payments to a nursing facility until the facility pays the assessment due in full or until the facility and the Department reach a negotiated settlement.

(2) The Department shall charge a nursing facility a negligence penalty as prescribed in Subsection 26-35a-105(3)(a) if the facility does not pay in full (or file its report) within 45 days of a notice of deficiency of the assessment.

(3) The Department shall charge a nursing facility an intentional disregard penalty as prescribed in Subsection 26-35-105(3)(b) if the facility does not pay in full (or file its report) within 45 days of a notice of deficiency of the assessment two times within a 12-month period, or if the facility does not pay in full (or file its report) within 60 days of a notice of deficiency of the assessment.

(4) The Department shall charge a nursing facility an intent to evade penalty as prescribed in Subsection 26-35a-105(4) if the facility does not pay in full (or file its report) within 45 days of a notice of deficiency of the assessment three times with a 12-month period, or if the facility does not pay in full (or file its report) within 75 days of a notice of deficiency of the assessment.

KEY: Medicaid, nursing facility

July 1, 2018	**26-1-30**
Notice of Continuation April 7, 2014	**26-35a**
	26-18-3

R426. Health, Family Health and Preparedness, Emergency Medical Services.
R426-8. Emergency Medical Services Ground Ambulance Rates and Charges.
R426-8-1. Authority and Purpose.

(1) This rule is established under Title 26, Chapter 8a.

(2) The purpose of this rule is to provide for the establishment of maximum ambulance transportation and rates to be charged by licensed ground ambulance providers in the State of Utah.

R426-8-2. Ground Ambulance Transportation Revenues, Rates, and Charges.

(1) Licensed ground ambulance providers operating under R426-3 shall not charge more than the rates described in this rule. In addition, the net income of licensed ground ambulance providers, including subsidies of any type, shall not exceed ten percent of gross revenue.

(a) Licensed ground ambulance providers may change rates at their discretion after notifying the Department, provided that the rates do not exceed the maximums specified in this rule.

(b) A licensed ground ambulance provider may not charge a transportation fee for patients who are not transported.

(2) The initial regulated rates established in this rule shall be adjusted annually on July 1, based on financial data as delineated by the Department to be submitted as detailed under R426-8-2(10). This data shall then be used as the basis for the annual rate adjustment.

(3) Base Rates for ground transport of a patient to a hospital or patient receiving facility are as follows:

(a) Ground Ambulance - $772.00 per transport;

(b) Advanced EMT Ground Ambulance - $1,018.00 per transport;

(c) Advanced EMT Ground Ambulance who was prior to June 30, 2016 licensed as an EMT-IA provider - $1,254.00 per transport;

(d) Paramedic Ground Ambulance - $1,490.00 per transport;

(e) Ground Ambulance with Paramedic on-board - $1,490.00 per transport if:

(i) a designated Emergency Medical Service dispatch center dispatches a licensed paramedic provider to treat the individual;

(ii) the licensed paramedic provider has initiated advanced life support;

(iii) on-line medical control directs that a paramedic remain with the patient during transport; and

(iv) a licensed ground ambulance provider who interfaces with a licensed paramedic rescue service and has an inter-local or equivalent agreement in place, dealing with reimbursing the paramedic ground ambulance licensed provider for services provided up to a maximum of $472.00 per transport.

(4) Mileage rates may be charged at a rate of $31.65 per mile or fraction thereof, and computed from the point of patient pick-up to the point of patient delivery. Fuel fluctuation surcharges of $0.25 per mile may be added when diesel fuel prices exceed $5.10 per gallon, or gasoline prices exceed $4.25 per gallon as invoiced.

(5) A surcharge of $1.50 per mile may be assessed if an ambulance is required to travel ten or more miles on unpaved roads.

(6) If more than one patient is transported from the same point of origin to the same point of delivery in the same ambulance, the charges to be assessed to each individual will be determined as follows:

(a) Each patient will be assessed the transportation rate;

(b) The mileage rate will be computed as specified, the sum to be divided equally between the total number of patients.

(7) A round trip may be billed as two one-way trips. A licensed ground ambulance provider shall provide 15 minutes of time at no charge at both point of pickup and point of delivery, and may charge $22.05 per quarter hour or fraction thereof thereafter. On round trips, 30 minutes at no charge will be allowed from the time the ambulance reaches the point of delivery until starting the return trip. At the expiration of the 30 minutes, the ambulance service may charge $22.05 per quarter hour or fraction thereof thereafter.

(8) A licensed ground ambulance provider may charge for supplies, providing supplies, medications, and administering medications on a response if:

(a) supplies shall be priced fairly and competitively with similar products in the local area;

(b) the individual does not refuse services; and

(c) the licensed ground ambulance personnel assess or treats the individual.

(9) In the event of a temporary escalation of costs, a licensed ground ambulance provider may petition the Department for permission to make a temporary service-specific surcharge. The petition shall specify the amount of the proposed surcharge, the reason for the surcharge, and provide sufficient financial data to clearly demonstrate the need for the proposed surcharge. Since this is intended to only provide temporary relief, the petition shall also include a recommended time limit. The Department will make a final decision on the proposed surcharge within 30 days of receipt of the petition.

(10) The licensed ground ambulance provider shall file with the Department within 90 days of the end of each licensed provider's fiscal year, an operating report in accordance with the instructions, guidelines and review criteria as specified by the Department. The Department shall provide a summary of operating reports received during the previous state fiscal year to the EMS Committee in the October quarterly meeting.

(11) The Department shall review licensed ground ambulance provider fiscal reports for compliance to Department established standards. The Department may perform financial audits as part of the review. If the Department determines that a licensed ground ambulance provider is not in compliance with this rule, the Department shall proceed in accordance with Utah Code Title 26-8a-504.

(12) All licensed ground ambulance providers shall submit a written total number of patient transports for each calendar year to the Department for calculating Medicaid assessments.

(a) A written patient transport number shall be submitted within 90 days after the end of the calendar year.

(b) The submission shall include a written justification when patient transport numbers are not in agreement with patient care reports submitted to the Department as described in R426-7. Written justifications shall include a description of data reporting errors, and a plan to correct future data submission.

(c) The Department shall use submitted patient transport numbers to calculate ambulance service providers assessments as described in Utah Code Title 26-37a-104(5).

(d) Submitted patient transport numbers and justifications for patient transport numbers not in agreement with patient care report data may be evaluated, corrected, or audited by the Department. If the Department determines that a licensed ground ambulance provider is not in compliance with this rule, the Department may proceed in accordance with Utah Code Title 26-8a-504.

KEY: emergency medical services, rates
July 1, 2018 26-8a
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R477. Human Resource Management, Administration.
R477-1. Definitions.
R477-1-1. Definitions.

The following definitions apply throughout these rules unless otherwise indicated within the text of each rule.

(1) Abandonment of Position: An act of resignation resulting when an employee is absent from work for three consecutive working days without approval.

(2) Actual FTE: The total number of full time equivalents based on actual hours paid in the state payroll system.

(3) Actual Hours Worked: Time spent performing duties and responsibilities associated with the employee's job assignments.

(4) Actual Wage: The employee's assigned wage rate in the central personnel record maintained by the Department of Human Resource Management.

(5) Administrative Leave: Leave with pay granted to an employee at management discretion that is not charged against the employee's leave accounts.

(6) Administrative Adjustment: An adjustment to a salary range approved by DHRM that is not a Market Comparability Adjustment, a Structure Adjustment, or a Reclassification. It is for administrative purposes only. An Administrative Adjustment will result in an increase to incumbent pay only when necessary to bring salaries to the minimum of the salary range.

(7) Administrative Salary Decrease: A decrease in the current actual wage based on non-disciplinary administrative reasons determined by an agency head.

(8) Administrative Salary Increase: An increase in the current actual wage based on special circumstances determined by an agency head.

(9) Agency: An entity of state government that is:

(a) directed by an executive director, elected official or commissioner defined in Title 67, Chapter 22 or in other sections of the code;

(b) authorized to employ personnel; and

(c) subject to Title 67, Chapter 19, Utah State Personnel Management Act.

(10) Agency Head: The executive director or commissioner of each agency or a designated appointee.

(11) Agency Human Resource Field Office: An office of the Department of Human Resource Management located at another agency's facility.

(12) Agency Management: The agency head and all other officers or employees who have responsibility and authority to establish, implement, and manage agency policies and programs.

(13) Alternative State Application Program (ASAP): A program designed to appoint a qualified person with a disability through an on the job examination period.

(14) Appeal: A formal request to a higher level for reconsideration of a grievance decision.

(15) Appointing Authority: The officer, board, commission, person or group of persons authorized to make appointments in their agencies.

(16) Break in Service: A point at which an individual has an official separation date and is no longer employed by the State of Utah.

(17) Budgeted FTE: The total number of full time equivalents budgeted by the Legislature and approved by the Governor.

(18) Bumping: A procedure that may be applied prior to a reduction in force action (RIF). It allows employees with higher retention points to bump other employees with lower retention points as identified in the work force adjustment plan, as long as employees meet the eligibility criteria outlined in interchangeability of skills.

(19) Career Mobility: A temporary assignment of an employee to a different position for purposes of professional growth or fulfillment of specific organizational needs.

(20) Career Service Employee: An employee who has successfully completed a probationary period in a career service position.

(21) Career Service Exempt Employee: An employee appointed to work for a period of time, serving at the pleasure of the appointing authority, who may be separated from state employment at any time without just cause.

(22) Career Service Exempt Position: A position in state service exempted by law from provisions of career service under Section 67-19-15.

(23) Career Service Status: Status granted to employees who successfully complete a probationary period for career service positions.

(24) Category of Work: A job series within an agency designated by the agency head as having positions to be eliminated agency wide through a reduction in force. Category of work may be further reduced as follows:

(a) a unit smaller than the agency upon providing justification and rationale for approval, including:

(i) unit number;

(ii) cost centers;

(iii) geographic locations;

(iv) agency programs.

(b) positions identified by a set of essential functions, including:

(i) position analysis data;

(ii) certificates;

(iii) licenses;

(iv) special qualifications;

(v) degrees that are required or directly related to the position.

(25) Change of Workload: A change in position responsibilities and duties or a need to eliminate or create particular positions in an agency caused by legislative action, financial circumstances, or administrative reorganization.

(26) Classification Grievance: The approved procedure by which an agency or a career service employee may grieve a formal classification decision regarding the classification of a position.

(27) Classified Service: Positions that are subject to the classification and compensation provisions stipulated in Section 67-19-12.

(28) Classification Study: A Classification review conducted by DHRM under Section R477-3-4. A study may include single or multiple job or position reviews.

(29) Compensatory Time: Time off that is provided to an employee in lieu of monetary overtime compensation.

(30) Contractor: An individual who is contracted for service, is not supervised by a state supervisor, but is responsible for providing a specified service for a designated fee within a specified time. The contractor shall be responsible for paying all taxes and FICA payments, and may not accrue benefits.

(31) Critical Incident Drug or Alcohol Test: A drug or alcohol test conducted on an employee as a result of the behavior, action, or inaction of an employee that is of such seriousness it requires an immediate intervention on the part of management.

(32) Demotion: A disciplinary action resulting in a reduction of an employee's current actual wage.

(33) Detailed Position Record Management Report: A document that lists an agency's authorized positions, incumbent's name and hourly rate, job identification number, salary range, and schedule.

(34) DHRM: The Department of Human Resource Management.

(35) DHRM Approved Recruitment and Selection System: The state's recruitment and selection system, which is a

centralized and automated computer system administered by the Department of Human Resource Management.

(36) Direct Supervisor: An employee's primary supervisor who normally directs day to day job activity such as assigning work, approving time records, and considering leave requests.

(37) Disability: Disability shall have the same definition found in the Americans With Disabilities Act (ADA) of 1990, 42 USC 12101 (2008); Equal Employment Opportunity Commission regulation, 29 CFR 1630 (2008); including exclusions and modifications.

(38) Disciplinary Action: Action taken by management under Rule R477-11.

(39) Dismissal: A separation from state employment for cause under Section R477-11-2.

(40) Dual State Employment: Employees who work for more than one agency and meet the employee criteria which is located in the Division of Finance accounting policy 11-18.00.

(41) Drug-Free Workplace Act: A 1988 congressional act, 34 CFR 84 (2008), requiring a drug-free workplace certification by state agencies that receive federal grants or contracts.

(42) Employee Personnel Files: For purposes of Title 67, Chapters 18 and 19, the files or records maintained by DHRM and agencies as required by Section R477-2-5. This does not include employee information maintained by supervisors.

(43) Employment Eligibility Verification: A requirement of the Immigration Reform and Control Act of 1986, 8 USC 1324 (1988) that employers verify the identity and eligibility of individuals for employment in the United States.

(44) "Escalator" Principle: Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), returning veterans are entitled to return back onto their seniority escalator at the point they would have occupied had they not left state employment.

(45) Excess Hours: A category of compensable hours separate and apart from compensatory or overtime hours that accrue at straight time only when an employee's actual hours worked, plus additional hours paid, exceed an employee's normal work period.

(46) Employee's Family Member: An employee's relative or household member as defined in Section 52-3-1 including, step-siblings, step-parents, and, step-children.

(47) Fitness For Duty Evaluation: Evaluation, assessment or study by a licensed professional to determine if an individual is able to meet the performance or conduct standards required by the position held, or is a direct threat to the safety of self or others.

(48) FLSA Exempt: Employees who are exempt from the overtime and minimum wage provisions of the Fair Labor Standards Act.

(49) FLSA Nonexempt: Employees who are not exempt from the overtime and minimum wage provisions of the Fair Labor Standards Act.

(50) Follow Up Drug or Alcohol Test: Unannounced drug or alcohol tests conducted for up to five years on an employee who has previously tested positive or who has successfully completed a voluntary or required substance abuse treatment program.

(51) Furlough: A temporary leave of absence from duty without pay for budgetary reasons or lack of work.

(52) GOMB: Governor's Office of Management and Budget.

(53) Grievance: A career service employee's claim or charge of the existence of injustice or oppression, including dismissal from employment resulting from an act, occurrence, omission, condition, discriminatory practice or unfair employment practice not including position classification or schedule assignment, or a complaint by a reporting employee as defined in Section 67-19a-101(4)(c).

(54) Grievance Procedures: The statutory process of grievances and appeals as set forth in Sections 67-19a-101 through 67-19a-406 and the rules promulgated by the Career Service Review Office.

(55) Gross Compensation: Employee's total earnings, taxable and nontaxable, as shown on the employee's pay statement.

(56) Highly Sensitive Position: A position approved by DHRM that includes the performance of:

(a) safety sensitive functions:

(i) requiring an employee to operate a commercial motor vehicle under 49 CFR 383 (January 18, 2006);

(ii) directly related to law enforcement;

(iii) involving direct access or having control over direct access to controlled substances;

(iv) directly impacting the safety or welfare of the general public;

(v) requiring an employee to carry or have access to firearms; or

(b) data sensitive functions permitting or requiring an employee to access an individual's highly sensitive, personally identifiable, private information, including:

(i) financial assets, liabilities, and account information;

(ii) social security numbers;

(iii) wage information;

(iv) medical history;

(v) public assistance benefits; or

(vi) driver license

(57) Hiring List: A list of qualified and interested applicants who are eligible to be considered for appointment or conditional appointment to a specific position created in the DHRM approved recruitment and selection system.

(58) HRE: Human Resource Enterprise; the state human resource management information system.

(59) Incompetence: Inadequacy or unsuitability in performance of assigned duties and responsibilities.

(60) Inefficiency: Wastefulness of government resources including time, energy, money, or staff resources or failure to maintain the required level of performance.

(61) Interchangeability of Skills: Employees are considered to have interchangeable skills only for those positions they have previously held successfully in Utah state government executive branch employment or for those positions which they have successfully supervised and for which they satisfy job requirements.

(62) Intern: An individual in a college degree or certification program assigned to work in an activity where on-the-job training or community service experience is accepted.

(63) Job: A group of positions similar in duties performed, in degree of supervision exercised or required, in requirements of training, experience, or skill and other characteristics. The same salary range is applied to each position in the group.

(64) Job Description: A document containing the duties, distinguishing characteristics, knowledge, skills, and other requirements for a job.

(65) Job Family: A group of jobs that have related or common work content, that require common skills, qualifications, licenses, etc., and that normally represents a general occupation area.

(66) Job Requirements: Skill requirements defined at the job level.

(67) Job Series: Two or more jobs in the same functional area having the same job title, but distinguished and defined by increasingly difficult levels of skills, responsibilities, knowledge and requirements; or two or more jobs with different titles working in the same functional area that have licensure, certification or other requirements with increasingly difficult levels of skills, responsibilities, knowledge and requirements.

(68) Leave Benefit: A benefit provided to an employee

that includes: Annual leave, sick leave, converted sick leave, and holiday leave. These benefits are not provided to non-benefited employees.

(69) Legislative Salary Adjustment: A legislatively approved salary increase for a specific category of employees based on criteria determined by the Legislature.

(70) Malfeasance: Intentional wrongdoing, deliberate violation of law or standard, or mismanagement of responsibilities.

(71) Market Based Bonus: One time lump sum monies given to a new hire or a current employee to encourage employment with the state.

(72) Market Comparability Adjustment: An adjustment to a salary range approved by the legislature that is based upon salary data and other relevant information from comparable jobs in the market that is collected by DHRM or from DHRM approved justifiable sources. The Market Comparability Adjustment may also change incumbent pay resulting in a budgetary impact for an agency.

(73) Merit Increase: A legislatively approved and funded salary increase for employees to recognize and reward successful performance.

(74) Misconduct: Wrongful, improper, unacceptable, or unlawful conduct or behavior that is inconsistent with prevailing agency practices or the best interest of the agency.

(75) Misfeasance: The improper or unlawful performance of an act that is lawful or proper.

(76) Nonfeasance: Failure to perform either an official duty or legal requirement.

(77) Pay for Performance Award: A type of cash incentive award where an employee or group of employees may receive a cash award for meeting or exceeding well-defined annual production or performance standards, targets and measurements.

(78) Pay for Performance: A plan for incentivizing employees for meeting or exceeding production or performance goals, in which the plan is well-defined before work begins, eligible work groups are defined, specific goals and targets are determined, measurement procedures are in place, and specific incentives are provided when goals and targets are met.

(79) Performance Evaluation: A formal, periodic evaluation of an employee's work performance.

(80) Performance Improvement Plan: A documented administrative action to address substandard performance of an employee under Section R477-10-2.

(81) Performance Management: The ongoing process of communication between the supervisor and the employee which defines work standards and expectations, and assesses performance leading to a formal annual performance evaluation.

(82) Performance Plan: A written summary of the standards and expectations required for the successful performance of each job duty or task. These standards normally include completion dates and qualitative and quantitative levels of performance expectations.

(83) Performance Standard: Specific, measurable, observable and attainable objectives that represent the level of performance to which an employee and supervisor are committed during an evaluation period.

(84) Personnel Adjudicatory Proceedings: The informal appeals procedure contained in Section 63G-4-101 et seq. for all human resource policies and practices not covered by the state employee's grievance procedure promulgated by the Career Service Review Office, or the classification appeals procedure.

(85) Phased Retirement: Employment on a half-time basis of a retiree with the same participating employer immediately following the retiree's retirement date. During phased retirement retiree will receive a reduced retirement allowance.

(86) Position: A unique set of duties and responsibilities identified by DHRM authorized job and position management numbers.

(87) Position Description: A document that describes the detailed tasks performed, as well as the knowledge, skills, abilities, and other requirements of a specific position.

(88) Position Identification Number: A unique number assigned to a position for FTE management.

(89) Post Accident Drug or Alcohol Test: A Drug or alcohol test conducted on an employee who is involved in a vehicle accident while on duty or driving a state vehicle:

(a) where a fatality occurs;

(b) where there is sufficient information to conclude that the employee was a contributing cause to an accident that results in bodily injury or property damage; or

(c) where there is reasonable suspicion that the employee had been driving while under the influence of alcohol or a controlled substance.

(90) Preemployment Drug Test: A drug test conducted on:

(a) final applicants who are not current employees;

(b) final candidates for a highly sensitive position;

(c) employees who are final candidates for transfer or promotion from a non-highly sensitive position to a highly sensitive position; or

(d) employees who transfer or are promoted from one highly sensitive position to another highly sensitive position.

(91) Probationary Employee: An employee hired into a career service position who has not completed the required probationary period for that position.

(92) Probationary Period: A period of time considered part of the selection process, identified at the job level, the purpose of which is to allow management to evaluate an employee's ability to perform assigned duties and responsibilities and to determine if career service status should be granted.

(93) Proficiency: An employee's overall quality of work, productivity, skills demonstrated through work performance and other factors that relate to employee performance or conduct.

(94) Promotion: An action moving an employee from a position in one job to a position in another job having a higher salary range maximum.

(95) Protected Activity: Opposition to discrimination or participation in proceedings covered by the antidiscrimination statutes or the Utah State Grievance and Appeal Procedure. Harassment based on protected activity can constitute unlawful retaliation.

(96) Random Drug or Alcohol Test: Unannounced drug or alcohol testing of a sample of highly sensitive employees done in accordance with federal regulations or state rules, policies, and procedures, and conducted in a manner such that each highly sensitive employee has an equal chance of being selected for testing.

(97) Reappointment: Return to work of an individual from the reappointment register after separation from employment.

(98) Reappointment Register: A register of individuals who have prior to March 2, 2009:

(a) held career service status and been separated in a reduction in force;

(b) held career service status and accepted career service exempt positions without a break in service and were not retained, unless discharged for cause; or

(c) by Career Service Review Board decision been placed on the reappointment register.

(99) Reasonable Suspicion Drug or Alcohol Test: A drug or alcohol test conducted on an employee based on specific, contemporaneous, articulated observations concerning the appearance, behavior, speech or body odors of the employee.

(100) Reassignment: An action mandated by management moving an employee from one job or position to a different job or position with an equal or lesser salary range maximum for administrative reasons. A reassignment may not include a

decrease in actual wage except as provided in federal or state law.

(101) Reclassification: A DHRM reallocation of a single position or multiple positions from one job to another job to reflect management initiated changes in duties and responsibilities.

(102) Reduction in Force: (RIF) Abolishment of positions resulting in the termination of career service staff. RIFs can occur due to inadequate funds, a change of workload, or a lack of work.

(103) Reemployment: Return to work of an employee who resigned or took military leave of absence from state employment to serve in the uniformed services covered under USERRA.

(104) Requisition: An electronic document used for HRE Online recruitment, selection and tracking purposes that includes specific information for a particular position, job seekers' applications, and a hiring list.

(105) Salary Range: Established minimum and maximum rates assigned to a job.

(106) Schedule: The determination of whether a position meets criteria stipulated in the Utah Code Annotated to be career service (schedule B) or career service exempt (schedule A).

(107) Separation: An employee's voluntary or involuntary departure from state employment.

(108) Settling Period: A sufficient amount of time, determined by agency management, for an employee to fully assume new or higher level duties required of a position.

(109) Structure Adjustment: An adjustment to a salary range approved by DHRM that is based upon salary data and other relevant information from comparable jobs in the market that is collected by DHRM or from DHRM approved justifiable sources.

(110) Tangible Employment Action: A significant change in employment status, such as firing, demotion, failure to promote, work reassignment, or a decision which changes benefits.

(111) Transfer: An action not mandated by management moving an employee from one job or position to another job or position with an equal or lesser salary range maximum for which the employee qualifies. A transfer may include a decrease in actual wage.

(112) Uniformed Services: The United States Army, Navy, Marine Corps, Air Force, Coast Guard; Reserve units of the Army, Navy, Marine Corps, Air Force, or Coast Guard; Army National Guard or Air National Guard; Commissioned Corps of Public Health Service, National Oceanic and Atmospheric Administration (NOAA), National Disaster Medical Systems (NDMS) and any other category of persons designated by the President in time of war or emergency. Service in Uniformed Services includes: voluntary or involuntary duty, including active duty; active duty for training; initial active duty for training; inactive duty training; full-time National Guard duty; or absence from work for an examination to determine fitness for any of the above types of duty.

(113) Unlawful Discrimination: An action against an employee or applicant based on race, religion, national origin, color, sex, age, disability, pregnancy, sexual orientation, gender identity, protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation, or any other factor, as prohibited by law.

(114) USERRA: Uniformed Services Employment and Reemployment Rights Act of 1994 (P.L. 103-353), requires state governments to re-employ eligible veterans who resigned or took a military leave of absence from state employment to serve in the uniformed services and who return to work within a specified time period after military discharge.

(115) Veteran: An individual who has served on active duty in the armed forces for more than 180 consecutive days, or was a member of a reserve component who served in a campaign or expedition for which a campaign medal has been authorized. Individuals must have been separated or retired under honorable conditions.

(116) Veteran Employment Opportunity Program (VEOP): A program designed to appoint a qualified veteran through an on the job examination period.

(117) Volunteer: Any person who donates services to the state or its subdivisions without pay or other compensation except actual and reasonable expenses incurred, as approved by the supervising agency.

(118) Wage: The fixed hourly rate paid to an employee.

(119) Work Period: The maximum number of hours an employee may work prior to accruing overtime or compensatory hours based on variable payroll cycles outlined in 67-19-6.7 and 29 CFR 553.230.

KEY: personnel management, rules and procedures, definitions

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Notice of Continuation April 27, 2017	**67-19-15**
	67-19-18

R477. Human Resource Management, Administration.
R477-2. Administration.
R477-2-1. Rules Applicability.

These rules apply to the executive branch of Utah State Government and its career service and career service exempt employees. Other entities may be covered in specific sections as determined by statute. Any inclusions or exceptions to these rules are specifically noted in applicable sections. Entities which are not bound by mandatory compliance with these rules include:

(1) members of the Legislature and legislative employees;

(2) members of the judiciary and judicial employees;

(3) officers, faculty, and other employees of state institutions of higher education;

(4) officers, faculty, and other employees of the public education system, other than those directly employed by the State Board of Education;

(5) employees of the Office of the Attorney General;

(6) elected members of the executive branch and their Schedule A employees;

(7) employees of independent entities, quasi-governmental agencies and special service districts;

(8) employees in any position that is determined by statute to be exempt from these rules.

R477-2-2. Compliance Responsibility.

Agencies shall comply with these rules.

(1) The Executive Director, DHRM, may authorize exceptions to these rules where allowed when:

(a) applying the rule prevents the achievement of legitimate government objectives; or

(b) applying the rule infringes on the legal rights of an employee.

(2) Agency personnel records, practices, policies and procedures, employment and actions, shall comply with these rules and are subject to compliance audits by DHRM.

R477-2-3. Fair Employment Practice and Discrimination.

All state personnel actions shall provide equal employment opportunity for all individuals.

(1) Employment actions including appointment, tenure or term, condition or privilege of employment shall be based on the ability to perform the essential duties, functions, and responsibilities assigned to a particular position.

(2) Employment actions may not be based on race, religion, national origin, color, sex, age, disability, pregnancy, sexual orientation, gender identity, or protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation or any other non-job related factor, except as provided under Subsection 67-19-15(2)(b)(ii).

(3) An employee who alleges unlawful discrimination may:

(a) submit a complaint to the agency head; and

(b) file a charge with the Utah Labor Commission Antidiscrimination and Labor Division within 180 days of the alleged harm, or directly with the EEOC within 300 days of the alleged harm.

(4) A state official may not impede any employee from the timely filing of a discrimination complaint in accordance with state and federal requirements.

R477-2-4. Control of Personal Service Expenditures.

(1) Statewide control of personal service expenditures shall be the shared responsibility of the employing agency, the Governor's Office of Management and Budget, the Department of Human Resource Management and the Division of Finance.

(2) Changes in job identification numbers, salary ranges, or number of positions listed in the Detailed Position Record Management Report shall be approved by the Executive Director, DHRM or designee.

(3) No person shall be placed or retained on an agency payroll unless that person occupies a position listed in an agency's approved Detailed Position Record Management Report.

R477-2-5. Records.

Access to and privacy of personnel records maintained by DHRM are governed by Title 63G, Chapter 2, the Government Records Access and Management Act (GRAMA) and applicable federal laws. DHRM shall designate and classify the records and record series it maintains under the GRAMA statute and respond to GRAMA requests for employee records.

(1) DHRM shall maintain an electronic record for each employee that contains the following, as appropriate:

(a) Social Security number, date of birth, home address, and private phone number.

(i) This information is classified as private under GRAMA.

(ii) DHRM may grant agency access to this information for state business purposes. Agencies shall maintain the privacy of this information.

(b) performance ratings;

(c) records of actions affecting employee salary history, classification history, title and salary range, employment status and other personal data.

(2) DHRM shall maintain, on behalf of agencies, personnel files.

(3) DHRM shall maintain, on behalf of agencies, a confidential medical file. Confidentiality shall be maintained in accordance with applicable regulations. Information in the medical file is private, controlled, or exempt in accordance with Title 63G-2.

(4) An employee has the right to review the employee's personnel file, upon request, in the presence of a DHRM representative.

(a) An employee may request corrections, amendments to, or challenge any information in the DHRM electronic or hard copy personnel file, through the following process:

(i) The employee shall request in writing to the appropriate agency human resource field office that changes occur.

(ii) The employing agency shall be given an opportunity to respond.

(iii) Disputes over information that are not resolved between the employing agency and the employee shall be decided in writing by the Executive Director, DHRM. DHRM shall maintain a record of the employee's letter, the agency's response, and the DHRM Executive Director's decision.

(5) When a disciplinary action is rescinded or disapproved upon appeal, forms, documents and records pertaining to the case shall be removed from the personnel file.

(a) When the record in question is on microfilm, a seal will be placed on the record and a suitable notice placed on the carton or envelope. This notice shall indicate the limits of the sealed Title and the authority for the action.

(6) Upon employee separation, DHRM shall retain electronic records for thirty years. Agency hard copy records shall be retained at the agency for a minimum of two years, and then transferred to the State Record Center to be retained according to the record retention schedule.

(7) When an employee transfers from one agency to another, the former agency shall transfer the employee's personnel file, medical and I-9 records to the new agency.

(8) An employee who violates confidentiality is subject to disciplinary action and may be personally liable.

(9) Records related to conduct for which an employee may be disciplined under R477-11-1(1) are classified as private records under Subsection 62G-2-302(2)(a).

(i) If disciplinary action under R477-11-1(4) has been

sustained and completed and all time for appeal has been exhausted, the documents issued in the disciplinary process are classified as public records under Subsection 63G-2-301(3)(o).

R477-2-6. Release of Information in a Reference Inquiry.

Reference checks or inquiries made regarding current or former public employees, volunteers, independent contractors, and members of advisory boards or commissions can be released if the information is classified as public, or if the subject of the record has signed and provided a current reference release form for information authorized under Title 63G, Chapter 2, of the Government Records Access and Management Act.

(1) The employment record is the property of Utah State Government with all rights reserved to utilize, disseminate or dispose of in accordance with the Government Records Access and Management Act.

(2) Additional information may be provided if authorized by law.

R477-2-7. Employment Eligibility Verification (Immigration Reform and Control Act -- 1986).

Employees newly hired, rehired, or placed through reciprocity with or assimilation from another career service jurisdiction shall provide verifiable documentation of their identity and eligibility for employment in the United States by completing all sections of the Employment Eligibility Verification Form I-9 as required under the Immigration Reform and Control Act of 1986.

R477-2-8. Public Officers Supervising a Relative or Household Member.

A public officer may not appoint, directly supervise, or make salary, performance, disciplinary, or other employment matter decisions regarding a family member, including a household member.

(1) A public officer supervising a family member, including a household member, shall make a complete written disclosure of any such relationship to the agency head and be recused from any and all employment matter discussions or decisions relating to the family member, including a household member.

R477-2-9. Employee Liability.

An employee who becomes aware of any occurrence which may give rise to a lawsuit, who receives notice of claim, or is sued because of an incident related to state employment, shall give immediate notice to his supervisor and to the Department of Administrative Services, Division of Risk Management.

(1) In most cases, under Title 63G, Chapter 7, the Governmental Immunity Act, an employee shall receive defense and indemnification unless the case involves fraud, malice or the use of alcohol or drugs by the employee.

(2) Before an agency may defend its employee against a claim, the employee shall make a written request for a defense to the agency head within ten calendar days, under Subsection 63G-7-902(2).

R477-2-10. Alternative Dispute Resolution.

Agency management may establish a voluntary alternative dispute resolution program under Chapter 63G, Chapter 5.

KEY: administrative responsibility, confidentiality of information, fair employment practices, public information

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R477. Human Resource Management, Administration.
R477-4. Filling Positions.
R477-4-1. Authorized Recruitment System.

Agencies shall use the DHRM approved recruitment and selection system unless an alternate system has been pre-approved by DHRM.

R477-4-2. Career Service Exempt Positions.

(1) The Executive Director, DHRM, may approve the creation and filling of career service exempt positions, as defined in Section 67-19-15.

(2) Agencies may use any pre-approved process to select an employee for a career service exempt position. Appointments may be made without competitive examination, provided job requirements are met.

(3) Appointments to fill an employee's position who is on approved leave shall only be made temporarily.

(4) Appointments made on a temporary basis shall be career service exempt and:

(a) be Schedule IN, in which the employee is hired to work part time indefinitely and shall work less than 1560 hours per fiscal year; or

(b) be Schedule TL, in which the employee is hired to work on a time limited basis;

(c) may, at the discretion of management, be offered benefits if working a minimum of 40 hours per pay period.

(d) if the required work hours of the position meet or exceed 1560 hours per fiscal year for Schedule IN or if the position exceeds anticipated time limits for Schedule TL, agency management shall consult with DHRM to review possible alternative options.

(5) Career service exempt appointments may only be considered for conversion to career service when the appointment was made from a hiring list under Subsection R477-4-8.

(6) Agency management shall ensure that all new hire appointees in Schedules AB, AC, AD, AR and AS submit disclosure statements pursuant to Utah Code Section 67-16-7.

R477-4-3. Career Service Positions.

(1) Selection of a career service employee shall be governed by the following:

(a) DHRM business practices;

(b) career service principles as outlined in R477-2-3 Fair Employment Practice emphasizing recruitment of qualified individuals based upon relative knowledge, skills and abilities;

(c) equal employment opportunity principles;

(d) Section 52-3-1, employment of relatives;

(e) reasonable accommodation for qualified applicants covered under the Americans With Disabilities Act.

R477-4-4. Recruitment and Selection for Career Service Positions.

(1) Prior to initiating recruitment, agencies may administer any of the following personnel actions:

(a) reemployment of a veteran eligible under USERRA;

(b) reassignment within an agency initiated by an employee's reasonable accommodation request under the ADA;

(c) fill a position as a result of return to work from long term disability or workers compensation at the same or lesser salary range;

(d) reassignment or transfer made in order to avoid a reduction in force, or for reorganization or bumping purposes;

(e) reassignment, transfer, or career mobility of qualified employees to better utilize skills or assist management in meeting the organization's mission;

(f) reclassification; or

(g) conversion from schedule A to schedule B as authorized by Subsection R477-5-1(3).

(2) Agencies shall use the DHRM approved recruitment and selection system for all career service position vacancies. This includes recruitments open within an agency, across agency lines, or to the general public. Recruitments shall comply with federal and state laws and DHRM rules and procedures.

(a) All recruitment announcements shall include the following:

(i) Information about the DHRM approved recruitment and selection system; and

(ii) opening and closing dates.

(b) Recruitments for career service positions shall be posted for a minimum of three business days, excluding state holidays.

(3) Agencies may carry out all the following steps for recruitment and selection of vacant career service positions concurrently. Management may make appointments according to the following order:

(a) from the reappointment register created prior to March 2, 2009, provided the applicant applies for the position and meets minimum qualifications.

(b) from a hiring list of qualified applicants for the position, or from another process pre-approved by the Executive Director, DHRM.

R477-4-5. Transfer and Reassignment.

(1) Positions may be filled through a transfer or reassignment.

(a) The receiving agency shall verify the employee's career service status and that the employee meets the job requirements for the position.

(b) Agencies receiving a transfer or reassignment of an employee shall accept all of that employee's previously accrued sick, annual, and converted sick leave on the official leave records.

(c) A transfer may not include an increase but may include a decrease in actual wage.

(d) A reassignment may not include a decrease in actual wage except as provided in federal or state law.

(e) An employee who is transferred or reassigned to a position where the employee's current actual wage is above the salary range maximum of the new position, is considered to be above maximum and may not be eligible for a longevity increase. Employees shall be eligible for a longevity increase only after they have been above the salary range maximum for 12 months and all other longevity criteria are met.

(f) An employee with a wage that is above the salary range maximum because of a longevity increase, who is transferred or reassigned and remains at or above the salary range maximum, shall receive their next longevity increase three years from the date they received the most recent increase if they receive a passing performance appraisal rating within the previous 12 months.

(2) A reassignment or transfer may include assignment to:

(a) a different job or position with an equal or lesser salary range maximum;

(b) a different work location; or

(c) a different organizational unit.

R477-4-6. Rehire.

(1) A former employee shall compete for career service positions through the DHRM approved recruitment and selection system and shall serve a new probationary period, as designated in the official job description.

(2) Employees rehired under the Phased Retirement Program pursuant to Utah Code Section 49-11-13 shall be:

(a) Classified as time-limited (Schedule TL) for the duration of a phased retirement employment period; and

(b) Placed at or below the employee's wage at the time of

retirement. Employees cannot be placed below the minimum of the established salary range of the job.

R477-4-7. Examinations.

(1) Examinations shall be designed to measure and predict applicant job performance.

(2) Examinations shall be based on documented job related criteria and include the following:

(a) an initial, impartial screening of the individual's qualifications;

(b) an impartial evaluation and results; and

(c) reasonable accommodation(s) for qualified individuals with disabilities.

(3) Examinations and ratings shall remain confidential and secure.

R477-4-8. Hiring Lists.

(1) The hiring list shall include the names of applicants to be considered for appointment or conditional appointment to a specific job, job series or position.

(a) An individual shall be considered an applicant when the individual applies for a particular position identified through a specific recruitment.

(b) Hiring lists shall be constructed using a DHRM approved recruitment and selection system.

(c) Applicants for career service positions shall be evaluated and placed on a hiring list based on job, job series or position related criteria.

(d) All applicants included on a hiring list shall be examined with the same examination or examinations.

(2) An individual who falsifies any information in the job application, examination or evaluation processes may be disqualified from further consideration prior to hire, or disciplined if already hired.

(3) The appointing authority shall demonstrate and document that equal consideration was given to all applicants on a hiring list whose final score or rating is equal to or greater than that of the applicant hired.

(4) The appointing authority shall ensure that any employee hired meets the job requirements as outlined in the official job description.

R477-4-9. Job Sharing.

Agency management may establish a job sharing program as a means of increasing opportunities for part-time employment. In the absence of an agency program, individual employees may request approval for job sharing status through agency management.

R477-4-10. Internships.

Interns or students in a practicum program may be appointed with or without competitive selection. Intern appointments shall be to temporary career service exempt positions.

R477-4-11. Volunteer Experience Credit.

(1) Documented job related volunteer experience shall be given the same consideration as similar paid employment in satisfying the job requirements for career service positions.

(a) Volunteer experience may not be substituted for required licensure, POST certification, or other criteria for which there is no substitution in the job requirements in the job description.

(b) Court ordered community service experience may not be considered.

R477-4-12. Reorganization.

When an agency is reorganized, but an employee's position does not change substantially, the agency may not require the employee to compete for his current position.

R477-4-13. Career Mobility Programs.

(1) A career mobility is a temporary assignment of an employee to a different position for purposes of professional growth or fulfillment of specific organizational needs. Career mobility assignments may be to any salary range.

(2) Agencies may provide career mobility assignments inside or outside state government in any position for which the employee qualifies.

(3) An eligible employee or agency may initiate a career mobility.

(a) Career mobility assignments may be made without going through the competitive process but shall remain temporary.

(b) Career mobility assignments shall only become permanent if:

(i) the position was originally filled through a competitive recruitment process; or

(ii) a competitive recruitment process is used at the time the agency determines a need for the assignment to become permanent.

(4) Agencies shall develop and use written career mobility contract agreements between the employee and the supervisor to outline all program provisions and requirements. The career mobility shall be both voluntary and mutually acceptable.

(5) A participating employee shall retain all rights, privileges, entitlements, career service status subject to R477-5-2, and benefits from the previous position while on career mobility.

(a) If a reduction in force affects a position vacated by a participating employee, the participating employee shall be treated the same as other RIF employees.

(b) If a career mobility assignment does not become permanent at its conclusion, the employee shall return to the previous position or a similar position at a salary rate described in R477-6-6(10).

(6) An employee who has not attained career service status prior to the career mobility program cannot permanently fill a career service position until the employee obtains career service status through a competitive process.

R477-4-14. Assimilation.

(1) An employee assimilated by the state from another government career service system to fill a Schedule B position shall receive career service status after completing a probationary period if originally selected through a competitive examination process judged by the Executive Director, DHRM, to be equivalent to the process prescribed in DHRM Rules.

(a) Assimilation agreements shall specify whether there are employees eligible for reemployment under USERRA in positions affected by the agreement.

(b) An assimilated employee shall accrue leave at the same rate as other career service employees with the same seniority.

R477-4-15. Hiring of Administrative Law Judges.

(1) Utah Code Section 67-19e-104.5 applies to hiring Administrative Law Judges. Utah Code Section 67-19e-104.5 does not apply to:

(a) An administrative law judge who is appointed by the governor; or

(b) Procurement of administrative law judge service under Utah Code Section 63G-6a-116.

(2) The hiring panel shall consist of:

(a) The head or designee of the hiring agency;

(b) The Executive Director, DHRM or designee; and

(c) The head of another agency, as appointed by the Executive Director, DHRM. The appointed agency head may select a designee to serve on her or his behalf.

(3) Only the agency heads described in subsection (2) may designate another individual to serve on the hiring panel on the agency head's behalf in consultation with the designee of the Executive Director, DHRM.

(4) In addition to the panel members established in subsection (2), the hiring agency may select one or more additional subject matter experts to serve on the panel, in consultation with DHRM.

R477-4-16. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

KEY: employment, fair employment practices, hiring practices

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R477. Human Resource Management, Administration.
R477-5. Employee Status and Probation.
R477-5-1. Career Service Status.

(1) Only an employee who is hired through a pre-approved process shall be eligible for appointment to a career service position.

(2) An employee shall complete a probationary period prior to receiving career service status.

(3) Management may convert a career service exempt employee to career service status, in a position with an equal or lower salary range to the previous career service position held, when:

(a) the employee previously held career service status with no break in service between the last career service position held and career service exempt status;

(b) the employee was hired from a hiring list to a career service exempt position, in the same job title to which they would convert, as prescribed by Subsection R477-4-8; or

(c) the employee was hired through the Alternative State Application Program (ASAP) or Veterans Employment Opportunity Program (VEOP) and successfully completed a six month on the job examination period.

R477-5-2. Probationary Period.

The probationary period allows agency management to evaluate an employee's ability to perform the duties, responsibilities, skills, and other related requirements of the assigned career service position. The probationary period shall be considered part of the selection process.

(1) An employee shall receive an opportunity to demonstrate competence in a career service position. A performance plan shall be established and the employee shall receive feedback on performance in relation to that plan.

(a) During the probationary period, an employee may be separated from state employment in accordance with Subsection R477-11-2(1).

(b) At the end of the probationary period, an employee shall receive a performance evaluation. Evaluations shall be entered into HRE as the performance evaluation that reflects successful or unsuccessful completion of probation.

(2) Each career service position shall be assigned a probationary period consistent with its job.

(a) The probationary period may not be extended except for periods of leave without pay, long-term disability, workers compensation leave, temporary transitional assignment, or donated leave from an approved leave bank.

(b) The probationary period may not be reduced after appointment.

(c) An employee who has completed a probationary period and obtained career service status shall not be required to serve a new probationary period including when changing agencies unless there is a break in service.

(3) An employee in a career service position who works at least 50% of the regular work schedule or more shall acquire career service status after working the same amount of elapsed time in hours as a full-time employee would work with the same probationary period.

(4) An employee serving probation in a career service position may be transferred, reassigned or promoted to another career service position including a career mobility assignment. Each new appointment to a career service position shall include a new probationary period unless the agency determines that the required duties or knowledge, skills, and abilities of the old and new position are similar enough not to warrant a new probationary period. The probationary period shall be the full probationary period defined in the job description of the new position.

R477-5-3. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

KEY: employment, personnel management, state employees
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R477. Human Resource Management, Administration.
R477-6. Compensation.
R477-6-1. Pay Plans.

(1) With approval of the Governor, the Executive Director, DHRM, shall develop salary ranges for pay plans for each job.

(a) Each job description shall include a salary range.

(b) Agency approved wage increases within salary ranges shall be:

(i) at least 1/2%, or

(ii) to the maximum wage within the salary range, if the difference between the current wage and the salary range maximum is less than 1/2%.

(c) Agency approved wage decreases within salary ranges shall be:

(i) at least 1/2%, or

(ii) to the minimum wage within the salary range, if the difference between the current wage and the salary range minimum is less than 1/2%.

(d) Salary increases and decreases shall not place an employee below the salary range minimum or above the salary range maximum unless the criteria for longevity increases has been met.

R477-6-2. Allocation to the Pay Plans for Classified Employees.

(1) Each job in classified service shall be:

(a) assigned to a salary range and job family.

(b) surveyed in the market in accordance with the benchmark job(s).

(c) included in a market comparability adjustment recommendation if warranted.

(2) Salary ranges can be adjusted through:

(a) an administrative adjustment determined appropriate by DHRM for administrative purposes that is not based on a change of duties and responsibilities, nor based on a comparison to salary data in the market;

(b) a structure adjustment when all agencies involved agree to resolve budgetary impacts prior to implementation; or

(c) a market comparability adjustment to a job's salary range based upon salary data and other relevant information for similar jobs in the market through an annual compensation benchmark survey or other sources.

(i) Market comparability adjustment recommendations shall be included in the annual compensation plan and are submitted to the Governor no later than October 31 of each year.

(ii) Funding for market comparability adjustments shall be legislatively approved if the adjustment would cause a budgetary impact.

(iii) If market comparability adjustments are funded and approved for benchmark jobs, salary ranges for other jobs in the same job family shall be adjusted by relative ranking with the benchmark job.

(3) Salary ranges may not be adjusted more frequently than on an annual basis without an exception by the Executive Director, DHRM.

R477-6-3. Pay Plans for Unclassified Employees Designated as Schedule AD and AR.

(1) Each job in an AD/AR pay plan shall be assigned to a salary range that is no more than 40% above and below the salary range midpoint.

(2) Salary ranges may be adjusted through:

(a) An administrative adjustment determined appropriate by DHRM for administrative purposes.

(b) A structure adjustment.

(i) DHRM will consult with the Governor's Office of Management and Budget (GOMB) prior to making structure adjustments that require legislative funding. Adjustments that impact deputy directors or issues addressed in state code must be approved by GOMB.

(ii) Funding for structure adjustments shall be legislatively approved unless the adjustment has no budgetary impact or all agencies involved agree to resolve budgetary impacts prior to implementation.

(iii) Structure adjustment recommendations that require funding may be included in the annual compensation plan.

(iv) Structure adjustments may take place on an annual basis. Limited exceptions addressing a critical need may be granted upon request and approval of the Executive Director, DHRM.

(v) Structure adjustments may not be approved for cross agency jobs unless all agencies involved agree to resolve budgetary impacts prior to implementation.

R477-6-4. Pay Plans for Unclassified Employees Designated as Schedule AC, AG, AH, AS, AN, AO, AP, IN, TL, AU, AQ and all employees of the State Board of Education.

(1) Each job exempted from classified service that are identified in positions under R477-3-1(1) shall have a salary range with a beginning and ending salary of any amount determined appropriate by the affected agency.

R477-6-5. Appointments.

(1) All appointments shall be placed on the DHRM approved salary range for the job.

(2) Qualifying military service members returning to work under USERRA shall be placed in their previous position or a similar position. Reemployment shall include the same seniority status, wage, including any cost of living adjustments, general increase, reclassification of the service member preservice position, or market comparability adjustments that would have affected the service member's preservice position during the time spent by the affected service member in the uniformed services. Performance related salary increases are not included.

R477-6-6. Salary.

(1) Promotions.

(a) An employee who is not in designated schedule IN or TL and is promoted to a job with a salary range maximum exceeding the employee's current salary range maximum shall receive a wage increase of at least 5%.

(b) An employee who is promoted may not be placed higher than the maximum or lower than the minimum in the new salary range except as provided in subsection R477-6-6(3), governing longevity salary increases.

(c) To be eligible for a promotion, an employee shall meet the requirements and skills specified in the job description and position specific criteria as determined by the agency for the position.

(2) Reclassifications.

(a) At agency management's discretion, an employee reclassified to a job with a salary range maximum exceeding the employee's current salary range maximum may receive a wage increase of at least 1/2% or up to the salary range maximum. An employee shall be placed within the new salary range. An employee's eligibility for a longevity salary increase shall be consistent with Subsection R477-6-6(3).

(b) An employee whose job is reclassified to a job with a lower salary range shall retain the current wage.

(3) Longevity Salary Increase.

(a) An employee shall receive an initial longevity salary increase of 2.75% when:

(i) the employee has been in state service for eight years or more. The employee may accrue years of service in more than one agency and such service is not required to be continuous.

(ii) the employee has been at or above the maximum of the current salary range for at least one year; and

(iii) received a passing performance appraisal rating within the 12-month period preceding the longevity increase.

(b) An employee who has received the initial longevity increase is then eligible for an additional 2.75% increase every three years. To be eligible for these additional increases, an employee shall receive a passing performance appraisal rating within the 12-month period preceding the longevity increase.

(c) An employee with a wage that is above the maximum salary range because of a longevity salary increase:

(i) shall retain the current actual wage if receiving an administrative adjustment or is reassigned or reclassified to a job with a lower salary range maximum.

(ii) who is reclassified to a job with a higher salary range maximum shall only receive a wage increase if the current actual wage is less than the salary range maximum of the new job. At the discretion of agency management, the salary increase shall be at least 1/2% or up to the salary range maximum of the new job.

(iii) who is promoted shall only receive a wage increase if the current actual wage is less than the salary range maximum of the new job. The wage increase shall be at least 5% or up to the salary range maximum of the new job.

(iv) who is promoted, reclassified, transferred, reassigned or receives an administrative adjustment and remains at or above the salary range maximum, shall receive their next longevity salary increase three years from the date they received the most recent increase subject to (3)(a).

(d) An employee with a wage that is not at or above the salary range maximum who is reclassified, transferred, reassigned, or receives an administrative adjustment and has a current actual wage that is above the salary range maximum of the new job is considered to be above maximum and may be eligible for a longevity salary increase after meeting the requirements of (3)(a).

(e) An employee in Schedules AB, IN, or TL is not eligible for the longevity salary increase program.

(4) Administrative Adjustment.

(a) An employee whose position has been allocated by DHRM from one job to another job or salary range for administrative purposes may not receive an adjustment in the current actual wage unless the employee is below the minimum of the new salary range.

(b) An employee whose position is changed by administrative adjustment to a job with a lower salary range shall retain the current wage even if the current wage exceeds the new salary range maximum.

(5) Reassignment.

An employee's current actual wage may not be decreased except as provided in federal or state law.

(6) Transfer.

(a) Management may decrease the current actual wage of an employee who transfers to another job with the same or lower salary range maximum.

(b) An employee who applies for a job with a lower salary range maximum shall be placed within the salary range of the new job.

(7) Demotion.

An employee demoted consistent with Section R477-11-2 shall receive a reduction in the current actual wage of at least 1/2%, or down to the salary range minimum as determined by the agency head or designee. The agency head or designee may move an employee to a job with a lower salary range concurrent with the reduction in the current actual wage.

(8) Administrative Salary Increase.

The agency head authorizes and approves administrative salary increases under the following parameters:

(a) An employee shall receive an increase of at least 1/2% or up to the salary range maximum.

(b) Administrative salary increases shall only be granted when the agency has sufficient funding within their annualized base budgets for the fiscal year in which the adjustment is given.

(c) Justifications for administrative salary increases shall be:

(i) in writing;

(ii) approved by the agency head or designee;

(iii) supported by unique situations or considerations in the agency.

(d) The agency head or designee shall answer any challenge or grievance resulting from an administrative salary increase.

(e) Administrative salary increases may be given during the probationary period. Wage increases shall be at least 1/2% or up to the salary range maximum. These increases alone do not constitute successful completion of the probationary period or the granting of career service status.

(f) An employee at or above the salary range maximum may not be granted administrative salary increases.

(g) Increasing an employee's wage as part of a transfer or reassignment action must be justified as an administrative salary increase in a separate action.

(9) Administrative Salary Decrease.

The agency head authorizes and approves administrative salary decreases for nondisciplinary reasons according to the following:

(a) The final wage may not be less than the salary range minimum.

(b) Wage decreases shall be at least 1/2% or down to the salary range minimum.

(c) Justification for administrative salary decreases shall be:

(i) in writing;

(ii) approved by the agency head; and

(iii) supported by issues such as previous written agreements between the agency and the employee to include career mobility, reasonable accommodation, or other unique situations or considerations in the agency.

(d) The agency head or designee shall answer any challenge or grievance resulting from an administrative salary decrease.

(10) Career Mobility.

If a career mobility assignment does not become permanent at its conclusion, the employee shall return to the previous position or a similar position and shall receive, at a minimum, the same wage and the same or higher salary range that the employee would have received without the career mobility assignment.

(11) Exceptions.

The Executive Director, DHRM, may authorize exceptions for wage increases or decreases.

R477-6-7. Incentive Awards.

(1) Only agencies with written and published incentive award and bonus policies may reward employees with incentive awards or bonuses. Incentive awards and bonuses are discretionary, not an entitlement, and are subject to the availability of funds in the agency.

(a) Policies shall be approved annually by DHRM and be consistent with standards established in these rules and the Department of Administrative Services, Division of Finance, rules and procedures.

(b) Individual awards may not exceed $4,000 per pay period and $8,000 in a fiscal year, except when approved by DHRM and the governor.

(i) A request for a retirement incentive award shall be accompanied by documentation of the work units affected and any cost savings.

(ii) A single payment of up to $8,000 may be granted as a retirement incentive.

(c) All cash and cash equivalent incentive awards and bonuses shall be subject to payroll taxes.

(2) Performance Based Incentive Awards.

(a) Cash Incentive Awards

(i) An agency may grant a cash incentive award to an employee or group of employees that demonstrates exceptional effort or accomplishment beyond what is normally expected on the job for a unique event or over a sustained period of time.

(ii) Pay for Performance cash incentive award programs offered by an agency shall be included in the agency's incentive awards policy and reviewed annually by DHRM, in consultation with GOMB.

(A) The policy shall include information supporting the following:

(1) Sustainability of the funding for the cash incentive program;

(2) The positions eligible to participate in the Pay for Performance program;

(3) Goals of the program;

(4) Type of work to be incentivized; and

(5) Ability to track the effectiveness of the program.

(iii) All cash awards shall be approved by the agency head or designee. They shall be documented and a copy shall be maintained by the agency.

(b) Noncash Incentive Awards

(i) An agency may recognize an employee or group of employees with noncash incentive awards.

(ii) Individual noncash incentive awards may not exceed a value of $50 per occurrence and $200 for each fiscal year.

(iii) Noncash incentive awards may include cash equivalents such as gift certificates or tickets for admission. Cash equivalent incentive awards shall be subject to payroll taxes and shall follow standards and procedures established by the Department of Administrative Services, Division of Finance.

(3) Cost Savings Bonus

(a) An agency may establish a bonus policy to increase productivity, generate savings within the agency, or reward an employee who submits a cost savings proposal.

(i) The agency shall document the cost savings involved.

(4) Market Based Bonuses

An agency may award a cash bonus as an incentive to acquire or retain an employee with job skills that are critical to the state and difficult to recruit in the market.

(a) All market based bonuses shall be approved by the DHRM Executive Director or designee.

(i) When requesting market based awards an agency shall submit documentation specifying how the agency will benefit by granting the bonus based on:

(A) budget;

(B) recruitment difficulties;

(C) a mission critical need to attract or retain unique or hard to find skills in the market; or

(D) other market based reasons.

(b) Retention Bonus

An agency may award a bonus to an employee who has unusually high or unique qualifications that are essential for the agency to retain.

(c) Recruitment or Signing Bonus

An agency may award a bonus to a qualified job candidate to incentivize the candidate to work for the state.

(d) Scarce Skills Bonus

An agency may award a bonus to a qualified job candidate that has the scarce skills required for the job.

(e) Relocation Bonus

An agency may award a bonus to a current employee who must relocate to accept a position in a different commuting area.

(f) Referral Bonus

An agency may award a bonus to a current employee who refers a job applicant who is subsequently selected.

(g) Geographic Job Market Bonus

An agency may award a bonus to incentivize an employee to accept and/or continue an assignment in a specific geographic area.

R477-6-8. Employee Benefits.

(1) An employee shall be eligible for benefits when:

(a) in a position designated by the agency as eligible for benefits; and

(b) in a position which normally requires working a minimum of 40 hours per pay period.

(2) An eligible employee has 30 days from the hire date to enroll in or decline one of the traditional medical insurance plans and 60 days from the hire date to enroll in or decline one of the HSA-qualified medical insurance plans or other tax-advantaged arrangement offered by PEHP and authorized under the Internal Revenue Code for the benefit of the employee.

(a) An employee shall only be permitted to change medical plans during the annual open enrollment period for all state employees.

(3) An eligible employee has 60 days from the hire date to enroll in dental, vision, and a flexible spending account.

(4) An employee shall enroll in guaranteed issue life insurance within 60 days of the hire date to avoid having to provide proof of insurability.

(a) An employee may enroll in additional life insurance and accidental death and dismemberment insurance at any time and may be required to provide proof of insurability.

(5) An employee eligible for retirement benefits shall be electronically enrolled using the URS online certification process as follows:

(a) An employee with any service time with Utah Retirement Systems prior to July 1, 2011, from any URS eligible employer, shall be automatically enrolled in the Tier I defined benefit plan and the Tier I defined contribution plan.

(i) Eligibility for Tier I shall be determined by Utah Retirement Systems.

(ii) An employee eligible for Tier I shall remain in the Tier I system, even after a break in service.

(b) An employee with no previous service time with Utah Retirement Systems in Tier I shall be enrolled in the Tier II retirement system.

(i) An employee has one year from the date of eligibility to elect whether to participate in the Tier II hybrid retirement system or the Tier II defined contribution plan.

(A) If no election is made the employee shall be automatically enrolled in the Tier II hybrid retirement system.

(ii) An employee eligible for the Tier II system has one year from the date of eligibility to change the election or it is irrevocable.

(c) Changes in employee contributions, beneficiaries, and investment strategies shall be submitted electronically to URS through the URS website.

(6) A reemployed veteran under USERRA shall be entitled to the same employee benefits given to other continuously employed eligible employees to include seniority based increased pension and leave accrual.

(7) All insurance coverage, excluding COBRA, shall end:

(a) at midnight on the last day of the pay period in which the employee receives a paycheck for employees hired prior to February 15, 2003; or

(b) at midnight on the last day of the pay period in which the employment termination date became effective for employees hired on February 15, 2003, or later.

(8) An employee who is not eligible for benefits under R477-6-8(1) but does meet the minimum qualifications under the Affordable Care Act shall be eligible for medical insurance only.

R477-6-9. Employee Converting from Career Service to Schedule AC, AD, AR, or AS.

(1) A career service employee in a position meeting the criteria for career service exempt schedule AC, AD, AR, or AS shall have 60 days from the date of offer to elect to convert from career service to career service exempt. As an incentive to convert, an employee shall be provided the following:

(a) an administrative salary increase of at least 1/2% or up to the current salary range maximum. An employee at or above the current salary range maximum shall receive, in lieu of the salary adjustment, a one time bonus, as determined by the agency head or designee, not to exceed limits in Subsection R477-6-7(1)(b);

(b) state paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program, Public Employees Health Plan, as provided in Section R477-6-10.

(2) An employee electing to convert to career service exempt after the 60 day election period may not be eligible for the wage increase, but shall be entitled to apply for the insurance coverage through the Group Insurance Office.

(3) An employee electing not to convert to career service exemption shall retain career service status even though the position shall be designated as schedule AC, AD, AR or AS. When these career service employees vacate these positions, subsequent appointments shall be career service exempt.

(4) An agency head may reorganize so that a current career service exempt position no longer meets the criteria for exemption. In this case, the employee shall be designated as career service if the employee had previously earned career service. However, the employee may not be eligible for a severance package, increased annual leave accrual, or exempt life insurance. In this situation, the agency and employee shall make arrangements through the Group Insurance Office to discontinue the exempt life insurance coverage.

(5) A career service exempt employee without prior career service status shall remain exempt. When the employee leaves the position, subsequent appointments shall be consistent with R477-4.

(6) Agencies shall communicate to all impacted and future eligible employees the conditions and limitations of this incentive program.

R477-6-10. State Paid Life Insurance.

(1) A benefits eligible career service exempt employee on schedule AA, AB, AD, AR and AT shall be provided the following benefits if the employee is approved through underwriting:

(a) State paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program Public Employees Health Plan:

(i) Hourly wage $24.03 or less shall receive $125,000 of term life insurance;

(ii) Hourly wage between $24.04 and $28.84 shall receive $150,000 of term life insurance;

(iii) Hourly wage $28.85 or higher shall receive $200,000 of term life insurance.

(2) An employee on schedule AC, AE, or AS may be provided these benefits at the discretion of the appointing authority.

R477-6-11. Severance Benefit.

(1) At the discretion of the appointing authority a benefits eligible career service exempt employee on schedule AB, AC, AD, AE, AR, AS or AT who is separated from state service through an action initiated by management, to include resignation in lieu of termination, may receive at the time of separation a severance benefit equal to:

(a) salary at the rate of:

(i) one week of salary, up to a maximum of 12 weeks, for each year of consecutive exempt service in the executive branch for schedule AC, AD, AE, AR, AS or AT employees; or

(ii) two weeks of salary, up to a maximum of 24 weeks, for each year of consecutive exempt service in the executive branch for schedule AB employees; and

(b) if eligible for COBRA, the level of medical insurance coverage only at the time of severance shall be provided at the rate of two pay periods for each year of consecutive exempt service, up to a maximum of 13 pay periods.

R477-6-12. Human Resource Transactions.

The Executive Director, DHRM, shall publicize procedures for processing payroll and human resource transactions and documents.

KEY: wages, employee benefit plans, insurance, personnel management

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R477. Human Resource Management, Administration.
R477-7. Leave.
R477-7-1. Conditions of Leave.

(1) An employee shall be eligible for a leave benefit when:

(a) in a position designated by the agency as eligible for benefits; and

(b) in a position which normally requires working a minimum of 40 hours per pay period.

(2) An eligible employee shall accrue annual, sick and holiday leave in proportion to the time paid as determined by DHRM.

(3) An employee shall use leave in no less than quarter hour increments.

(4) An employee may not use annual, sick, or holiday leave before accrued. Leave accrued during a pay period may not be used until the following pay period.

(5) An employee may not use annual leave, converted sick leave used as annual leave, or use excess or compensatory hours without advance approval by management.

(6) Management may not require employees to maintain a minimum balance of accrued leave.

(7) An employee may not use any type of leave except military and jury leave to accrue excess hours.

(8) An employee transferring from one agency to another is entitled to transfer all accrued annual, sick, and converted sick leave to the new agency.

(9) An employee separating from state service shall be paid in a lump sum for all annual leave and excess hours. An FLSA nonexempt employee shall also be paid in a lump sum for all compensatory hours.

(a) An employee separating from state service for reasons other than retirement shall be paid in a lump sum for all converted sick leave.

(b) Converted sick leave for a retiring employee shall be subject to Section R477-7-5.

(c) Annual, sick and holiday leave may not be used or accrued after the last day worked, except for:

(i) leave without pay;

(ii) administrative leave specifically approved by management to be used after the last day worked;

(iii) leave granted under the FMLA; or

(iv) leave granted for other medical reasons that was approved prior to the commencement of the leave period.

(10) After four months cumulative leave in a 24 month period, the employee may be separated from employment regardless of paid leave status unless prohibited by state or federal law. Decisions to separate the employee shall be made by the agency head in consultation with DHRM.

(11) Contributions to benefits may not be paid on cashed out leave, other than FICA tax, except as it applies to converted sick leave in Section R477-7-5(2) and the Retirement Benefit in Section R477-7-6.

R477-7-2. Holiday Leave.

(1) The following dates are paid holidays for eligible employees:

(a) New Year's Day -- January 1

(b) Dr. Martin Luther King Jr. Day -- third Monday of January

(c) Washington and Lincoln Day -- third Monday of February

(d) Memorial Day -- last Monday of May

(e) Independence Day -- July 4

(f) Pioneer Day -- July 24

(g) Labor Day -- first Monday of September

(h) Columbus Day -- second Monday of October

(i) Veterans' Day -- November 11

(j) Thanksgiving Day -- fourth Thursday of November

(k) Christmas Day -- December 25

(l) Any other day designated as a paid holiday by the Governor.

(2) If a holiday falls or is observed on a regularly scheduled day off, an eligible employee shall receive equivalent time off, not to exceed eight hours, or shall accrue excess hours.

(a) If a holiday falls on a Sunday, the following Monday shall be observed as a holiday.

(b) If a holiday falls on a Saturday, the preceding Friday shall be observed as a holiday.

(3) If an employee is required to work on an observed holiday, the employee shall receive appropriate holiday leave, or shall accrue excess hours.

(4) A new hire shall be in a paid status on or before the holiday in order to receive holiday leave.

(5) A separating employee shall be in a paid status on or after the holiday in order to receive holiday leave.

R477-7-3. Annual Leave.

(1) An eligible employee shall accrue leave based on the following years of benefits eligible state service:

(a) less than 5 years -- four hours per pay period;

(b) at least 5 and less than 10 years -- five hours per pay period;

(c) at least 10 and less than 20 years --six hours per pay period;

(d) 20 years or more -- seven hours per pay period.

(2) The maximum annual leave accrual rate shall be granted to an employee, effective from the day the employee is appointed through the duration of the appointment under the following conditions:

(a) an employee in schedule AB, and agency deputy directors and division directors appointed to career service exempt positions; or

(b) an employee who is schedule A, FLSA exempt and who has a direct reporting relationship to an elected official, executive director, deputy director, commissioner or board.

(3) The accrual rate for an employee rehired to a position which receives leave benefits shall be based on all eligible employment in which the employee accrued leave.

(4) The first eight hours of annual leave used by an employee in the calendar leave year shall be the employee's personal preference day.

(5) Agency management shall allow every employee the option to use annual leave each year for at least the amount accrued in the year.

(6) Unused accrued annual leave time in excess of 320 hours shall be forfeited during year end processing for each calendar year.

R477-7-4. Sick Leave.

(1) An eligible employee shall accrue sick leave, not to exceed four hours per pay period. Sick leave shall accrue without limit.

(2) Agency management may grant sick leave for preventive health and dental care, maternity, paternity, and adoption care, or for absence from duty because of illness, injury or disability of the employee, a spouse, children; or parents living in the employee's home; or qualifying FMLA purposes.

(3) Agency management may grant exceptions for other unique medical situations.

(4) When management approves the use of sick leave, an employee may use any combination of Program I, Program II, and Program III sick leave.

(5) An employee shall contact management prior to the beginning of the scheduled workday the employee is absent due to illness or injury.

(6) Any application for a grant of sick leave to cover an absence that exceeds three consecutive working days shall be

supported by administratively acceptable evidence.

(7) If there is reason to believe that an employee is abusing sick leave, a supervisor may require an employee to produce administratively acceptable evidence regardless of the number of sick hours used.

(8) Unless retiring, an employee separating from state employment shall forfeit any unused sick leave without compensation.

(a) An employee rehired into a benefited position within one year of separation due to a reduction in force shall have forfeited sick leave reinstated to Program I, Program II, and Program III as accrued prior to the reduction in force.

(b) An employee rehired with benefits within one year of separation for reasons other than a reduction in force shall have forfeited sick leave reinstated as Program III sick leave.

(c) An employee accepting a benefit eligible position within one year of forfeiting unused sick leave for accepting a non-benefit eligible position shall have their sick leave reinstated as Program III.

(d) An employee who retires from state service and is rehired may not reinstate forfeited sick leave.

R477-7-5. Converted Sick Leave.

(1) An employee may not accrue converted sick leave hours on or after January 3, 2014. Converted sick leave hours accrued before January 3, 2014 can be used for retirement per R477-7-5(6) or cashed out if the employee leaves employment.

(a) Converted sick leave hours accrued prior to January 1, 2006 shall remain Program I converted sick leave hours.

(b) Converted sick leave hours accrued after January 1, 2006 shall remain Program II converted sick leave hours.

(2) An employee may use converted sick leave as annual leave or as regular sick leave.

(3) When management approves the use of converted sick leave, an employee may use any combination of Program I and Program II converted sick leave.

(4) Employees retiring from LTD who have converted sick leave balances still intact may use these hours for the unused converted sick leave retirement program at the time they become eligible for retirement.

(5) Upon retirement, 25% of the value of the unused converted sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employee's 401(k) account as an employer contribution.

(a) Converted sick leave hours from Program II shall be placed in the 401(k) account before hours from Program I.

(b) The remainder shall be used for:

(i) the purchase of health care insurance and life insurance under Subsection R477-7-6(3)(a) if the converted sick leave was accrued in Program I ; or

(ii) a contribution into the employee's PEHP health reimbursement account under Subsection R477-7-6(6)(b) if the converted sick leave was accrued in Program II.

(6) Upon retirement, Program I converted sick leave hours may not be suspended or deferred for future use. This includes retired employees who reemploy with the state and choose to suspend their defined benefit payments and employees participating in phased retirement.

R477-7-6. Sick Leave Retirement Benefit.

Upon retirement from active employment, including when a retirement eligible employee passes away, an employee or surviving spouse shall receive an unused sick leave retirement benefit under Sections 67-19-14.2 and 67-19-14.4.

(1) An employee in the Tier I retirement system or the Tier II hybrid retirement system shall become eligible for this benefit when actively retiring with Utah Retirement Systems.

(2) An employee in the Tier II defined contribution system shall become eligible when terminating employment on or after the retirement date established by the Utah Retirement Systems. This date reflects service time accrued by the employee as if the employee were in the Tier II hybrid retirement system.

(3)(a) Sick leave hours accrued prior to January 1, 2006 shall be Program I sick leave hours.

(b) Sick leave hours accrued on or after January 1, 2006, but before January 4, 2014, shall be Program II sick leave hours.

(c) Sick leave hours accrued on or after January 4, 2014, shall be Program III sick leave hours, which shall have no benefit upon retirement.

(4) An agency may offer the Unused Sick Leave Retirement Option Program I to an employee who is eligible to receive retirement benefits. However, any decision whether or not to participate in this program shall be agency wide and shall be consistent through an entire fiscal year.

(a) If an agency decides to withdraw for the next fiscal year after initially deciding to participate, the agency shall notify all employees at least 60 days before the new fiscal year begins.

(5) An employee in a participating agency shall receive the following benefit provided by the Unused Sick Leave Retirement Options Program I.

(a) 25% of the value of the unused sick leave and converted sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employee's 401(k) account as an employer contribution.

(i) Sick leave hours from Program II shall be placed in the 401(k) account before hours from Program I.

(ii) After the 401(k) contribution is made, the remaining Program I sick leave hours and converted sick leave hours from Subsection R477-7-5(5)(b)(i) shall be used to provide the following benefit.

(iii) The purchase of PEHP health insurance, or a state approved program, and life insurance coverage for the employee until the employee reaches the age eligible for Medicare.

(A) Health insurance shall be the same coverage carried by the employee at the time of retirement; i.e., family, two-party, or single.

(B) The purchase rate shall be eight hours of sick leave or converted sick leave for the state paid portion of one month's premium.

(C) The employee shall pay the same percentage of the premium as a current employee on the same plan. The premium amount shall be determined from the approved PEHP retiree rate and not the active employee rates.

(D) Life insurance provided shall be the minimum authorized coverage provided for state employees at the time the employee retires.

(iv) When the employee becomes eligible for Medicare, a Medicare supplement policy provided by PEHP may be purchased at the rate of eight hours of sick leave or converted sick leave for one month's premium.

(v) When the employee becomes eligible for Medicare, a PEHP health insurance policy, or another state approved policy, may be purchased for a spouse until the spouse is eligible for Medicare.

(A) The purchase rate shall be eight hours of sick leave or converted sick leave for one month's premium.

(B) The employee shall pay the same percentage of the premium as a current employee on the same plan. The premium amount shall be determined from the approved PEHP retiree rate and not the active employee rates.

(vi) When the spouse reaches the age eligible for Medicare, the employee may purchase a Medicare supplement policy provided by PEHP for the spouse at the rate of eight hours of sick leave or converted sick leave for one month's premium.

(vii) In the event an employee is killed in the line of duty, the employee's spouse shall be eligible to use the employee's available sick leave hours for the purchase of additional medical

coverage under Section 67-19-14.3.

(b) Employees retiring from LTD who have sick leave balances still intact may use these hours for the unused sick leave retirement program at the time they become eligible for retirement.

(c) Upon retirement, Program I sick leave hours may not be suspended or deferred for future use. This includes retired employees who reemploy with the state and choose to suspend their defined benefit payments and employees participating in phased retirement.

(6) An employee shall receive the following benefit provided by the Unused Sick Leave Retirement Option Program II.

(a) 25% of the value of the unused sick leave and converted sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employee's 401(k) account as an employer contribution.

(b) After the 401(k) contribution the remaining sick leave hours and the converted sick leave hours from Subsection R477-7-5(5)(b)(ii) shall be deposited in the employee's PEHP health reimbursement account at the greater of:

(i) the employee's rate of pay at retirement, or

(ii) the average rate of pay of state employees who retired in the same retirement system in the previous calendar year.

(c) A retired employee who is reemployed in a benefited position with the state shall have a benefit calculated on any Program II sick leave hours if:

(i) The employee chooses to suspend pension;

(ii) The employee was separated for one year or more;

(iii) The employee was reemployed before January 2, 2014; and

(iv) The employee must work for two years or more to receive this benefit.

(7) A retired employee who is reemployed in a benefited position with the state after January 3, 2014 shall accrue Program III sick leave, which shall have no benefit upon subsequent retirement.

R477-7-7. Administrative Leave.

(1) Administrative leave may be granted consistent with agency policy for the following reasons:

(a) administrative;

(i) governor approved holiday leave;

(ii) during management decisions that benefit the organization;

(iii) when no work is available due to unavoidable conditions or influences; or

(iv) other reasons consistent with agency policy.

(b) protected;

(i) suspension with pay pending hearing results;

(ii) personnel decision making prior to discipline;

(iii) removal from adverse or hostile work environment situations;

(iv) fitness for duty or employee assistance; or

(v) other reasons consistent with agency policy.

(c) reward in lieu of cash;

(i) the agency head or designee may grant paid administrative leave up to one day per occurrence;

(ii) administrative leave in excess of one day may be granted with written approval by the agency head.

(iii) administrative leave given as a reward in lieu of cash may not exceed 40 hours in a fiscal year.

(iv) administrative leave given as a reward in lieu of cash may be given from one agency to employees of another agency if both agency heads agree in advance.

(d) employee education assistance.

(2) An employee shall be granted up to two hours of administrative leave to vote in an official election if the employee has fewer than three total hours off the job between the time the polls open and close, and the employee applies for the leave at least 24 hours in advance.

(a) Management may specify the hours when the employee may be absent.

(3) Administrative leave shall be given for non-performance based purposes to employees who are on Family and Medical Leave or a military leave of absence if the leave would have been given had the employee been in a working status.

(4) With the exception of administrative leave used as a reward, under Subsection R477-7-7(1)(c), the agency head or designee may grant paid administrative leave.

(5) Administrative leave taken shall be documented in the employee's leave record.

R477-7-8. Witness and Jury Leave.

(1) An employee is entitled to a leave of absence from a regularly scheduled work day with full pay when, in obedience to a subpoena or direction by proper authority, the employee is required to:

(a) appear as a witness as part of the employee's position for the federal government, the State of Utah, or a political subdivision of the state; or

(b) serve as a witness in a grievance hearing under Section 67-19-31 and Title 67, Chapter 19a; or

(c) serve on a jury.

(2) An employee on jury leave may accrue excess hours in the same pay period during which the jury leave is used.

(3) An employee choosing to use accrued leave while on jury duty shall be entitled to keep juror's fees; otherwise, juror's fees received shall be returned to agency finance or agency payroll staff for deposit with the State Treasurer.

(4) An employee who is absent in order to litigate in matters unrelated to state employment shall use eligible accrued leave or leave without pay.

R477-7-9. Bereavement Leave.

An employee may receive a maximum of three work days bereavement leave per occurrence with pay, at management's discretion, following the death of a member of the employee's immediate family. Bereavement leave may not be charged against accrued sick or annual leave.

(1) The immediate family means relatives of the employee or spouse including in-laws, step-relatives, or equivalent relationship as follows:

(a) spouse;

(b) parents;

(c) siblings;

(d) children;

(e) all levels of grandparents; or

(f) all levels of grandchildren.

R477-7-10. Military Leave.

A benefited or non-benefited employee who is a member of the National Guard or Military Reserves and is on official military orders is entitled to paid military leave not to exceed 120 hours each calendar year, including travel time, under Utah Code Section 39-3-2. Military leave for part-time employees shall be based on a prorated basis that is no more than the average hours worked in the last 12 months, or if employed less than 12 months, the average hours worked since date of hire.

(1) An employee may not claim salary for non-working days spent in military training or for traditional weekend training.

(2) An employee may use any combination of military leave, accrued leave or leave without pay under Section R477-7-13.

(a) Accrued sick leave may only be used if the reason for leave meets the conditions in Section R477-7-4.

(3) An employee on military leave is eligible for any service awards or non-performance administrative leave the employee would otherwise be eligible to receive.

(4) An employee shall give notice of official military orders as soon as possible.

(5) Upon release from official military orders under honorable conditions, an employee shall be placed in a position in the following order of priority.

(a) If the period of service was for less than 91 days, the employee shall be placed:

(i) in the same position the employee held on the date of the commencement of the service in the uniformed services; or

(ii) in the same position the employee would have held if the continuous employment of the employee had not been interrupted by the service.

(b) If the period of service was for more than 90 days, the employee shall be placed:

(i) in a position of like seniority, status and salary, of the position the employee held on the date of the commencement of the service in the uniformed services; or

(ii) in a position of like seniority, status, and salary the employee would have held if the continuous employment of the employee had not been interrupted by the service.

(c) When a disability is incurred or aggravated while on official military orders, the employing agency shall adhere to the Uniformed Services Employment and Reemployment Rights Act (USERRA), United States Code, Title 38, Chapter 43.

(d) The cumulative length of time allowed for reemployment may not exceed five years. This rule incorporates by reference 20CFR1002.103 for the purposes of calculating cumulative time.

(e) An employee is entitled to reemployment rights and benefits including increased pension and leave accrual to which the employee would have been entitled had the employee not been absent due to military service. An employee entering military leave may elect to have payment for annual leave deferred.

(6) In order to be reemployed, an employee shall present evidence of military service, and:

(a) for service less than 31 days, return at the beginning of the next regularly scheduled work period on the first full day after release from service unless impossible or unreasonable through no fault of the employee;

(b) for service of more than 30 days but less than 181 days, submit a request for reemployment within 14 days of release from service, unless impossible or unreasonable through no fault of the employee; or

(c) for service of more than 180 days, submit a request for reemployment within 90 days of release from service.

R477-7-11. Disaster Relief Volunteer Leave.

(1) An employee may be granted leave from work with pay, by the agency head or designee, for an aggregate of 15 working days in any 12-month period to participate in disaster relief services for a non-governmental disaster relief organization. To request this leave an employee shall be a certified disaster relief volunteer and file a written request with the employing agency. The request shall include:

(a) a copy of a written request for the employee's services from an official of the disaster relief organization;

(b) the anticipated duration of the absence;

(c) the type of service the employee is to provide; and

(d) the nature and location of the disaster where the employee's services will be provided.

R477-7-12. Organ Donor Leave.

An employee who serves as a bone marrow or human organ donor shall be granted paid leave for the donation and recovery.

(1) An employee who donates bone marrow shall be granted up to seven days of paid leave.

(2) An employee who donates a human organ shall be granted up to 30 days of paid leave.

R477-7-13. Leave of Absence Without Pay.

(1) An employee shall apply in writing to agency management and be approved before taking a leave of absence without pay.

(2) Leave without pay may be granted only when there is an expectation that the employee will return to work.

(3) A leave of absence may not be granted when documentation from one or more qualified healthcare providers clearly establishes that the employee has a permanent condition preventing the employee from returning to the last held regular position unless prohibited by state or federal law.

(4) An employee who receives no compensation for a complete pay period shall be responsible for payment of the full premium of state provided benefits.

(5) An employee who returns to work on or before the expiration of leave without pay shall be placed in a position with comparable pay and seniority to the previously held position.

(6) Upon request, an employee who is granted this leave shall provide a monthly return to work status update to the employee's supervisor.

R477-7-14. Furlough.

(1) Agency management may furlough employees as a means of saving salary costs in lieu of or in addition to a reduction in force. Furlough plans are subject to the approval of the agency head and the following conditions:

(a) Furlough hours shall be counted for purposes of annual, sick and holiday leave accrual.

(b) Payment of all state paid benefits shall continue at the agency's expense.

(i) Benefits that have fixed costs shall be paid at the full rate regardless of how many days an employee is furloughed.

(ii) Benefits that are paid as a percentage of actual wages shall continue to be paid as percentage of actual wages if the furlough is less than one pay period. Employees who are furloughed for a full pay period shall have no percentage based benefits paid.

(c) An employee who is furloughed shall continue to pay the employee portion of all benefits. Voluntary benefits shall remain entirely at the employee's expense.

(d) An employee shall return to the current position.

(e) Furlough is applied equitably; e.g., to all persons in a given class, all program staff, or all staff in an organization.

R477-7-15. Family and Medical Leave.

(1) An eligible employee is allowed up to 12 workweeks of family and medical leave each calendar year for any of the following reasons:

(a) birth of a child;

(b) adoption of a child;

(c) placement of a foster child;

(d) a serious health condition of the employee; or

(e) care of a spouse, child, or parent with a serious medical condition.

(f) A qualifying exigency arising as a result of a spouse, son, daughter or parent being on active duty or having been notified of an impending call or order to active duty in the Armed Forces.

(2) An employee is allowed up to 26 workweeks of family and medical leave during a 12-month period to care for a spouse, son, daughter, parent or next of kin who is a recovering service member as defined by the National Defense Authorization Act.

(3) An employee on FMLA leave shall continue to receive

the same health insurance benefits the employee was receiving prior to the commencement of FMLA leave provided the employee pays the employee share of the health insurance premium.

(4) An employee on FMLA leave shall receive any administrative leave given for non-performance based reasons if the leave would have been given had the employee been in a working status.

(5) To be eligible for family and medical leave, the employee shall:

(a) be employed by the state for at least 12 months;

(b) be employed by the state for a minimum of 1250 hours worked, as determined under FMLA, during the 12-month period immediately preceding the commencement of leave.

(6) To request FMLA leave, the employee or an appropriate spokesperson, shall apply in writing for the initial leave and when the reason for requesting family medical leave changes:

(a) thirty days in advance for foreseeable needs; or

(b) as soon as practicable in emergencies.

(7) An employee with a serious health condition may use accrued annual leave, sick leave, converted sick leave, excess hours and compensatory time prior to going into leave without pay status for the family and medical leave period.

(a) An employee who chooses to use accrued annual leave, sick leave, converted sick leave, excess hours and compensatory time prior to going into leave without pay status for the family and medical leave period shall notify the agency.

(b) If an employee fails to notify the agency under this Subsection, accrued leave will be used to pay the employee's payroll deductions in the following order:

(i) Program III sick leave;

(ii)(A) Compensatory time;

(B) Excess leave; or

(C) Annual leave;

(iii)(A) Converted sick leave;

(B) Program II sick leave; or

(C) Program I sick leave.

(8) An employee who chooses to use FMLA leave shall use FMLA leave for all absences related to that qualifying event.

(9) Any period of leave for an employee with a serious health condition who is determined by a health care provider to be incapable of applying for Family and Medical Leave and has no agent or designee shall be designated as FMLA leave.

(10) An employee with a serious health condition covered under workers' compensation may use FMLA leave concurrently with the workers' compensation benefit.

(11) If an employee has gone into leave without pay status and fails to return to work after FMLA leave has ended, an agency may recover, with certain exceptions, the health insurance premiums paid by the agency on the employee's behalf. An employee is considered to have returned to work if the employee returns for at least 30 calendar days.

(a) Exceptions to this provision include:

(i) an FLSA exempt and schedule AB, AD and AR employee who has been denied restoration upon expiration of their leave time;

(ii) an employee whose circumstances change unexpectedly beyond the employee's control during the leave period preventing the return to work at the end of 12 weeks.

(12) Leave taken after childbirth or placement of a healthy child for adoption or foster care may not be taken intermittently or on a reduced leave schedule unless the employee and employer mutually agree.

(13) Medical records created for purposes of FMLA and the Americans with Disabilities Act shall be maintained in accordance with confidentiality requirements of Subsection R477-2-5.

R477-7-16. Workers Compensation Leave.

(1) An employee may use accrued leave benefits to supplement the workers compensation benefit.

(a) The combination of leave benefit, wages and workers compensation benefit may not exceed the employee's gross salary. Leave benefits shall only be used in increments of one hour in making up any difference.

(b) The use of accrued leave to supplement the worker compensation benefit shall be terminated if the:

(i) employee is declared medically stable by a licensed medical authority;

(ii) workers compensation fund terminates the benefit;

(iv) employee refuses to accept appropriate employment offered by the state; or

(v) employee is notified of approval for Long Term Disability or Social Security Disability benefits.

(c) The employee shall refund to the state any accrued leave paid which exceeds the employee's gross salary for the period for which the benefit was received.

(2) Workers compensation hours shall be counted for purposes of annual, sick and holiday leave accrual while the employee is receiving a workers compensation time loss benefit for up to six months from the last day worked in the regular position.

(3) Health insurance benefits shall continue for an employee on leave without pay while receiving workers compensation benefits. The employee is responsible for the payment of the employee share of the premium.

(4) If an employee has applied for LTD and is approved, the employee shall be eligible to receive a medical coverage stipend in their LTD check each month, beginning the day after the employee's last day worked pursuant to R477-7-17(2).

(5) If the employee is able to return to work in the employee's regular position, the agency shall place the employee in the previously held position or a similar position at a comparable salary range.

(6) If the employee is unable to return to work in the regular position, or if documentation from one or more qualified health care providers clearly establishes that the employee has a permanent condition preventing the employee from returning to the last held regular position, the employee may be separated from state employment unless prohibited by state or federal law. Exceptions may be granted by the agency head in consultation with DHRM.

(7) An employee who files a fraudulent workers compensation claim shall be disciplined under Rule R477-11.

(8) An employee covered under 67-19-27 who is injured in the course of employment shall be given a leave of absence with full pay during the period the employee is temporarily disabled.

(a) the employee shall be placed on administrative leave; and

(b) any compensation received from the state's workers compensation administrator shall be returned to the agency payroll clerks for deposit with the State Treasurer as a refund of expenditure in the unit number where the salary is recorded.

R477-7-17. Long Term Disability Leave.

(1) Upon approval of an LTD claim:

(a) Biweekly salary payments that the employee may be receiving shall cease. If the employee received any salary payments after the three month waiting period, the LTD benefit shall be offset by the amount received.

(b) The employee shall be paid for remaining balances of annual leave, excess hours, and compensatory hours earned by FLSA non-exempt employees in a lump sum payment. This payment shall be made at the time LTD is approved unless the employee requests in writing to receive it upon separation from state employment. No reduction of the LTD payment shall be

made to offset this payment. Upon return to work from an approved leave of absence, the employee has the option of buying back annual leave at the current hourly rate.

(c) An employee with a converted sick leave balance at the time of LTD eligibility shall have the option to receive a lump sum payout of all or part of the balance or to keep the balance intact to pay for health and life insurance upon retirement. The payout shall be at the rate at the time of LTD eligibility.

(d) An employee who retires from state government directly from LTD may be eligible for health and life insurance under Subsection 67-19-14.

(e) Unused sick leave balance shall remain intact until the employee retires. At retirement, the employee shall be eligible for the 401(k) contribution and the purchase of health and life insurance under Subsection 67-19-14.2.

(2) An employee in the Tier I retirement system shall continue to accrue service credit for retirement purposes while receiving long term disability benefits.

(3) Conditions for return from long term disability include:

(a) If an employee provides an administratively acceptable medical release allowing a return to work prior to termination under this section, the agency shall place the employee in the previously held position or similar position in a comparable salary range provided the employee is able to perform the essential functions of the job with or without a reasonable accommodation.

(4) Long term disability benefits are provided to eligible employees in accordance with 49-21-403.

R477-7-18. Disabled Law Enforcement Officer Amendments.

(1) A law enforcement officer or state correctional officer, as defined in 67-19-27, who is injured in the course of employment, as defined in 67-19-27, shall be given a leave of absence with 100% of the officer's regular monthly salary and benefits, either:

(a) during the period the employee has a temporary disability; or

(b) in the case of a total disability, until the employee is eligible for an unreduced retirement under Title 49 or reaches the retirement age of 62 years, whichever occurs first.

(2) The eligible employee shall disclose to the agency any time-loss benefit amounts received by, or payable to, the employee, from outside sources, as soon as the employee is made aware.

(a) These amounts do not include benefits received from sources in which the employee pays the full premium.

(3) The agency shall apply R477-7-16, workers compensation leave, and R477-7-17, long term disability leave rules first. They then must consider any benefit amounts received under (2). If the total of these benefits is less than 100% of the employee's monthly salary and benefits, the agency shall make arrangements through payroll to pay the employee the difference.

(4) DHRM shall work with the Division of Risk Management, Workers' Compensation, and the Public Employee's Health Program on a periodic and case-by-case basis to assure that eligible employees receive full benefits.

(a) If at any time it is discovered that the employee is receiving less than 100% of their regular monthly salary and benefits, the agency shall make up the difference to the employee.

(5) If an employee discloses other time-loss benefits received under (2) after these additional payments by the agency have been made, the employee shall reimburse the agency for salary and benefits paid in overage.

R477-7-19. Leave Bank.

With the approval of the agency head, agencies may establish a leave bank program.

(1) A leave bank program shall include a policy with the following:

(a) Access to a leave bank is not an employee right and shall be authorized at management discretion.

(b) Any application for a leave bank program shall be supported by administratively acceptable medical documentation.

(c) An approval process that prohibits leave donors, supervisors, managers or management teams from reviewing any employee's medical certifications or physician statements.

(d) An employee may not receive donated leave until all individually accrued leave is exhausted.

(e) Leave shall be accrued if an employee is on sick leave donated from an approved leave bank program.

(f) Employees using donated leave may not work a second job without written consent of the agency head.

(g) Only compensatory time earned by an FLSA nonexempt employee, annual leave, excess hours, and converted sick leave hours may be donated to a leave bank.

(h) Only employees of agencies with approved leave bank programs may donate leave hours to another agency with a leave bank program, if mutually agreed on by both agencies.

(3) All medical records created for the purpose of a leave bank, shall be maintained in accordance with confidentiality requirements of Subsection R477-2-5.

R477-7-20. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).

KEY: holidays, leave benefits, vacations

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	67-19-14

R477. Human Resource Management, Administration.
R477-8. Working Conditions.
R477-8-1. Work Week.

(1) The state's standard work week begins Saturday at 12:00am and ends the following Friday at 11:59pm. FLSA nonexempt employees may not deviate from this work week.

(2) State offices are typically open Monday through Friday from 8 a.m. to 5 p.m. Agencies may adopt alternative business hours under Section 67-25-201.

(3) Agency management shall establish work schedules and may approve a flexible starting and ending time for an employee as long as scheduling is consistent with overtime provisions of Section R477-8-4.

(4) An employee is required to work the assigned schedule and be at work on time. An employee who is late, regardless of the reason including inclement weather, shall, with management approval, make up the lost time by using accrued leave, leave without pay or adjusting their work schedule.

(5) An employee's time worked shall be calculated in increments of 15 minutes. This rule incorporates by reference 29 CFR 785.48 (2012) for rounding practices when calculating time worked.

R477-8-2. Telecommuting.

(1) Telecommuting is an agency option, not a universal employee benefit. Agencies utilizing a telecommuting program shall:

(a) establish a written policy governing telecommuting;

(b) enter into a written contract with each participating employee to specify conditions, such as use of state or personal equipment, protecting confidential information, and results such as identifiable benefits to the state and how customer needs are being met;

(c) not allow participating employees to violate overtime rules;

(d) not compensate for normal commute time; and

(e) document telecommuting authorization in the Utah Performance Management system.

R477-8-3. Lunch, Break and Exercise Release Periods.

(1) Each full time work day may include a minimum of 30 minutes non-compensated lunch period, at the discretion of agency management.

(a) Lunch periods may not be used to shorten a work day.

(2) An employee may take a 15 minute compensated break period for every four hours worked.

(a) Break periods may not be accumulated to accommodate a shorter work day or longer lunch period.

(3) Compensated exercise release time may be allowed at agency discretion for up to three days per week for 30 minutes.

(a) Participating agencies shall have a written policy regarding exercise release time.

(b) Work time exercise that is a bona fide job requirement is not subject to this section.

(4) Authorization for exercise time and regular scheduled lunch breaks less than 30 minutes shall be documented in the Utah Performance Management system.

(5) As requested and after consultation with an employee, reasonable, daily break periods shall be granted for the first year following the birth of a child to allow an employee to express breast milk for her child.

(a) A private location, other than a restroom, shall be provided.

(b) Appropriate temporary storage shall be provided for expressed milk.

R477-8-4. Overtime Standards.

The state's policy for overtime is adopted and incorporated from the Fair Labor Standards Act, 29 CFR Parts 500 to 899(2002) and Section 67-19-6.7.

(1) Management may direct an employee to work overtime. Each agency shall develop internal rules and procedures to ensure overtime usage is efficient and economical. These policies and procedures shall include:

(a) prior supervisory approval for all overtime worked;

(b) recordkeeping guidelines for all overtime worked;

(c) verification that there are sufficient funds in the budget to compensate for overtime worked.

(2) Overtime compensation designations are identified for each job title in HRE as either FLSA nonexempt, or FLSA exempt.

(a) An employee may appeal the FLSA designation to the agency human resource field office. Further appeals may be filed directly with the United States Department of Labor, Wage and Hour Division. Sections 67-19-31, 67-19a-301 and Title 63G, Chapter 4 may not be applied for FLSA appeals purposes.

(3) An FLSA nonexempt employee may not work more than 40 hours a week without management approval. Overtime shall accrue when the employee actually works more than 40 hours a week. Leave and holiday time taken within the work period may not be counted as hours worked when calculating overtime accrual. Hours worked over two or more weeks may not be averaged with the exception of certain types of law enforcement, fire protection, and correctional employees.

(4) Agency management shall arrange for an employee's use of compensatory time as soon as possible without unduly disrupting agency operations or endangering public health, safety or property.

R477-8-5. Compensatory Time for FLSA Nonexempt Employees.

(1) An FLSA nonexempt employee shall sign a prior overtime agreement authorizing management to compensate the employee for overtime worked by actual payment or accrual of compensatory time at time and one half.

(a) An FLSA nonexempt employee may receive compensatory time for overtime up to a maximum of 80 hours. Only with prior approval of the Executive Director, DHRM, may compensatory time accrue up to 240 hours for regular employees or up to 480 hours for peace or correctional officers, emergency or seasonal employees. Once an employee reaches the maximum, additional overtime shall be paid on the payday for the period in which it was earned.

(b) Compensatory time balances for an FLSA nonexempt employee shall be paid down to zero at the rate of pay in the old position in the same pay period that the employee is:

(i) transferred from one agency to a different agency; or

(ii) promoted, reclassified, reassigned or transferred to an FLSA exempt position.

R477-8-6. Compensatory Time for FLSA Exempt Employees.

(1) An FLSA exempt employee may not work more than 80 hours in a pay period without management approval. Compensatory time shall accrue when the employee actually works more than 80 hours in a work period. Leave and holiday time taken within the work period may not count as hours worked when calculating compensatory time. Each agency shall compensate an FLSA exempt employee who works overtime by granting time off. For each hour of overtime worked, an FLSA exempt employee shall accrue an hour of compensatory time.

(a) Agencies shall establish in written policy a uniform overtime year either for the agency as a whole or by unit number and communicate it to employees. Overtime years shall be set at one of the following pay periods: Five, Ten, Fifteen, Twenty, or the last pay period of the calendar year. If an agency fails to establish a uniform overtime year, the Executive Director, DHRM, and the Director of Finance, Department of

Administrative Services, will establish the date for the agency at the last pay period of the calendar year. An agency may change the established overtime year only after the current overtime year has lapsed, unless justifiable reasons exist and the Executive Director, DHRM, has granted a written exception.

(b) The limit on compensatory time accrued by an FLSA exempt employee may not be less than 80 hours.

(i) Any compensatory time earned by an FLSA exempt employee over the limit shall be paid out in the pay period it is earned.

(c) Any compensatory time earned by an FLSA exempt employee is not an entitlement, a benefit, nor a vested right.

(d) Any compensatory time earned by an FLSA exempt employee shall lapse upon occurrence of any one of the following events:

(i) at the end of the employee's established overtime year;

(ii) upon assignment to another agency;

(iii) changes FLSA status to nonexempt; or

(iv) when an employee terminates, retires, or otherwise does not return to work before the end of the overtime year.

R477-8-7. Nonexempt Public Safety Personnel.

(1) To be considered for overtime compensation under this rule, a law enforcement or correctional officer shall meet the following criteria:

(a) be a uniformed or plain clothes sworn officer;

(b) be empowered by statute or local ordinance to enforce laws designed to maintain public peace and order, to protect life and property from accidental or willful injury, and to prevent and detect crimes;

(c) have the power to arrest;

(d) be POST certified or scheduled for POST training; and

(e) perform over 80% law enforcement duties.

(2) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to law enforcement or correctional officers designated FLSA nonexempt and covered under this rule.

(a) 171 hours in a work period of 28 consecutive days; or

(b) 86 hours in a work period of 14 consecutive days.

(3) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to fire protection employees.

(a) 212 hours in a work period of 28 consecutive days; or

(b) 106 hours in a work period of 14 consecutive days.

(4) Agencies may designate a lesser threshold in a 14 day or 28 day consecutive work period as long as it conforms to the following:

(a) the Fair Labor Standards Act, Section 207(k);

(b) 29 CFR 553.230;

(c) the state's payroll period; and

(d) the approval of the Executive Director, DHRM.

R477-8-8. Time Reporting.

(1) Employees shall complete and submit a state approved biweekly time record that accurately reflects the hours actually worked, including:

(a) approved and unapproved overtime;

(b) on-call time;

(c) stand-by time;

(d) meal periods of public safety and correctional officers who are on duty more than 24 consecutive hours; and

(e) approved leave time.

(2) An employee who fails to accurately record time may be disciplined.

(3) Time records developed by the agency shall have the same elements of the state approved time record and be approved by the Department of Administrative Services, Division of Finance.

(4) A Supervisor who directs an employee to submit an inaccurate time record or knowingly approves an inaccurate time record may be disciplined.

(5) A Non-exempt employee who believes FLSA rights have been violated may submit a complaint directly to the Executive Director, DHRM or designee.

R477-8-9. Hours Worked.

(1) An FLSA nonexempt employee shall be compensated for all hours worked. An employee who works unauthorized overtime may be disciplined.

(a) All time that an FLSA nonexempt employee is required to wait for an assignment while on duty, before reporting to duty, or before performing activities is counted towards hours worked.

(b) Time spent waiting after being relieved from duty is not counted as hours worked if one or more of the following conditions apply:

(i) the employee arrives voluntarily before their scheduled shift and waits before starting duties;

(ii) the employee is completely relieved from duty and allowed to leave the job;

(iii) the employee is relieved until a definite specified time; or

(iv) the relief period is long enough for the employee to use as the employee sees fit.

R477-8-10. On-call Time.

(1) An FLSA non-exempt employee required by agency management to be available for on-call work shall be compensated for on-call time at a rate of one hour for every 12 hours the employee is on-call. A FLSA exempt employee required by agency management to be available for on-call work may be compensated at agency discretion, not to exceed a rate of one hour for every 12 hours the employee is on-call.

(a) Time is considered on-call time when the employee has freedom of movement in personal matters as long as the employee is available for a call to duty. An employee may not be in on-call status while using leave or while otherwise unable to respond to a call to duty.

(b) Agencies who enter into on-call agreements with employees shall have an agency policy consistent with this rule and finance policy.

(c) On-call status shall be designated by a supervisor and shall be in writing and documented in the Utah Performance Management system on an annual basis. Carrying a pager or cell phone shall not constitute on-call time without this written agreement.

(d) The employee shall record the hours spent in on-call status, and any actual hours worked, on the official time record, for the specific date the hours were incurred, in order to be paid.

(e) An employee may not record on-call hours and actual hours worked for the same period of time. On-call hours, actual hours worked, and leave hours cannot exceed 24 hours in a day.

(f) An employee shall round on-call hours to the nearest two decimal places. Hours of on-call pay shall be calculated by subtracting the number of hours worked in the on-call period from the number of hours in the on-call period then dividing the result by 12.

R477-8-11. Stand-by Time.

(1) An employee restricted to stand-by at a specified location ready for work shall be paid full-time or overtime, as appropriate. An employee shall be paid for stand-by time if required to stand by the post ready for duty, even during lunch periods, equipment breakdowns, or other temporary work shutdowns.

(2) The meal periods of police, and other public safety or correctional officers and firefighters who are on duty more than 24 consecutive hours shall be counted as working time, unless

an express agreement excludes the time.

R477-8-12. Commuting and Travel Time.

(1) Normal commuting time from home to work and back may not count towards hours worked.

(2) Time an employee spends traveling from one job site to another during the normal work schedule shall count towards hours worked.

(3) Time an employee spends traveling on a special one-day assignment shall count towards hours worked except meal time and ordinary home to work travel.

(4) Travel that keeps an employee away from home overnight does not count towards hours worked if it is time spent outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

(5) Travel as a passenger counts toward hours worked if it is time spent during regular working hours. This applies to non-working days, as well as regular working days. However, regular meal period time is not counted.

(6) Management may compensate employees for travel and meal period not required by federal law as implemented in Sections (4) and (5).

R477-8-13. Excess Hours.

(1) An employee may use excess hours the same way as annual leave.

(a) An employee may not work hours which would lead to the accrual of excess hours without prior management approval.

(b) An employee may not use any leave time, other than holiday and jury leave, that results in the accrual of excess hours.

(c) An employee may not accumulate more than 80 excess hours.

(d) Agency management shall pay out excess hours:

(i) for all hours accrued above the limit set by DHRM;

(ii) when an employee is assigned from one agency to another; and

(iii) upon separation.

(e) Agency management may pay out excess hours:

(i) automatically in the same pay period accrued;

(ii) at any time during the year as determined appropriate by a state agency or division; or

(iii) upon request of the employee and approval by the agency head.

R477-8-14. Dual State Employment.

An employee who has more than one position within state government, regardless of schedule is considered to be in a dual employment situation. The following conditions apply to dual employment status.

(1) An employee may work in up to four different positions in state government.

(2) An employee's benefit status for any secondary position(s), regardless of schedule of any of the positions, shall be the same as the primary position.

(3) An employee's FLSA status (exempt or nonexempt) for any secondary position(s) shall be the same as the primary position.

(4) Leave accrual shall be based on all hours worked in all positions and may not exceed the maximum amount allowed in the primary position.

(5) As a condition of dual employment, an employee in dual employment status is prohibited from accruing excess hours in either the primary or secondary positions. All excess hours earned shall be paid at straight time in the pay period in which the excess hours are earned.

(6) As a condition of dual employment, the Overtime or Comp selection shall be as overtime paid regardless of FLSA status. An employee may not accrue comp hours while in dual employment status.

(7) Overtime shall be calculated at straight time or time and one half depending on the FLSA status of the primary position. Time and a half overtime rates shall be calculated based on the weighted average rate of the multiple positions. Refer to Division of Finance's payroll policies, dual employment section.

(8) The Accepting Terms of Dual Employment form shall be completed, signed by the employee and supervisor, and placed in the employee's personnel file with a copy sent to the Division of Finance.

(9) Secondary positions may not interfere with the efficient performance of the employee's primary position or create a conflict of interest. An employee in dual employment status shall comply with conditions under Subsection R477-9-2(1).

R477-8-15. Reasonable Accommodation.

Employees and applicants seeking reasonable accommodation shall be evaluated under state and federal law. This shall be done in conjunction with the agency ADA coordinator. The ADA coordinator shall consult with the Division of Risk management prior to denying any accommodation request.

R477-8-16. Fitness For Duty Evaluations.

Fitness for duty medical evaluations may be performed under any of the following circumstances:

(1) return to work from injury or illness except as prohibited by federal law;

(2) when management determines that there is a direct threat to the health or safety of self or others;

(3) in conjunction with corrective action, performance or conduct issues, or discipline; or

(4) when a fitness for duty evaluation is a bona fide occupational qualification for selection, retention, or promotion.

R477-8-17. Temporary Transitional Assignment.

(1) Agency management may place an employee in a temporary transitional assignment when an employee is unable to perform essential job functions due to temporary health restrictions. Time spent on such an assignment may be counted as leave for purposes of R477-7-1(10).

(2) Temporary transitional assignments may also be part of any of the following:

(a) when management determines that there is a direct threat to the health or safety of self or others;

(b) in conjunction with an internal investigation, corrective action, performance or conduct issues, or discipline;

(c) where there is a bona fide occupational qualification for retention in a position;

(d) while an employee is being evaluated to determine if reasonable accommodation is appropriate.

R477-8-18. Change in Work Location.

(1) An involuntary change in work location shall not be permitted if this requires the employee to commute or relocate 50 miles or more, one way, beyond the current one-way commute, unless:

(a) the change in work location is communicated to the employee at employment; or

(b) the agency either pays to move the employee consistent with Section R25-6-8 and Finance Policy FIACCT 05-03.03, or reimburses commuting expenses up to the cost of a move.

R477-8-19. Agency Policies and Exemptions.

(1) Each agency may write its own policies for work schedules, overtime, leave usage, and other working conditions consistent with these rules.

R477-8-20. Background Checks.

In order to protect the citizens of the State of Utah and state resources and with the approval of the agency head, agencies may establish background check policies requiring specific employees to submit to a criminal background check through the Department of Public Safety, Bureau of Criminal Identification.

(1) Agencies who have statewide responsibility for confidential information, sensitive financial information, or handle state funds may require employees to submit to a background check, including employees who work in other state agencies.

(2) The cost of the background check will be the responsibility of the employing agency.

R477-8-21. Workers' Compensation Interference Prohibited.

(1) Agency management may not interfere with an employee's effort to make a claim for workers' compensation.

(2) Agency management may not retaliate against an employee who makes or attempts to make a claim for workers' compensation, reports an employer's noncompliance Utah Code Sections 34A-2 or 34A-3, or testifies or intends to testify in a workers' compensation proceeding.

R477-8-22. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

KEY: breaks, telecommuting, overtime, dual employment

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R477. Human Resource Management, Administration.
R477-9. Employee Conduct.
R477-9-1. Standards of Conduct.

An employee shall comply with the standards of conduct established in these rules and the policies and rules established by agency management.

(1) Employees shall apply themselves to and shall fulfill their assigned duties during the full time for which they are compensated.

(a) An employee shall:

(i) comply with the standards established in the individual performance plans;

(ii) maintain an acceptable level of performance and conduct on all other verbal and written job expectations;

(iii) report conditions and circumstances, including controlled substances or alcohol impairment, that may prevent the employee from performing their job effectively and safely;

(iv) inform the supervisor of any unclear instructions or procedures.

(2) An employee shall make prudent and frugal use of state funds, equipment, buildings, time, and supplies.

(3) An employee who reports for duty or attempts to perform the duties of the position while under the influence of alcohol or other intoxicant, including use of illicit drugs, non-prescribed controlled substances, and misuse of volatile substances, shall be subject to administrative action in accordance with Section R477-10-2, Rule R477-11 and R477-14.

(a) The agency may decline to defend and indemnify an employee found violating this rule, in accordance with Section 63G-7-202 of the Utah Governmental Immunity Act.

(4) An employee may not drive a state vehicle or any other vehicle, on state time, while under the influence of alcohol or controlled substances.

(a) An employee who violates this rule shall be subject to administrative action under Section R477-10-2, Rules R477-11 and R477-14.

(b) The agency may decline to defend or indemnify an employee who violates this rule, according to Subsection 63G-7-202(3)(c)(ii) of the Utah Governmental Immunity Act.

(5) An employee shall provide the agency with a current personal mailing address.

(a) The employee shall notify the agency in writing of any change in address.

(b) Mail sent to the current address on record shall be deemed to be delivered for purposes of these rules.

R477-9-2. Outside Employment.

(1) An employee shall notify agency management in writing of outside employment. Failure to notify the employer and to gain approval for outside employment is grounds for disciplinary action.

(2) State employment shall be the principal vocation for a full-time employee governed by these rules. An employee may engage in outside employment under the following conditions:

(a) Outside employment may not interfere with an employee's performance.

(b) Outside employment may not conflict with the interests of the agency nor the State of Utah.

(c) Outside employment may not give reason for criticism nor suspicion of conflicting interests or duties.

(3) Agency management may deny an employee permission to engage in outside employment, or to receive payment, if the outside activity is determined to cause a real or potential conflict of interest.

(4) The provisions of this rule do not apply when two or more government positions are held by the same individual, unless the personal interest of the individual is not shared by the general public.

R477-9-3. Conflict of Interest.

(1) An employee may receive honoraria or paid expenses for activities outside of state employment under the following conditions:

(a) Outside activities may not interfere with an employee's performance, the interests of the agency nor the State of Utah.

(b) Outside activities may not give reasons for criticism nor suspicion of conflicting interests or duties.

(2) An employee may not use a state position; any influence, power, authority or confidential information received in that position; nor state time, equipment, property, or supplies for private gain.

(3) An employee may not accept economic benefit tantamount to a gift, under Section 67-16-5 and the Governor's Executive Order, 1/26/2010, nor accept other compensation that might be intended to influence or reward the employee in the performance of official business.

(4) An employee shall declare a potential conflict of interest when required to do or decide something that could be interpreted as a conflict of interest. Agency management shall then excuse the employee from making decisions or taking actions that may cause a conflict of interest.

R477-9-4. Political Activity.

A state employee may voluntarily participate in political activity, except as restricted by this section or the federal Hatch Act, 5 U.S.C. Sec. 1501 through 1508.

(1) As modified by the Hatch Modernization Act of 2012, 5 U.S.C. Section 1502(a)(3), the federal Hatch Act restricts the political activity of state government employees whose salary is 100% funded by federal loans or grants.

(a) State employees in positions covered by the Hatch Act may run for public office in nonpartisan elections, campaign for and hold office in political clubs and organizations, actively campaign for candidates for public office in partisan and nonpartisan elections, contribute money to political organizations, and attend political fundraising functions.

(b) State employees in positions covered by the federal Hatch Act may not be candidates for public office in a partisan election, use official authority or influence to interfere with or affect the results of an election or nomination, or directly or indirectly coerce contributions from subordinates in support of a political party or candidate.

(2) Prior to filing for candidacy, a state employee who is considering running for a partisan office shall submit a statement of intent to become a candidate to the agency head.

(a) The agency head shall consult with DHRM.

(b) DHRM shall determine whether the employee's intent to become a candidate is covered under the Hatch Act.

(c) Employees in violation of section R477-9-4(1)(b) may be disciplined up to dismissal.

(3) If a determination is made that the employee's position is covered by the Hatch Act, the employee may not run for a partisan political office.

(a) If it is determined that the employee's position is covered by the Hatch Act, the state shall dismiss the employee if the employee files for candidacy.

(4) Any career service employee elected to any partisan or full-time nonpartisan political office shall be granted a leave of absence without pay for times when monetary compensation is received for service in political office.

(5) During work time, no employee may engage in any political activity. No person shall solicit political contributions from employees of the executive branch during hours of employment. However, a state employee may voluntarily contribute to any party or any candidate.

(6) This rule incorporates by reference the Governor's Executive Order of March 5, 2018, regarding communications with legislators by state employees.

(7) Decisions regarding employment, promotion, demotion, dismissal, or any other human resource actions may not be based on partisan political activity.

R477-9-5. Employee Reporting Protections.

(1) Under Section 67-21-3, an agency may not adversely affect the employment conditions of an employee who communicates in good faith, and in accordance with statute:

(a) the waste or misuse of public property, manpower, or funds;

(b) gross mismanagement;

(c) unethical conduct;

(d) abuse of authority; or

(e) violation of law, rule, or regulations.

R477-9-6. Employee Indebtedness to the State.

(1) An employee indebted to the state because of an action or performance in official duties may have a portion of salary that exceeds the minimum federal wage withheld. Overtime salary shall not be withheld.

(a) The following three conditions shall be met before withholding of salary may occur:

(i) The debt shall be a legitimately owed amount which can be validated through physical documentation or other evidence.

(ii) The employee shall know about and, in most cases, acknowledge the debt. As much as possible, the employee should provide written authorization to withhold the salary.

(iii) An employee shall be notified of this rule which allows the state to withhold salary.

(b) An employee separating from state service will have salary withheld from the last paycheck.

(c) An employee going on leave without pay for more than two pay periods may have salary withheld from their last paycheck.

(d) The state may withhold an employee's salary to satisfy the following specific obligations:

(i) travel advances where travel and reimbursement for the travel has already occurred;

(ii) state credit card obligations where the state's share of the obligation has been reimbursed to the employee but not paid to the credit card company by the employee;

(iii) evidence that the employee negligently caused loss or damage of state property;

(iv) payroll advance obligations that are signed by the employee and that the Division of Finance authorizes;

(v) misappropriation of state assets for unauthorized personal use or for personal financial gain. This includes reparation for employee theft of state property or use of state property for personal financial gain or benefit;

(vi) overpayment of salary determined by evidence that an employee did not work the hours for which they received salary or was not eligible for the benefits received and paid for by the state;

(vii) excessive reimbursement of funds from flexible reimbursement accounts;

(viii) other obligations that satisfy the requirements of Subsection R477-9-5(1) above.

(2) This rule does not apply to state employee obligations to other state agencies where the obligation was not caused by their actions or performance as an employee.

R477-9-7. Acceptable Use of Information Technology Resources.

Information technology resources are provided to a state employee to assist in the performance of assigned tasks and in the efficient day to day operations of state government.

(1) An employee shall use assigned information technology resources in compliance with Rule R895-7, Acceptable Use of Information Technology Resources.

(2) An employee who violates the Acceptable Use of Information Technology Resources policy may be disciplined according to Rule R477-11.

R477-9-8. Personal Blogs and Social Media Sites.

(1) An employee who participates in blogs and social networking sites for personal purposes may not:

(a) claim to represent the position of the State of Utah or an agency;

(b) post the seal of the State of Utah, or trademark or logo of an agency;

(c) post protected or confidential information, including copyrighted information, confidential information received from agency customers, or agency issued documents without permission from the agency head; or

(d) unlawfully discriminate against, harass or otherwise threaten a state employee or a person doing business with the State of Utah.

(2) An agency may establish policy to supplement this section.

(3) An employee may be disciplined according to R477-11 for violations of this section or agency policy.

R477-9-9. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

KEY: conflict of interest, government ethics, Hatch Act, personnel management

July 1, 2018 **63G-7-2**
Notice of Continuation April 27, 2017 **67-19-6**
67-19-19
5 USC Section 1502(a)(3)
Utah Exec Order No. 2018-1

R477. Human Resource Management, Administration.
R477-10. Employee Development.
R477-10-1. Performance Evaluation.

Agency management shall utilize the Utah Performance Management (UPM) system for employee performance plans and evaluations. The Executive Director, DHRM, may authorize exceptions to the use of UPM and this rule consistent with Section R477-2-2. For this rule, the word employee refers to a career service employee, unless otherwise indicated.

(1) Performance management systems shall satisfy the following criteria:

(a) Agency management shall select an overall performance rating scale.

(b) Performance standards and expectations for each employee shall be specifically written in a performance plan.

(c) Managers or supervisors shall notify employees when their performance plans are implemented or modified.

(d) Managers or supervisors provide employees with regular verbal and written feedback based on the standards of performance and behavior outlined in their performance plans.

(2) Each fiscal year a state employee shall receive a performance evaluation.

(a) An employee shall have the right to include written comments pertaining to the employee's performance evaluation.

(b) A probationary employee may receive a performance evaluation at the end of the probationary period.

R477-10-2. Performance Improvement.

When an employee's performance does not meet established standards due to failure to maintain skills, incompetence, or inefficiency, and after consulting with DHRM, agency management may place an employee on an appropriate and documented performance improvement plan in accordance with the following rules:

(1) The supervisor shall discuss the substandard performance with the employee and determine appropriate action.

(2) Performance improvement plans shall identify or provide for:

(a) a designated period of time for improvement;

(b) an opportunity for remediation;

(c) performance expectations;

(d) closer supervision to include regular feedback of the employee's progress;

(e) notice of disciplinary action for failure to improve; and,

(f) a written performance evaluation at the conclusion of the performance improvement plan.

(3) An employee shall have the right to submit written comment to accompany the performance improvement plan.

(4) Performance improvement plans may also identify or provide for the following based on the nature of the performance issue:

(a) training;

(b) reassignment;

(c) use of appropriate leave;

(5) Following successful completion of a performance improvement plan, the supervisor shall notify the employee of disciplinary consequences for a recurrence of the deficient work performance.

R477-10-3. Written Warnings.

Agency management may use written warnings to address performance or conduct problems.

R477-10-4. Employee Development and Training.

(1) Agency management may establish programs for training and staff development that shall be agency specific or designed for highly specialized or technical jobs and tasks.

(2) Agency management shall consult with the Executive Director, DHRM, when proposed training and development activities may have statewide impact or may be offered more cost effectively on a statewide basis. The Executive Director, DHRM, shall determine whether DHRM will be responsible for the training standards.

(3) The Executive Director, DHRM, shall work with agency management to establish standards to guide the development of statewide activities and to facilitate sharing of resources statewide.

(4) When an agency directs an employee to participate in an educational program, the agency shall pay full costs.

(5) Agencies are required to provide refresher training and make reasonable efforts to requalify veterans reemployed under USERRA, as long as it does not cause an undue hardship to the employing agency.

(6) Training shall be presented or made available online unless there is a physical or interactive component, the training takes place over consecutive, full-day sessions, or no attendee travels more than 50 miles from their primary residence or place of employment, whichever is closer to the training site, to attend the training.

R477-10-5. Education Assistance.

State agencies may assist an employee in the pursuit of educational goals by granting administrative leave to attend classes, a subsidy of educational expenses, or both.

(1) Prior to granting education assistance, agencies shall establish policies which shall include the following conditions:

(a) The educational program will provide a benefit to the state.

(b) The employee shall successfully complete the required course work or the educational requirements of a program.

(c) The employee shall agree to repay any assistance received if the employee resigns from state employment within one year of completing educational work.

(i) Agencies may require the employee to repay any assistance received if the employee transfers to another agency within one year of completing educational work.

(d) Education assistance may not exceed $5,250 per employee in any one calendar year unless approved in advance by the agency head.

(e) The employee shall disclose all scholarships, subsidies and grant monies provided to the employee for the educational program.

(i) Except for funding that must be repaid by the employee, the amount reimbursed by the State may not include funding received from sources in Subsection R477-10-4(1)(e).

(2) Agency management shall be responsible for determining the taxable or nontaxable status of educational assistance reimbursements.

KEY: educational tuition, employee performance evaluations, employee productivity, training programs
July 1, 2018 67-19-6
Notice of Continuation April 27, 2017

R477. Human Resource Management, Administration.
R477-11. Discipline.
R477-11-1. Disciplinary Action.

(1) Agency management may discipline any employee for any of the following causes or reasons:

(a) noncompliance with these rules, agency or other applicable policies, including but not limited to safety policies, agency professional standards, standards of conduct and workplace policies;

(b) work performance that is inefficient or incompetent;

(c) failure to maintain skills and adequate performance levels;

(d) insubordination or disloyalty to the orders of a superior;

(e) misfeasance, malfeasance, or nonfeasance;

(f) any incident involving intimidation, physical harm, or threats of physical harm against co-workers, management, or the public;

(g) no longer meets the requirements of the position;

(h) conduct, on or off duty, which creates a conflict of interest with the employee's public responsibilities or impacts that employee's ability to perform job assignments;

(i) failure to advance the good of the public service, including conduct on or off duty which demeans or harms the effectiveness or ability of the agency to fulfill its mission;

(j) dishonesty; or

(k) misconduct.

(2) Agency management shall consult with DHRM prior to disciplining an employee.

(3) All disciplinary actions of career service employees shall be governed by principles of due process and Title 67, Chapter 19a. The disciplinary process shall include all of the following, except as provided under Subsection 67-19-18(4):

(a) The agency representative notifies the employee in writing of the proposed discipline, the reasons supporting the intended action, and the right to reply within five working days.

(b) The employee's reply shall be received within five working days in order to have the agency representative consider the reply before discipline is imposed.

(c) If an employee waives the right to reply or does not reply within the time frame established by the agency representative or within five working days, whichever is longer, discipline may be imposed in accordance with these rules.

(4) After a career service employee has been informed of the reasons for the proposed discipline and has been given an opportunity to respond and be responded to, the agency representative may discipline that employee, or any career service exempt employee not subject to the same procedural rights, by imposing one or more of the following forms of disciplinary action:

(a) written reprimand;

(b) suspension without pay up to 30 calendar days per incident requiring discipline;

(c) demotion in accordance with Section R477-1(32), reducing the employee's current actual wage, as determined by the agency head.

(d) dismissal in accordance with Section R477-11-2.

(5) If agency management determines that a career service employee endangers or threatens the peace and safety of others or poses a grave threat to the public service or is charged with aggravated or repeated misconduct, the agency may impose the following actions, under Subsection 67-19-18(4), pending an investigation and determination of facts:

(a) paid administrative leave; or

(b) temporary reassignment to another position or work location at the same current actual wage.

(6) At the time disciplinary action is imposed, the employee shall be notified in writing of the discipline, the reasons for the discipline, the effective date and length of the discipline.

(7) Imposed disciplinary actions are subject to the grievance and appeals procedure by law for career service employees, except under Section 67-19a-402.5. The employee and the agency representative may agree in writing to waive or extend any grievance step, or the time limits specified for any grievance step.

R477-11-2. Dismissal or Demotion.

An employee may be dismissed or demoted for cause under Subsection R477-10-2(3)(e) and Section R477-11-1, and through the process outlined in this rule.

(1) A probationary employee or career service exempt employee may be dismissed or demoted for any or for no reason without right of appeal, except under Sections 67-21-3.5 and 67-19a-402.5.

(2) No career service employee shall be dismissed or demoted from a career service position unless the agency head or designee has observed the Grievance Procedure Rules and law cited in Section R137-1-13 and Title 67, Chapter 19a, and the following procedures:

(a) The agency head or designee shall notify the employee in writing of the specific reasons for the proposed dismissal or demotion.

(b) The employee shall have up to five working days to reply. The employee shall reply within five working days for the agency head or designee to consider the reply before discipline is imposed.

(c) The employee shall have an opportunity to be heard by the agency head or designee. This meeting shall be strictly limited to the specific reasons raised in the notice of intent to demote or dismiss.

(i) At the meeting the employee may present, either in person, in writing, or with a representative, comments or reasons as to why the proposed disciplinary action should not be taken. The agency head or designee is not required to receive or allow other witnesses on behalf of the employee.

(ii) The employee may present documents, affidavits or other written materials at the meeting. However, the employee is not entitled to present or discover documents within the possession or control of the department or agency that are private, protected or controlled under Section 63G-2-3.

(d) Following the meeting, the employee may be dismissed or demoted if the agency head finds adequate cause or reason.

(e) The employee shall be notified in writing of the agency head's decision. The reasons shall be provided if the decision is a demotion or dismissal.

(3) Agency management may place an employee on paid administrative leave pending the administrative appeal to the agency head.

R477-11-3. Discretionary Factors.

(1) When deciding the specific type and severity of agency action, the agency head or representative may consider the following factors:

(a) consistent application of rules and standards;

(i) the agency head or representative need only consider those cases decided under the administration of the current agency head. Decisions in cases prior to the administration of the current agency head are not binding upon the current agency head and are not relevant in determining consistent application of rules and standards.

(ii) In determining consistent application of rules and standards, the disciplinary actions imposed by one agency may not be binding upon any other agency and may not be used for comparison purposes in hearings wherein the consistent application of rules and standards is at issue.

(b) prior knowledge of rules and standards;

(c) the severity of the infraction;

(d) the repeated nature of violations;
(e) prior disciplinary/corrective actions;
(f) previous oral warnings, written warnings and discussions;
(g) the employee's past work record;
(h) the potential of the violations for causing damage to persons or property;
(i) the strength of the evidence of conduct;
(j) dishonesty or failing to disclose relevant information;
(k) the effect on agency operations, including:
(i) how the wrongdoing relates to the employee's job duties;
(ii) the potential of the conduct to adversely affect public confidence in the agency;
(iii) the potential of the conduct to adversely affect morale and effectiveness of the agency;
(l) willful or intentional conduct; or
(m) likelihood of recurrence.

KEY: discipline of employees, dismissal of employees, grievances, government hearings
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63G-2-3

R477. Human Resource Management, Administration.
R477-12. Separations.
R477-12-1. Resignation.

A career service employee may resign or retire by giving written or verbal notice to the supervisor or an appropriate representative of agency management.

(1) After giving a notice, withdrawal of a resignation or retirement may occur only with the consent of the agency head or designee.

R477-12-2. Abandonment of Position.

An employee who is absent from work for three consecutive working days without approval shall be considered to have abandoned the position and to have resigned from the employing agency.

(1) An employee who has abandoned his position may be separated from state employment. Management shall inform the employee of the action in writing.

(a) Management shall send the employee notice of intent to separate to the employee's last known address.

(b) The employee shall have the right to appeal separation to the agency head within five working of receipt, delivery, or attempted postal delivery of the notice of abandonment to the last known address.

(c) If the separation is appealed, management may not be required to prove intent to abandon the position.

R477-12-3. Reduction in Force.

Reductions in force (RIF) shall be governed by DHRM rules and business practices.

(1) When staff will be reduced in one or more categories of work, agency management shall develop a work force adjustment plan (WFAP). A career service employee shall only be given formal written notification of separation after a WFAP has been reviewed by the Executive Director, DHRM, or designee and approved by Agency Head or designee. The following items shall be addressed in the WFAP:

(a) the categories of work to be eliminated;

(b) specifications of measures taken to facilitate the placement of affected employees through reassignment, transfer and relocation to vacant positions for which the employee qualifies;

(c) job-related criteria as identified in Subsection R477-12-3(3)(a) used for determining retention points; and

(d) When more than one employee is affected, employees shall be listed in order of retention points.

(e) Retention points do not have to be calculated for a single incumbent WFAP.

(2) Eligibility for RIF.

(a) Only career service employees who have been identified in an approved WFAP and given an opportunity to be heard by the agency head or designee may be RIF'd.

(b) An employee covered by USERRA shall be identified, assigned retention points, and notified of the RIF in the same manner as a career service employee.

(3) Retention points shall be determined for all affected employees within a category of work by giving appropriate consideration for proficiency and seniority with proficiency being the primary factor.

(a) Performance evaluations and performance information for the past three years may be taken into account for assessing job proficiency.

(b) Seniority shall be determined by the length of most recent continuous career service, which commenced in a career service position for which the probationary period was successfully completed.

(i) Exempt service time subsequent to attaining career service status with no break in service shall be counted for purposes of seniority.

(c) In each WFAP, agency management shall develop the criteria they will use for determining retention points.

(i) Agency Management shall consult with Executive Director, DHRM or designee.

(ii) Agency plans shall comply with current DHRM business practices.

(4) The order of separation shall be:

(a) temporary employees in schedule IN or TL positions;

(b) probationary employees; then

(c) career service employees with the lowest retention points.

(5) An employee, including one covered under USERRA, who is identified for separation due to a RIF shall receive written notification of:

(a) the pending RIF; and

(b) final written notification of separation on the day of separation.

(6) An employee separated due to a RIF may appeal to the agency head by submitting a written notice of appeal within 20 working days after the date of separation.

(a) The employee may appeal the decision of the agency head according to the appeals procedure of the Career Service Review Office.

(7) A career service employee who is separated in a RIF shall be governed by the rules in place at the time of separation.

(8) A career service employee who is separated in a RIF shall be given preferential consideration to the application score in the process of developing the hiring list as outlined in DHRM business practices when applying for a career service position.

(a) Preferential consideration shall end once the RIF'd individual accepts a career service position.

(b) A RIF'd individual may be rehired under Section R477-4-6.

(c) At agency discretion, an individual rehired to a career service position may buy back part or all accumulated annual and converted sick leave that was cashed out when RIF'd.

(9) A career service employee accepting an exempt position without a break in service, who is later not retained by the appointing officer shall be given preferential consideration as outlined in Subsection R477-12-3(8).

(10) Prior to separation and in lieu of a RIF, management may reassign an employee to a vacant career service position for which the employee qualifies under Section R477-4-5.

R477-12-4. Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).

KEY: administrative procedures, employees' rights, grievances, retirement
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Notice of Continuation April 27, 2017 67-19-18

R477. Human Resource Management, Administration.
R477-16. Abusive Conduct Prevention.
R477-16-1. Policy.

It is the policy of the State of Utah to provide a work environment free from abusive conduct.

(1) Abusive conduct includes physical, verbal or nonverbal conduct, such as derogatory remarks, insults, or epithets made by an employee that a reasonable person would determine:

(a) was intended to cause intimidation, humiliation, or unwarranted distress;

(b) exploits a known physical or psychological disability; or

(c) results in substantial physical or psychological harm caused by intimidation, humiliation or unwarranted distress.

(2) The following actions do not constitute abusive conduct unless they are especially severe and egregious:

(a) a single act;

(b) appropriate disciplinary or administrative actions;

(c) appropriate coaching or work-related feedback;

(d) reasonable work assignments or job reassignments; or

(e) reasonable differences in styles of management, communication, expression, or opinion.

(3) An employee may be subject to discipline under this rule even if the conduct occurs outside of scheduled work time or work location.

(4) Once a complaint of abusive conduct has been filed, the accused may not communicate with the complainant regarding allegations in the complaint.

R477-16-2. Complaint Procedure.

Management shall permit employees who allege abusive conduct to file complaints and engage in a review process free from bias, collusion, intimidation or retaliation.

(1) Employees who feel they are being subjected to abusive conduct should do the following:

(a) document the occurrence;

(b) continue to report to work; and

(c) identify a witness(es), if applicable

(2) An employee shall file a written complaint of abusive conduct with their immediate supervisor, any other supervisor in their direct chain of command, or the Department of Human Resource Management, including the agency human resource field office.

(a) Complaints may be submitted by any employee, witness, volunteer or other individual.

(b) Any supervisor who has knowledge of abusive conduct shall take immediate, appropriate action in consultation with DHRM and document the action.

R477-16-3. Investigative Procedure.

(1) When warranted, investigations shall be conducted based on DHRM standards and business practices.

(2) Results of Investigation

(a) If an investigation finds the allegations of abusive conduct to be sustained, agency management shall take appropriate administrative action.

(b) If an investigation reveals evidence of criminal conduct in abusive conduct allegations, the agency head or Executive Director, DHRM, may refer the matter to the appropriate law enforcement agency.

(c) At the conclusion of the investigation, the appropriate parties shall be notified of investigative findings and procedure to request an administrative review of findings pursuant to Utah Code Section 67-19a-501.

(3) Participants in any abusive conduct investigation shall treat all information pertaining to the case as confidential.

R477-16-4. Abusive Conduct Training.

(1) DHRM shall provide employees and supervisors training on the prevention of abusive conduct.

(a) Training shall include information regarding what constitutes abusive conduct, how to prevent it, options available under rule, and grievance procedures provided by Utah Code Section 67-19a.

(b) Agencies shall ensure employees complete training within a reasonable time after hire and at least every two years thereafter.

(c) Training records shall be submitted to DHRM including who provided the training, who attended the training and when they attended it.

KEY: abusive conduct, administrative procedures, hostile work environment
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67-19-44

R477. Human Resource Management, Administration.
R477-101. Administrative Law Judge Conduct Committee.
R477-101-1. Authority and Purpose.

This rule is enacted pursuant to Utah Code Section 67-19e-104, requiring the Department of Human Resource Management to establish rules governing minimum performance standards for administrative law judges, procedures for addressing and reviewing complaints against administrative law judges, standards for complaints, and standards of conduct for administrative law judges.

R477-101-2. Definitions.

In addition to the terms defined in Utah Code Section 67-19e-102:

(1) "Administrative Law Judge" (ALJ) includes Hearing Officers employed or contracted by a state agency that meet the criteria described in Utah Code Section 67-19e-102(1)(a).

(2) "Chair" means the Executive Director, Department of Human Resource Management, or designee.

(3) "Code of Conduct" means the Model Code of Judicial Conduct for State Administrative Law Judges, National Association of Administrative Law Judges (November 1993) incorporated by reference.

(4) "Committee" means the Administrative Law Judge Committee created in Utah Code Section 67-19e-108.

(5) "Committee Meeting" means a proceeding at which a Complaint is presented to the Committee by the investigator. Respondent ALJ shall also have the opportunity to appear and speak regarding the Complaint and its allegations.

(6) "Complaint" means a written document filed with the Department pursuant to Utah Administrative Code R477-101-8 alleging Misconduct by an ALJ.

(7) "Department" means the Department of Human Resource Management.

(8) "Final Agency Action" occurs when the substantive rights or obligations of litigants in an administrative proceeding have been determined or legal consequences flow from a determination and when the agency decision is not preliminary, preparatory, procedural or intermediate.

(9) "Full investigation" means that portion of an investigation where the Respondent ALJ may respond, in writing, to specific allegations identified in a Complaint. A Full Investigation may also include, but is not limited to: examination by the Investigator of documents, correspondence, hearing records, transcripts or tapes; interviews of the complainant, counsel, hearing staff, Respondent ALJ, interested parties, and other witnesses.

(10) "Good cause" means a cause or reason in law, equity or justice that provides responsible basis for action or a decision.

(11) "Interested Party" means an individual or entity who participated in an event or proceeding giving rise to a Complaint against the Respondent ALJ.

(12) "Investigator" means a person employed by the department to perform investigations mandated under Utah Code Section 67-19e-107 and present information at the Committee Meeting.

(13) "Misconduct" means a violation of the Code of Conduct or Utah Code Section 67-19e-101 et seq.

(14) "Preliminary Investigation" means that portion of an investigation conducted by the Department upon receipt of a Complaint. A Preliminary Investigation may include, but is not limited to: examination of documents, correspondence, interviews of the complainant, counsel, hearing staff, and other witnesses.

(15) "Respondent ALJ" means an ALJ against whom a Complaint is filed.

R477-101-3. Jurisdiction.

(1) Administrative Law Judges. The Committee has jurisdiction over ALJs to investigate, review, hear, and make recommendations regarding Complaints filed against ALJs.

(2) Former ALJs. The Committee has continuing jurisdiction over former ALJs regarding allegations that Misconduct occurred during service as an ALJ if a Complaint is received before the ALJ's appointment concludes.

R477-101-4. Records Classification and Retention.

(1) Records prepared by and for the Committee, including all Complaints, investigative reports, recommendations, and votes on recommended action against an ALJ are classified as protected under Utah Code Section 63G-2-305.

(2) Committee records shall be maintained by the department for a period of three years following the conclusion of any Committee activity.

R477-101-5. Committee.

(1) The Executive Director or designee shall serve as Chair of the Committee, and appoint four Executive Directors or their designees to serve on the Committee.

(2) Only Executive Directors of agencies that employ or contract with ALJs may serve on the Committee.

(3) If a Department investigation establishes a Complaint requires further action, the Executive Director and Chair shall convene the Committee.

(4) An Executive Director of the agency that employs or contracts with the Respondent ALJ may not participate in a Committee proceeding involving the Respondent ALJ.

(5) After convening the Committee, the Department shall provide a copy of the Complaint and its investigative results to the Committee and the Respondent ALJ.

(6) Within 30 days of the date the Committee is convened on a complaint the Committee shall schedule a Committee Meeting. At the Committee Meeting the Respondent ALJ shall be given the opportunity to appear, speak and present documents in response to a Complaint.

(7) Committee members may attend Committee meetings in person, by telephone, by videoconference, or by other means approved in advance by the Chair.

(8) After consideration of all information provided at the Committee Meeting, the Committee shall dispose of the Complaint by issuing a decision or report with a recommendation to the agency containing:

(a) a brief description of the Complaint and the investigative results;

(b) findings, and;

(c) recommendations.

(9) Committee members shall not, individually or collectively, engage in ex parte communications about proceedings with complainants, witnesses, or ALJs.

R477-101-6. Duties of the Chair.

(1) The Chair shall:

(a) receive, acknowledge receipt of and review Complaints;

(b) notify complainants about the status and disposition of their Complaints,

(c) make recommendations to the Committee regarding further proceedings or the disposition of a Complaint;

(d) stay investigation(s) or committee proceedings pending Final Agency Action of the matter giving rise to the Complaint against the Respondent ALJ;

(e) maintain records of the Committee's operations and actions;

(f) compile data to aid in the administration of the Committee's operations and actions;

(g) prepare and distribute an annual report of the Committee's operations and actions;

(h) direct the operations of the Committee's office, and supervise other members of the Committee's staff;

(i) make available to the public the laws, rules, and procedures of the Committee and its operations;

(j) consider requests for extension of time periods and, upon a showing of Good Cause, grant such requests for a period not to exceed 20 days for each request.

(2) Subject to the duty to direct and supervise, the Chair may delegate any of the foregoing duties to other members of the Committee's staff.

R477-101-7. Code of Conduct.

(1) ALJs shall comply with the Model Code of Judicial Conduct for State Administrative Law Judges, National Association of Administrative Law Judges.

(2) In order to suit a specific agency need, an agency may make an addendum or modification to the Code of Conduct. Any such addendum or modification shall be specific to their agency. In addition, any addendum or modification to the Code of Conduct must be reviewed and approved by the Committee before being implemented. The Committee may be convened for the purpose of reviewing any proposed addendum or modification.

R477-101-8. Filing Procedure.

(1) Each agency shall include a copy of DHRM Rule R477-101 in the administrative rule materials that they provide to parties, or shall otherwise make them readily available to parties, at the commencement of administrative proceedings.

(2) An individual who alleges a violation of the Code of Conduct or otherwise has a Complaint against an ALJ may file a timely Complaint with the Department. To be timely a Complaint must be in writing and filed with the Department within 20 working days of Final Administrative Action in the matter in which the individual is an Interested Party.

(3) Complaints filed with the Department are deemed filed on the date actually received by the Department. The Department shall date-stamp all Complaints on the date received. All filing and other time periods are based upon the Department's working days.

(4) Complaints must contain specific facts and allegations of Misconduct and must be signed by the person filing the Complaint or by the person's authorized representative. Complaints shall also contain the name, address, and telephone number of the complainant, and the name, business address, and telephone number of the representative, if a party or person is being represented.

R477-101-9. Investigation.

(1) Preliminary Investigation.

(a) The Department shall review all timely filed Complaints and shall, regardless of whether the allegations contained therein would constitute misconduct if true, conduct a Preliminary Investigation.

(b) If the Preliminary Investigation determines that the Complaint is untimely, frivolous, without merit, or if the Complaint merely indicates disagreement with the Respondent ALJ's decision, without further alleged Misconduct, the Complaint may be similarly dismissed without further action.

(c) If, after a Preliminary Investigation is completed, there is a reasonable basis to find Misconduct occurred, the Investigator shall initiate a Full Investigation.

(2) Full Investigation.

Within ten days after a determination to conduct a Full Investigation is made, the Investigator shall notify the Respondent ALJ that a Full Investigation is being conducted. The notice shall:

(a) inform the Respondent ALJ of the specific facts and allegations being investigated and the canons or statutory provisions allegedly violated;

(b) inform the Respondent ALJ that the investigation may be expanded if appropriate;

(c) invite the Respondent ALJ to respond to the Complaint in writing within 10 working days;

(d) include a copy of the Complaint, the Preliminary Investigation report(s), and any other documentation reviewed in determining whether to authorize a Full Investigation; and

(e) unless continued by the Chair, Full Investigations shall be completed within three months of the determination to conduct a Full Investigation.

R477-101-10. Full Investigative Findings.

Results of the investigation shall be provided to the Chair, who shall determine whether to convene a Committee Meeting.

R477-101-11. Notice.

(1) If after review of the Full Investigative result and findings the Chair determines the Complaint is factually or legally insufficient to establish Misconduct, the Chair shall similarly dismiss the Complaint and take no further action.

(2) If after review of the Full Investigative result and findings the Chair determines the Complaint requires further action, the Chair shall convene the Committee and order a Committee Meeting be scheduled.

(3) After convening the Committee the Chair shall provide Respondent ALJ written notice of the ALJ's right to appear, speak, and present documents at the Committee Meeting. The Chair shall also provide the Respondent ALJ with a copy of the Complaint and the results of the Department's investigation.

(4) Notice that a Committee has been convened and a Committee Meeting ordered shall be made by personal service or certified mail upon the Respondent ALJ or the Respondent ALJ's representative. Service of all other notices or papers may be regular mail.

(5) Within 20 days after receiving written notice from the Chair that a Committee has been convened the Respondent ALJ may provide the Committee a written response to the Complaint.

(6) After receipt of the Respondent ALJ's response of after expiration of the time to respond the Committee shall, in consultation with the ALJ, schedule a Committee Meeting. The Committee shall notify the ALJ in writing of the date, time, and place of the Committee Meeting. Unless continued for Good Cause, Committee Meetings shall be held within four months of the date a Committee is convened on a Complaint.

(7) No later than 20 days before the scheduled Committee Meeting the Chair shall provide the Respondent ALJ with copies of all documents proposed for use at the Committee Meeting or to be relied upon in making its report and recommendation.

(8) Respondent ALJ shall be entitled to representation at every stage of the Committee proceedings or the Committee Meeting.

(9) Neither the Utah Rules of Evidence nor the Utah Rules of Civil Procedure apply in Committee proceedings.

R477-101-12. Effect of Respondent ALJ's Resignation or Retirement during Proceeding.

If the Respondent ALJ resigns or retires during the proceedings, the Committee shall determine whether to proceed or dismiss the proceedings.

R477-101-13. Committee Meetings.

(1) The Chair shall rule on all motions or objections raised during a Committee Meeting, set reasonable limits on the statements or documents presented, including any statements from the complainant. The Chair may limit the time allowed for the presentation of information, may bifurcate any and all issues to be considered, and may make any and all other rulings

regarding any Committee proceeding or Committee Meeting.

(2) To hold a Committee Meeting there must be at least 3 members of the Committee present.

(3) The Respondent ALJ shall be permitted to present information to, make statements and produce witnesses for the Committee's consideration.

(4) Committee members may ask questions of any witness including the Respondent ALJ.

(5) Immediately following the conclusion of the Committee Meeting, the Committee shall deliberate and decide whether there is sufficient evidence the Respondent ALJ violated the Code of Conduct or otherwise engaged in Misconduct. Any such decision shall require a majority vote of the participating Committee members.

(6) Committee decisions shall be supported by a preponderance of the evidence.

(7) Within 30 days of the conclusion of the Committee Meeting, the Chair shall prepare a memorandum decision or report, with a recommendation for any proposed personnel action(s), and shall forward the decision and recommendation to the Respondent ALJ and the agency head of the Respondent ALJ.

(8) After deliberation, if the Committee finds insufficient evidence or reason to determine Misconduct occurred, the complaint shall be dismissed.

R477-101-14. Discipline.

(1) At any time after the commencement of a Full Investigation and before any Committee action, the ALJ may admit to any or all of the allegations in exchange for a stated sanction. The admission shall be submitted to the Committee for a recommendation.

(2) Any corrective and/or disciplinary action taken against a career service employee by the employing agency shall be implemented in accordance with applicable Department or state rule(s) governing discipline.

R477-101-15. Reinstatement of Proceedings.

(1) Reinstatement upon Request by Complainant.

(a) If a Complaint is dismissed, the complainant may, within 20 days of the date of the letter notifying the complainant of the dismissal, file a written request that the Committee reinstate the Complaint. The request shall include the specific grounds upon which reinstatement is sought.

(b) The request shall be presented to the Committee at the next available Meeting of the Committee, at which time the Committee shall determine whether to reinstate the Complaint.

(c) A determination not to reinstate the Complaint is not reviewable.

(2) Reinstatement by the Chair.

(a) If the Committee dismisses a Complaint, the Chair may, at any time upon the receipt of newly discovered evidence, request that the Committee reinstate the Complaint. The request shall include the specific grounds upon which the reinstatement is sought.

(b) The request shall be presented to the Committee at the next available Meeting of the Committee, at which time the Committee shall determine whether to reinstate the Complaint.

R477-101-16. Performance Standard.

(1) The following minimum performance standards shall apply to all ALJ's:

(a) The ALJ shall have no more than one agency disciplinary action or one Committee recommendation for disciplinary action during the ALJ's four-year evaluation cycle; and

(b) The ALJ shall receive a satisfactory rating on the survey. A satisfactory rating is achieved when an average of at least 65% of collected responses to survey questions for an ALJ is "Agree". Any survey question with a response of "Not enough information to respond" will not be used when calculating the rating.

(2) For any question that does not use the "Agree"/"Disagree" response option, the Committee shall establish the minimum performance standard. Any established performance standard shall be substantially equivalent to the standard required by Utah Code Section 67-19e-105.

R477-101-17. Performance Surveys.

(1) The department shall establish and follow a schedule to survey the performance of each ALJ every four years. The schedule shall be staggered to survey the performance of approximately one quarter of all ALJ's each calendar year.

(2) Survey respondents shall include:

(a) Attorneys who have appeared before the administrative law judge as counsel in the proceeding; and

(b) Staff who have worked with the administrative law judge.

(3) Additional respondents may include any other persons who have appeared on record before the administrative law judge, including, but not limited to, pro se parties and witnesses.

(3) Survey results shall be maintained by the department and shall not be maintained in the ALJ's personnel file.

(4) Survey results shall be made available to the ALJ's supervisor for consideration in completing annual performance evaluations.

R477-101-18. Training.

(1) The department shall provide an annual webcast on the topic of procedural fairness for administrative law judges. The content of the webcast shall comply with the provisions and requirements set forth in Utah Code 67-19e-110.

(2) Each year that an administrative law judge receives a performance evaluation conducted by the department under this section, the administrative law judge shall complete the procedural fairness training program established by the department.

R477-101-19. Hiring of Administrative Law Judges.

(1) Hiring of administrative law judges must comply with Utah Code Section 67-19e-104.5 and DHRM Rule R477-4-15.

KEY: administrative law judges, conduct committee
July 1, 2018 67-19e-101 through 67-19e-109

R501. Human Services, Administration, Administrative Services, Licensing.
R501-12. Foster Care Services.
R501-12-1. Authority.

This Rule is authorized by Sections 62A-2-101 et seq.

R501-12-2. Purpose Statement.

(1) This Rule establishes standards for the licensure of foster parents for children in the custody of DHS, inclusive of its Divisions.

(2) This Rule establishes standards that must be utilized by child-placing foster agencies for the certification of foster parents to provide care for foster children.

(3) This Rule establishes compliance standards for licensed and certified foster parents.

R501-12-3. Definitions.

As used in this Rule:

(1) "Agency" means a child-placing foster agency licensed by the DHS Office of Licensing to certify foster parents.

(2) "Child" means a person under 18 years of age or a person under 21 years of age who remains subject to the continuing jurisdiction of the Juvenile Court or whose placement in the home is initiated and facilitated by DCFS.

(3) "Child Care" is defined in Section 26-39-102.

(4) "DCFS" means the DHS Division of Child and Family Services.

(5) "DHS" means the Utah Department of Human Services.

(6) "Direct Access" is defined in section 62A-2-101.

(7) "DJJS" means the DHS Division of Juvenile Justice Services.

(8) "Foster Care" means the temporary provision of family based care for a foster child by a foster parent.

(9) "Foster Parent" means a substitute parent licensed by the DHS Office of Licensing or certified by a licensed child-placing foster agency, and includes the spouse of the primary applicant. Foster parents may also be referred to by other titles, including but not limited to proctor foster parents, professional foster parents, resource families, or kinship caregivers.

(10) "Hazardous Material" means any substance that if ingested, inhaled, ignited, used, or touched may cause significant injury, illness, or death. These substances include but are not limited to:

(a) pesticides;
(b) gasoline;
(c) bleach, including bleach based cleansers;
(d) compressed air
(e) ammonia, including ammonia based cleansers;
(f) chemical drain openers;
(g) hair relaxers/permanents;
(h) kerosene;
(i) spray paint;
(j) paint thinner;
(k) automotive fluids;
(l) toxic glues (excludes non-toxic glues);
(m) oven cleaners;
(n) matches/lighters/lighter fluid;
(o) cleaning aerosols;
(p) medications; and
(q) ultra and concentrated detergent capsules.

(11) "Home Study" is the same as a pre-placement adoptive evaluation as outlined in 78B-6-128 and is the written assessment of an applicant's ability to:

(a) comply with all applicable statutes and administrative rules related to providing foster care;

(b) meet the physical and emotional needs of a child in foster care; and

(c) actively engage in achieving the custodial agency's identified outcomes for foster children.

(12) "Human Services Program" is defined in Section 62A-2-101.

(13) "Incidental Care" is defined in 62A-2-120.

(a) Foster parents shall utilize reasonable and prudent judgment in selecting a provider of incidental care of a foster child;

(b) incidental care is permitted only in DHS licensed homes, not those certified by child placing agencies.

(14) "Medication" means any over-the-counter or prescription drug, vitamin, or supplement in any form.

(15) "Poverty Guidelines" means the current US Department of Health and Human Services listing of poverty levels as determined by the number of members of a family (see http://www.direct.ed.gov/RepayCalc/poverty.html).

(16) "Reside" means living in the home for any cumulative thirty days of the past 12 months.

(17) "Respite Care" means the short term provision of family based care for a foster child by a foster parent in order to provide relief to another parent.

(18) "Siblings" means children with a common parent or grandparent, regardless of whether their legal relationship has been severed, including biological siblings, half-siblings, step-siblings, adopted siblings, and cousins.

(19) "Sick" means to have a fever, to be experiencing ongoing or severe diarrhea, unexplained lethargy, respiratory distress, ongoing or severe vomiting, or pain or other symptoms that are ongoing or severe enough to impair a child's ability to participate in normal activity.

R501-12-4. Initial, Renewal, and Reapplication Process.

(1) Initial Application for Licensure or Certification: An individual or legally married couple age 21 or over may apply to be a foster parent. The applicant shall provide:

(a) Application Forms: A completed Office of Licensing or Agency foster care application that lists each member of the applicant's household must be submitted, including acknowledgment of:

(i) responsibility to maintain all current and past clients' confidentiality;

(ii) Office of Licensing Provider Code of Conduct; and

(iii) a verification that the applicant(s) have read and understand R501-12 Foster Care Services;

(b) Background Screening: a completed background screening application for each member of the household who is 18 years of age or older, including any supplemental documentation that the application requires;

(c) Financial Viability: a written statement of household income and expenses, together with consecutive current pay stubs or income tax forms;

(i) The Office of Licensing or Agency may consider poverty guidelines when evaluating the dependence of a foster parent on foster payments for their own expenses.

(ii) The Office of Licensing or Agency may require supporting documentation of household income and expenses in order to verify the foster parent will not be dependent on foster care reimbursement for their own expenses.

(d) Training:

(i) Verification of successful completion of agency approved pre-service training by each applicant within the past 24 months, and

(ii) Verification of current CPR/first aid training for each prospective foster parent. Examples of accepted training include but are not limited to: Heart Savers, American Red Cross, and American Heart Association Friends and Family.

(2) Medical Assessment:

(a) Each applicant shall authorize their current licensed physician, physician's assistant or nurse practitioner to complete and send a signed medical reference report directly to the Office

of Licensing or Agency. Medical reference reports must assess the current ability of the individual to be a foster parent.

(b) A professional mental health examination of a prospective or current foster parent may be required by the Office of Licensing or the Agency if there are concerns regarding the individual's mental status which may impair functioning as a foster parent. These concerns may be based upon any information gathered during the licensing/certifying and monitoring process.

(i) The type of professional mental health examination required shall be determined by the Office of Licensing or Agency based on the nature of the presenting concerns.

(ii) Determination of need and type of examination will be made collaboratively involving the licensor, Agency or Office of Licensing administration, and clinical staff from within the Department of Human Services or Agency.

(iii) The prospective or current foster parent shall authorize the release of examination information to the Office of Licensing or Agency, including a signed report that assesses the ability of the individual to parent vulnerable children full time as a foster parent.

(c) Medical and mental health examinations shall be paid for by the prospective or current foster parent.

(d) The Agency or the Office of Licensing may, in the exercise of their professional judgment, deny or revoke an application or license if a medical reference report or other examination reveals reasonable concerns regarding an applicant's ability to provide foster care services, or if the required examination is not completed and provided to the Agency of the Office of Licensing.

(3) References:

(a) At the time of initial application, the applicant(s) shall submit the names, mailing address, email addresses, and phone numbers of no more than four individuals who will be contacted by the agency or the Office of Licensing and asked to provide a reference letter. These individuals shall be knowledgeable regarding the ability of the applicant(s) to provide a safe environment and to nurture foster children. No more than one reference may be a relative of the applicant. Only the four original reference individuals submitted will be considered.

(b) A minimum of three out of the four individuals must submit reference letters directly to the Agency or the Office of Licensing. A minimum of three reference letters received must be acceptable to the Agency or the Office of Licensing.

(c) The Agency or the Office of Licensing may, in the exercise of their professional judgment, deny an application if a reference reveals reasonable concerns regarding an applicant's ability to provide foster care services.

(4) Background Screening:

(a) Each applicant and all persons 18 years of age or older residing in the home shall submit a background screening application as part of the initial application. A background screening application is also required at the point any new individual over the age of 18 moves into the home. A foster parent shall not be licensed or certified unless the background screening applications of all persons 18 years of age or older who reside in the home are approved by the Office of Licensing in compliance with Section 62A-2-120 and R501-14.

(b) A background screening approval shall not be transferred from one Agency to another Agency.

(c) A foster parent shall not permit any person without an Office approved background screening clearance to have unsupervised direct access to a foster child unless:

(i) the person is a provider of "Incidental Care" as defined in 62A-2-120 and 501-12-3-15; or

(ii) the person's access is driven by child-centered normalcy needs that are guided by reasonable and prudent parenting as described in 62A-4a-211 through 212 and is not a foster parent-centered delegation of parental responsibility.

(d) A foster parent shall immediately notify the Office of Licensing or Agency if any person in the home is charged with or under investigation for any criminal offense or allegation of abuse, neglect, or exploitation of any child or vulnerable adult.

(e) Pursuant to section 62A-4a-1003(2), the Office of Licensing shall review and evaluate information from the Division of Child and Family Services Management Information System for the purpose of licensing and for the purpose of monitoring all individuals who reside in the foster parents' home. When, in the professional judgment of the Office of Licensing, a supported or substantiated finding against any individual who resides in the foster parents' home may pose a risk of harm to a foster child, the Office of Licensing may issue a safety plan or a sanction on the license of the foster parent or Agency.

(5) Home Study:

(a) The Office of Licensing or Agency is not required to perform a home study until after the background screening applications of all persons 18 years of age or older who reside in the home are approved.

(b) A narrative home study shall be completed by an adoption service provider as described in 78B-6-128(2)(c) and may be used for adoptive purposes.

(c) The home study shall include, but not be limited to:

(i) background and current information of each caregiver, including but not limited to information regarding family of origin, discipline used by parents, family history or presence of abuse or neglect, use of substances, education, employment, relationship with extended family, mental and physical health history based on doctor's examination completed within two years, stress reduction techniques, values, and interests;

(ii) marital relationship information, including but not limited to areas of conflict, communication, how problems are resolved, and how responsibilities are shared;

(iii) family demographical information, including but not limited to ages, ethnicity, languages spoken, dates of birth, gender, relationships, and history of adoption;

(iv) family characteristics including but not limited to functioning, cohesion, interests, work/life balance, family activities, ethnicity, culture, and values;

(v) child care and supervision arrangements;

(vi) written description of in-person interviews conducted with the applicants, applicants' children, and others residing in the home;

(vii) written description of the physical characteristics of the home, including neighborhood and school information, sufficient space and facilities to meet the needs of children and ensure their basic health and safety;

(viii) motivation for doing foster care, including assessment of interest in adoption vs. foster care only;

(ix) assessment of understanding and expectations of children in foster care;

(x) previous experience caring for children;

(xi) current and planned methods of discipline, use of privileges, family rules;

(xii) previous experience with children with special needs or trauma histories;

(xiii) description of the reference response regarding the character and suitability of the applicants;

(xiv) assessment of informal and formal supports;

(xv) assessment of willingness and ability to access support and resources;

(xvi) finances, including bankruptcies;

(xvii) applicant strengths and weaknesses;

(xviii) applicant history of any and all previous applications, home studies, or licenses/certifications related to providing foster care;

(xix) assessment of ability to actively engage in achieving the custodial agency's identified outcomes for foster children;

and

(xx) recommendations for the applicant's suitability for placement of children, to include: child matching, capacity, training, and support needs; and

(xxi) query results of the home address on the Utah Sex Offender Registry and address how potential threats will be mitigated.

(6) Foster Parent Annual Renewal Application: A foster parent who wishes to remain authorized to provide foster care services shall submit renewal paper work at least 30 days and no longer than 90 days prior to license or certification expiration. Background screening approvals and renewal activities have to be completed prior to license expiration. Foster parent shall provide or otherwise submit to the following annually:

(a) Renewal application which addresses all updates and changes to the initial application. Requirements to include:

(i) acknowledgment responsibility to maintain confidentiality for current and past clients;

(ii) acknowledgement of Office of Licensing Provider Code of Conduct;

(iii) verification that the applicant(s) have read and understand R501-12 Foster Care Services;

(iv) health statement including new medical reference form if there has been significant health changes over the past year;

(v) proof of current CPR/first aid certification;

(vi) background screening applications for each adult 18 years of age or older residing in the home or any substitute care providers not identified as incidental caregivers. A foster parent shall not be licensed or certified unless the background screening applications of all persons 18 years of age or older who reside in the home are approved by the Office of Licensing in compliance with Section 62A-2-120 and R501-14;

(vii) financial statement outlining changes to household income, job status, and expenses, including any foreclosures and/or bankruptcies.

(A) The Office of Licensing or Agency may consider poverty guidelines when evaluating the dependence of a foster parent on foster payments for their own expenses.

(B) The Office of Licensing or Agency may require supporting documentation of household income and expenses in order to verify the foster parent will not be dependent on foster care reimbursement for their own expenses.

(b) The home study shall be updated in writing annually after a home visit and safety inspection and shall be completed by an adoptions service provider as described in 78B-6-128(2)(c) as a means to assess the family's experience over the past year as a foster family and shall include:

(i) any changes to required home study information; and

(ii) interviews with any members of the home.

(7) Reapplication: A previously licensed or certified foster home is subject to the same requirements as an initial application, with the following exceptions:

(a) Each applicant shall disclose all previous foster care licenses and certifications, including those outside the State of Utah.

(b) Previously licensed homes shall request a written reference from the DCFS region, or out-of-state equivalent, where they last held a foster care license to be sent directly to the Office of Licensing or Agency. Previously certified homes shall request a written reference letter from the last agency where they were certified, and every agency they have been certified by within the past 3 years, to be sent directly to the Office of Licensing or Agency.

(c) Each applicant shall sign releases of information for any agency where they previously provided certified or licensed foster care.

(d) Reapplication of previously licensed or certified homes may utilize an update of the previous home study as long as the home study was created by the same agency currently relicensing or recertifying the home.

(e) If 12 months or less since lapse of any license or certification, non-agency references will be waived.

(f) If 12 months or less since lapse of any license or certification, physician's statement shall be waived. Personal Health statement is still required.

(g) If 24 months or less since lapse of any license or certification, initial training requirements will be waived as long as there is not a change in licensing/certifying agency. A change in agency requires new initial training.

(8) Approval or Denial:

(a) The decision to approve or deny the applicant to provide foster services shall be made on the basis of facts, health and safety factors, and the professional judgment of the Agency or the Office of Licensing.

(b) No person may be denied a foster care license or certification on the basis of the religion, race, color, or national origin of any individual.

(c) The approval of a license or certification is not a guarantee that a foster child will be placed or retained in the foster parent's home.

(d) Foster parents shall not be licensed or certified to provide foster or respite care services in the same home in which they are providing child care or another licensed or certified Department of Health or Department of Human Services program.

(e) In order to promote health and safety, the Office of Licensing or Agency may issue a license or certification that includes additional restrictions unique to the circumstances of the license.

(f) If a license or certification is denied, an applicant may not reapply for a minimum of 90 days from the date of denial.

(9) Initial license expiration dates must coincide with background screening clearance dates by:

(i) allowing the applicants to resubmit clearances in order to receive a full year's license or;

(ii) setting the initial license expiration date no more than one year from the date of the earliest initial completed background clearance.

R501-12-5. Foster Parent Requirements.

(1) Foster parents shall:

(a) be in good health and emotionally stable;

(b) be able to provide for the physical, social, mental health, and emotional needs of the foster child;

(c) be responsible persons who are 21 years of age or older;

(d) provide documentation of legal residential status;

(e) have the ability to help the foster child thrive;

(f) not be dependent on foster care reimbursement for their own expenses, outside of those expenses directly associated with providing foster care services;

(g) provide updated medical, social, financial, or other family information when requested by the Office of Licensing or Agency;

(h) follow all federal, state and local laws and ordinances; and

(i) not engage in conduct that poses a substantial risk of harm to any person or that is illegal or grounds for denying a license under 62A-2-112.

(2) DHS employees shall not be licensed or certified as foster parents for children in the custody of their respective Divisions, unless they qualify as a "relative" to the child in accordance with Utah Code Ann. Section 78A-6-307. An employee may provide foster services for children in the custody of a different Division only with the prior written approval of both Divisions' Directors in accordance with DHS conflict of interest policy.

(3) Foster parents shall cooperate with the Office of

Licensing, Agency, courts, and law enforcement officials.

(4) Each foster parent shall read, acknowledge, and comply with the Office of Licensing Provider Code of Conduct.

(a) A foster parent shall not abuse, neglect, or maltreat a child through any act or omission.

(b) A foster parent shall not encourage or fail to deter the acts or omissions of another that abuse, neglect, or maltreat a child.

(5) No more than two children under the age of two, including children who are members of the household and foster children, shall reside in a foster home.

(6) No more than two non-ambulatory children, including children who are members of the household and foster children, shall reside in a foster home.

(7) Except as provided by Section 62A-2-116.5 and R501-12-5-8, no more than four foster children shall reside in a licensed foster home and no more than three children shall reside in a certified foster home.

(i) The capacity limits of foster homes may be exceeded under the conditions outlined in 62A-2-116.5. Foster homes, as defined in 62A-2-101(19), shall remain in continual compliance with all foster care rules established by the Office of Licensing.

(8) Foster parents may provide respite care in their home as long as they remain in compliance with licensing rules in regards to each child placed for foster and respite care. Foster parents may provide respite care when the additional foster child(ren) exceed their licensed capacity only as follows:

(a) Respite care is limited to a maximum of 10 days within any 30 day period.

(i) For foster children who are not siblings, each day of respite for each individual child counts as one day of respite care.

(ii) For foster children who are siblings, each day of respite for a sibling group receiving respite in the same foster home at the same time counts as one day of respite care.

(b) The foster home must have no licensing sanctions currently imposed, including corrective action plans or conditional licenses.

(c) Total number of foster and respite children in a home at one time shall not exceed six unless all but one or two of the children are part of a single sibling group.

(9) A foster parent shall report all major changes or events to the Office of Licensing or Agency within one business day.

(a) A major change in the lives of foster parents includes, but is not limited to:

(i) the death or serious illness of a member of the foster parent's household;

(ii) change in marital status;

(iii) loss of employment;

(iv) change in household composition, such as the birth or adoption of a child, addition of household members, or tenants;

(v) allegations of abuse or neglect of any child or vulnerable adult against any member of the foster parent's household; or

(vi) anything defined as a "critical incident" in R501-1.

(10) The Office of Licensing or Agency may evaluate major changes to determine necessary actions which may include an update to the home study; implementation of a safety plan; amendments to the license certification; request for new references or examinations; or agency action in the form of a penalty.

(11) A foster parent shall report any potential change in address in advance to the Office or Agency.

(a) Licenses and certifications are site specific.

(b) An adjoining dwelling with a separate address that is not accessible from the foster home is not considered part of the foster home site.

(c) A foster child shall not be moved into a home that is not licensed or certified to provide foster care except as allowed in R501-1 provisions for relocation of a license.

(d) Foster providers must reside at the license location.

(e) In the event of a separation or divorce, a provider who no longer resides at the licensed location shall be removed from the license certificate and must apply for a separate initial license and meet all licensing requirements in the new residence in order to become licensed at the new location.

(i) The provider remaining in the home shall demonstrate the ability to continue to meet the financial and all other foster care licensure requirements and an update to the home study shall be completed.

R501-12-6. Physical Aspects of Home.

(1) All indoor and outdoor areas of the home shall be maintained to ensure a safe physical environment.

(2) The home shall be free from health and fire hazards.

(3) The home shall have a working smoke detector and a working carbon monoxide detector on each separated level.

(4) The home shall have at least one approved, fully charged fire extinguisher readily accessible to the main living area. An approved fire extinguisher shall be a minimum of 2A:10BC five point, rated multi-purpose, dry chemical fire extinguisher.

(5) Each bathroom shall have a lock sufficient to preserve the privacy of the occupant.

(6) The home shall have sufficient bedroom space to provide for the following:

(a) a bedroom shall not be shared by children of the opposite sex unless each child sharing the room is under two years of age;

(b) a foster parent's bedroom may only be shared with foster children who are under the age of two years;

(c) a foster parent's bedroom shall not be considered in calculating the allowable bedroom space for foster children;

(d) a foster child shall not share a bedroom with other adults in the home;

(e) each child in foster care must have an individual bed/crib, mattress, and linens that meet the child's needs and are comparable to other similarly utilized sleeping accommodations in the household;

(f) a minimum of 40 square feet per child, excluding adjoining bathrooms and storage space;

(g) no more than four children are housed in a single bedroom that houses at least one foster child;

(h) bedrooms used for foster children shall be comparable to other similarly utilized bedrooms in the home, including but not limited to access, location, space, finishings, and furnishings; and

(i) bedrooms used by foster children shall have a source of natural light and shall be equipped with a screened window that opens and provides egress to the outdoors.

(7) Closet or dresser space shall be provided within the bedroom for the foster child's personal possessions and for a reasonable degree of privacy.

(8) The home shall have space or access to common areas for recreational activities.

(9) Foster parents shall offer nutritious, balanced meals that meet each foster child's individual needs.

(10) The home shall be maintained at a reasonable temperature when occupied by a foster child. The age and needs of the child and other residents may be considered. Generally, reasonable temperatures range between 65-82 degrees Fahrenheit.

(11) The home shall have a working refrigerator, cooking appliances, and functional indoor plumbing.

(12) Hazards on the property shall be abated. These areas include but are not limited to fall hazards of 3 feet or greater (steep grades, cliffs, open pits, window wells, stairwells, elevated porches, retaining walls, etc), drowning hazards

(swimming pools, hot tubs, water features, ponds or streams, etc), burn hazards (fireplaces, candles, radiators, water, etc), unstable heavy items (televisions, bookshelves, etc), high voltage boosters, or dangerous traffic conditions. These hazards shall be mitigated through the use of protective hardware, fences, banisters, railings, grates, natural barriers, or other licensor approved methods.

(13) The home and its contents shall be maintained in a clean and safe condition. Food, clothing, supplies, furniture, and equipment shall be of sufficient quantity, variety, and quality to meet the foster child(ren)'s needs.

(14) Exits: There shall be at least two exits on each accessible floor of the home. Each exit shall be accessible and adequately sized for emergency personnel. Multiple-level homes shall have a functional, automatic fire suppression system or an escape ladder, stairway, or other exterior egress to ground level accessible from each of the upper levels.

(15) Foster parents shall have and use child safety devices appropriate to the needs of the foster child, including but not limited to safety gates and electrical outlet covers.

(16) Home address is clearly visible and location is accessible.

(17) Water and sewage disposal systems other than public systems must be approved by the appropriate authorities.

(18) Swimming pools will be secured in order to prevent unsupervised access and comply with applicable community ordinances.

(19) Foster providers with placements made in the home shall ensure that all physical aspects of the home outlined in this section are compliant at all times.

(20) Foster providers with no placements made in the home shall demonstrate the ability to comply upon request.

R501-12-7. Safety.

(1) A foster parent shall not smoke any substance in the foster home or when a foster child is present. All smoking materials shall be inaccessible to foster children.

(2) Foster parents shall provide training to children regarding response to fire warnings and other instructions for life safety upon the initial placement of a child and annually thereafter. This includes an evacuation plan that also anticipates the evacuation of a child who is non-ambulatory or who has a disability.

(3) The home shall have a telephone on-site during all times that a foster child is present. This may be a land line or a mobile phone, but must be able to receive and make calls and be recognized by the 911 system. Telephone numbers for emergency assistance and the address of the home shall be posted next to the telephone or in a central location visible to the child.

(4) The home shall have a fully supplied first aid kit such as recommended by the American Red Cross.

(5) Foster parents shall inform the Office of Licensing or the Agency if they possess or use a firearm or other weapon.

(6) Firearms, ammunition, and other weapons shall be inaccessible to children. Foster parents shall not provide a weapon to a child or permit a child to possess a weapon except as outlined in Sections 76-10-509 through 76-10-509.7.

(a) Foster parents do not have the authority of a parent or guardian under Section 76-10-509.

(b) Firearms may be stored together with ammunition only in a locked container commercially manufactured for the secure storage of firearms.

(c) Firearms not stored in a locked container commercially manufactured for the secure storage of firearms shall be unloaded and securely locked. Ammunition for these firearms shall be kept securely locked in a separate location.

(i) The locked storage for firearms and ammunition shall not be accessible through the same keys or combinations.

(ii) Keys and combinations utilized to open locked storage for firearms and ammunition shall not be accessible to a foster child.

(d) Firearms may be stored in display cases only if unloaded and rendered inoperable through the effective use of trigger locks, bolts removed, or other disabling methods.

(e) This does not restrict an individual's rights regarding concealed weapons permits pursuant to UC 53-5-704.

(7) Foster parents who have alcoholic beverages in their home shall ensure that the beverages are closely monitored and inaccessible to children at all times.

(8) Hazardous materials shall be stored securely and remain locked when not in active use, and closely monitored while in active use.

(i) Hazardous materials shall be stored in the manufacturer's original packaging together with the manufacturer's directions and warnings; or

(ii) a container that complies with the manufacturer's directions and warnings and is clearly labeled with the contents, manufacturer's directions and warnings.

(9) Flammable substances, including but not limited to gasoline and kerosene, shall be locked in a ventilated storage area separate from living areas. This requirement does not include substances contained within the storage tanks of equipment, including but not limited to automobiles, lawnmowers, ATV's, boats and snow blowers.

(10) General, common use, household items (excluding those identified as hazardous materials) shall be stored responsibly in consideration of the age, behavior, history, and cognitive and physical ability of each foster child in the home. The foster parent is responsible for consulting with the caseworker and child and family team regarding individual restrictions. General, common use, household items include, but are not limited to the following:

(a) oral hygiene products;
(b) hair and cosmetic products;
(c) facial and skin hygiene products;
(d) cutlery;
(e) laundry and dish detergent (excluding concentrated pods);
(f) cleaning wipes;
(g) rubbing alcohol;
(h) nail polish remover;
(i) laundry stain remover;
(j) propane attached to a grill;
(k) air fresheners and deodorizers; and
(l) spray furniture polish.

(11) Foster parents shall comply with all laws regarding the care and number of animals on their property.

(12) Foster parents shall ensure that the foster child has the safety equipment, supervision, and training necessary for the child to safely participate in an activity that has an inherent risk of bodily harm, injury, or death.

(a) These activities include but are not limited to participation in rock climbing, swimming, hunting, target practice, camping, hiking, use of recreational vehicles, and sports.

(b) Every precaution must be taken to participate in the respective activity as safely as possible. This includes, but is not limited to: wearing DOT/Snell approved helmets when riding off-highway vehicles (OHV), completing OHV education, personal watercraft or boating education, wearing Coast Guard approved lifejackets, and completing hunter's education.

(c) Foster parents shall follow any applicable statute pertaining to minors operating OHV's, personal watercraft, boats, and firearms.

(d) Foster parents shall not permit a foster child any access to firearms without first obtaining the written approval of the

child's caseworker.

(13) Foster parents shall comply with any written safety plan required by the Office of Licensing or Agency which establishes additional safety requirements to protect the child from hazardous conditions on the foster parent's property. A safety plan shall not waive any requirement of this R501-12.

(14) Verification of compliance with the Utah Department of Health's recommended immunization schedules shall be provided for each individual residing in the home who is not a foster child.

(a) Recommended influenza immunizations are optional unless a foster child in the home has an immunocompromised condition.

(b) If compliance of all residents in the home cannot be verified, the license shall be restricted to only placements of children who are over the age of 2 months and who are immunized in accordance with the Utah Department of Health's recommendations for their age.

(i) Foster parents must disclose if any individual residing in the home is not in compliance with the Utah Department of Health's recommended immunization schedules to the child placing agency prior to accepting a placement.

(ii) Newborn infants must reach the required age and receive their first dose of required vaccinations to be considered appropriately immunized for their age.

(15) Foster parents shall not accept the placement of a child into their home in violation of any license conditions.

R501-12-8. Emergency Plans.

(1) Foster parents shall have a written plan of action for emergencies and disaster to include the following:

(a) evacuation with a pre-arranged site for relocation;

(b) transportation and relocation of foster children when necessary;

(c) supervision of foster children after evacuation or relocation; and

(d) notification of appropriate authorities.

(2) Foster parents shall have a written plan for medical emergencies, including arrangements for medical transportation, treatment and care.

(3) Foster parents shall immediately report any serious illness, injury, or death of a foster child to the appropriate Division or Agency and the Office of Licensing.

R501-12-9. Infectious Disease.

(1) In the event of an infectious or communicable disease outbreak, foster parents shall follow specific instructions given by the local health department.

R501-12-10. Medication and Medical Emergencies.

(1) Foster parents shall ensure that prescribed medication is administered according to the written directions of the foster child's health provider.

(a) Foster parents shall ensure that the foster child actually consumes the medication.

(b) Foster parents shall report any severe or unexpected side effects or reactions to the foster child's health provider.

(2) Medication shall only be given to the foster child for whom it was prescribed.

(3) Medication shall not be discontinued without the approval of the foster child's health provider.

(4) Non-prescription medications may be administered by foster parents according to manufacturer's instructions unless otherwise directed by the child's health provider.

(5) Medications shall not be administered or carried by the foster child unless approved in writing by the child's health provider.

(6) Medication shall not be used for behavior management or restraint unless prescribed in writing by the foster child's health provider and after notification to the Division or Agency worker.

(7) Medication shall remain locked at all times they are not in immediate, active use.

(a) Foster parents shall not leave medications in active use unattended.

(b) If a foster child requires immediate access to the child's medication, including but not limited to a child with asthma or diabetes, foster parents may carry a single dose of medication for active use on the foster parent's person.

(8) Medications shall remain in the original pharmacy or manufacturer's packaging.

(a) Foster parents shall not repackage medications or divide doses into alternative containers.

(b) Foster parents should partner with the pharmacy regarding any needed divisions of medication.

(9) Foster parents shall promptly take a foster child who has a medical emergency, who is sick, or who is injured, for an assessment by a medical practitioner.

(10) Foster parents shall comply with the treatment orders of the foster child's health provider.

(11) When a foster child is no longer placed in the foster parent's home, all unused medications shall be transferred to the caseworker or Agency.

R501-12-11. Transportation.

(1) Drivers of vehicles carrying foster child(ren) shall have a valid, current driver's license and valid, current vehicle insurance, and comply with all traffic regulations.

(2) Transportation of foster children shall be provided in an enclosed, registered vehicle that has functional seatbelts. Foster parents shall ensure that foster children properly utilize seatbelts and other safety equipment, including age and size appropriate car/booster seats. Recreational vehicles, including motorcycles, shall not be used for transportation.

(3) Emergency contact information, including but not limited to caseworker and Agency information, shall be provided and accessible in each vehicle used to transport foster children.

(4) Each vehicle shall be equipped with a first aid kit.

R501-12-12. Behavior Management.

(1) Foster parents shall provide supervision appropriate to the age and needs of each foster child.

(2) Foster parents shall not use, nor permit the use of corporal punishment including but not limited to physical, mechanical, or chemical restraint, physical force, infliction of bodily harm or pain, deprivation of meals, rest or visits with family, or humiliating or frightening methods to discipline, coerce, punish, or retaliate against a child.

(3) Foster parents shall only use behavior management techniques appropriate for the child's age, behavior, needs, developmental level, and past experiences.

(4) Foster parents shall use the least restrictive method of behavior management available to control a situation.

(5) Foster parents shall only use behavior management techniques that are positive, consistent, and that promote self-control, self-esteem, and independence.

(6) Foster parents shall not use physical work assignments or activities that inflict pain as behavior management techniques. A physical work assignment or activity that results in minor sore muscles does not violate this subsection.

(7) Foster parents shall not abuse, threaten, ridicule, intimidate, or degrade a child.

(8) Foster parents shall not deny a child medical care, nutrition, hydration, clothing, bedding, sleep, or toilet and bathing facilities.

(9) Passive physical restraint shall be applied only by individuals who are trained in accordance with the non-violent

intervention strategies of a state, regional, or nationally recognized behavior management program. Documentation of passive physical restraint training certification shall be submitted to the Office of Licensing or Agency with the initial and each renewal application.

R501-12-13. Child's Rights in Foster Care.

(1) Foster parents shall not violate a foster child's right to:

(a) eat nutritious meals with the family;

(b) eat the same food as the family, except when the child is provided with alternative food ordered by the child's physician;

(c) participate in family and school activities;

(d) privacy, including but not limited to maintaining the confidentiality of information about the child and not retaining copies of the child's records once the child is no longer placed there;

(e) be informed of the child's responsibilities, including household tasks, privileges, and rules of conduct;

(f) be protected from discrimination based upon the child's race, color, national origin, culture, religion, sex, sexual orientation, age, political affiliation, or disability;

(g) be protected from harm or acts of violence, including but not limited to protection from physical, verbal, sexual, or emotional abuse, neglect, maltreatment, exploitation, or inhumane treatment;

(h) be treated with courtesy and dignity, including but not limited to reasonable personal privacy and self-expression;

(i) communicate with and visit the child's family, attorney, physician, and clergy, except as restricted by court order;

(j) have clean clothes and personal hygiene needs met;

(k) participate in their own cultural traditions; and

(l) receive prompt medical care when sick or injured.

(m) be free from media content that is likely harmful considering the child's age, behavior, needs, developmental level, and past experiences.

R501-12-14. Additional Child Placing Agency Considerations.

(1) The Agency shall comply with all Office of Licensing rules that relate to their Child Placing Foster license.

(2) The Agency shall comply with Background Screening Rules, R501-14.

(3) The Agency shall recruit, train, certify, and supervise foster parents.

(4) The Agency shall not certify a home which is licensed or certified or applying to be licensed or certified with any other Agency.

(5) Agency owners, directors, managers, and members of the governing body shall not be certified to provide foster care services for children placed with or by the Agency.

(6) The Agency shall verify completion of all of a foster parent's training requirements, including but not limited to CPR/First Aid training and training regarding the requirements of R501-12, prior to issuing an initial or renewal certification and prior to placing a foster child in the home.

(7) The Agency shall train each foster parent regarding the Agency's policies and procedures prior to placing a foster child in the home.

(8) The Agency shall provide the Department with identifying information of all certified foster homes via the DHS/DCFS Provider website located on the Human Services DHS/DCFS Employee website and shall report their list of homes annually and upon request.

(9) The Agency shall maintain documentation of the initial and annual home studies of the foster parent's home.

(10) The Agency must have a written agreement with the foster parent(s) which includes:

(a) the expectations and responsibilities of the Agency, staff, foster parents and limitations of authority;

(b) the services to be provided to and by the foster parent;

(c) the provision of medical, remedial, treatment, and other specialized services to the child;

(d) the financial arrangements for children placed in the home;

(e) the authority foster parents can exercise over children placed in the home; and

(f) actions which require staff or DHS authorizations.

(11) The Agency shall monitor and keep detailed documentation regarding foster parents' compliance with R501-12. (12) The Agency shall document all announced and unannounced visits to the home, including an initial safety inspection and a minimum of one unannounced safety inspection annually in addition to any announced or unannounced visits to the home.

(a) Each safety inspection completed by the Agency shall be documented on the DHS Home Inspection Checklist, or a similar form that contains all of the DHS form contents.

(b) The Agency shall coordinate with the Office when checklist items are not compliant to determine which actions should be taken.

(c) The Agency shall maintain all completed checklists and compliance monitoring documentation in the provider files.

(13) The Agency shall investigate all complaints and alleged violations of this rule. The Agency shall provide documentation to the Office of Licensing of any investigations into complaints and alleged violations of R501-12.

(14) The Agency shall provide written notification to each foster parent that informs the foster parent of the rights and responsibilities assumed by a foster parent who signs as the responsible adult for a foster child to receive a driver license, as described in Section 53-3-211. The Agency shall maintain documentation in the foster parent's file, signed and dated by the foster parent, acknowledging receipt of a copy of this written notification.

(15) The Agency shall have and comply with written policies and procedures regarding the denial, suspension, and revocation of a foster parent's certification to provide foster care services, which must include written notification of the foster parent's appeal process.

(16) The Agency shall provide documentation to the Office of Licensing and DCFS of any denial, suspension, revocation or other agency-initiated termination of a foster parent's certification. Documentation shall be provided within two weeks of the action.

(17) The Agency shall not grant any variance to this R501-12 or any other regulation without the prior written consent of the Director of the Office of Licensing.

(18) The Agency shall certify foster parent(s) for a specific time period that does not exceed one year prior to placing any foster children in the home. Documentation of certification dates shall be made available to the Office of Licensing as requested.

(19) The Agency shall provide ongoing supervision of certified foster parents to ensure the quality of care they provide.

(20) The Agency shall participate with the child's legal guardian and the foster home to obtain, coordinate, and supervise care and services necessary to meet the needs of each child in their care.

R501-12-15. Additional DCFS Kinship and Specified Home Licensure Considerations.

(1) An applicant may be licensed for the placement of a specific foster child or sibling group.

(2) The home study shall be conducted by an approved DCFS kinship home study specialist or by the Office of Licensing.

(3) A minimum of two reference letters received must be

acceptable to the Agency or the Office of Licensing.

(4) The home study safety inspection and background screening approvals shall be successfully completed prior to the placement of the child in the home.

(5) The Office shall grant a kinship/specific probationary license upon receipt and approval of a completed kinship/specific packet submitted by DCFS.

(a) The kinship/specific probationary license shall be issued for no more than five months until full compliance can be achieved in order to receive an initial license for the remainder of the licensing year.

(b) An initial license may be issued at any time that compliance with probationary terms is met.

(c) A probationary license whose terms are not met prior to the expiration of that license shall be extended in corrective or penalty status.

(d) Initial license expiration dates shall be determined per R501-12-4-9.

(6) A kinship/specific home license may not be utilized for the placement of any foster child other than the child designated on the license, and may not be utilized for respite care.

(7) If a kinship/specific home desires to provide general foster care services, they will close their specific license and submit to the requirements of a general foster care license.

(8) The Office of Licensing recognizes the importance of preserving family and cultural connections for children in foster care. In accordance with 62A-2-117.5 and the Indian Child Welfare Act, 25 U.S.C. Secs. 1901-1963, the Office of Licensing may issue a waiver of any rule in regards to a kinship/specific home that does not impact the health and safety of the specific child or sibling group. This requires prior written approval by the Director of the Office of Licensing.

R501-12-16. Compliance.

Any active license on the effective date of this rule shall be given 30 days to achieve compliance with this rule.

KEY: licensing, human services, foster care, certified foster care
July 1, 2018 62A-2-101 et seq.
Notice of Continuation October 4, 2017

R512. Human Services, Child and Family Services.
R512-76. Expungement of DCFS Allegations.
R512-76-1. Purpose and Authority.

(1) The purpose of this rule is to define the criteria for the expungement of an allegation associated with an individual who is identified as a perpetrator or alleged perpetrator in the Management Information System (MIS) and the Licensing Information System (LIS).

(2) This rule is authorized by Sections 62A-4a-102 and 62A-4a-1008.

R512-76-2. Definitions.

(1) "CPS" means Child Protective Services.

(2) "DCFS" means the Division of Child and Family Services.

(3) "Expungement" means to seal an allegation associated with an individual identified as a perpetrator or alleged perpetrator that meets the criteria for expungement.

(4) "LIS" means the Licensing Information System as described in Section 62A-4a-1006.

(5) "MIS" means the Management Information System as described in Section 62A-4a-1003.

R512-76-3. Internal Process.

(1) An individual may submit a written request to expunge an allegation in which they are identified as a perpetrator or alleged perpetrator in the MIS or LIS. If the perpetrator or alleged perpetrator is a minor at the time expungement is sought, the perpetrator or alleged perpetrator's parent or guardian may submit the written request to expunge the allegation,

(2) Eligibility is based on the meeting of the criteria for expungement as outlined in the Criteria for Expungement subsection of this rule.

(3) If the individual does not meet the criteria for expungement, the request will be denied. The individual shall wait at least one year before submitting the same request.

(4) Decisions to approve or deny expungements are governed by the criteria for expungement and are not at the discretion of the division.

R512-76-4. Criteria for Expungement.

(1) Automatic Expungement after one year:

(a) All allegation types with a finding of Without Merit or Unsubstantiated by the court will be automatically expunged if:

(i) One year has passed since the case closure date with no subsequent ongoing case or removal; and

(ii) One year has passed since the case closure date with no subsequent CPS case, including unaccepted referrals.

(2) Automatic Expungement after five years:

(a) Allegations of dependency and educational neglect will be automatically expunged after five years if:

(i) The original CPS case did not result in an ongoing case or removal; and

(ii) Five years have passed since the case closure date with no subsequent CPS case, including unaccepted referrals.

(iii) Not eligible to make the request until a minimum of five years after the case closure date.

(3) Expungement Upon Request after five years:

(a) After five years have passed since the case closure date, an individual may request an expungement on the following Unsupported General Findings:

(i) Child Endangerment;
(ii) Dealing in Material Harmful to a Child;
(iii) Dental Neglect;
(iv) Dependency;
(v) Domestic Violence Related Child Abuse;
(vi) Educational Neglect;
(vii) Emotional Abuse;
(viii) Emotional Maltreatment;
(ix) Environmental Neglect;
(x) Failure to Protect;
(xi) Failure to Thrive;
(xii) Medical Neglect;
(xiii) Munchhausen Syndrome by Proxy;
(xiv) Non-Supervision;
(xv) Pediatric Condition Falsification;
(xvi) Physical Abuse;
(xvii) Physical Health;
(xviii) Physical Neglect;
(xix) Psychological Neglect;
(xx) Sibling or Child at Risk; and
(xxi) Unknown.

(b) The expungement will be approved only if:

(i) The original CPS case did not result in an ongoing case or removal;

(ii) Five years have passed since the case closure date with no subsequent CPS case, including unaccepted referrals; and

(iii) There was no criminal conviction for the same incident.

(c) Not eligible to make the request until a minimum of five years after the case closure date.

(4) Expungement Upon Request after 10 years:

(a) After ten years have passed since the case closure date, an individual may request an expungement on the following Supported General Findings:

(i) Child Endangerment;
(ii) Dealing in Material Harmful to a Child;
(iii) Dental Neglect;
(iv) Dependency;
(v) Domestic Violence Related Child Abuse;
(vi) Educational Neglect;
(vii) Emotional Abuse;
(viii) Emotional Maltreatment;
(ix) Environmental Neglect;
(x) Failure to Protect;
(xi) Failure to Thrive;
(xii) Fetal Exposure to Alcohol or other Harmful Substances;
(xiii) Medical Neglect;
(xiv) Munchhausen Syndrome by Proxy;
(xv) Non-Supervision;
(xvi) Pediatric Condition Falsification;
(xvii) Physical Abuse;
(xviii) Physical Health;
(xix) Physical Neglect;
(xx) Psychological Neglect;
(xxi) Sibling or Child at Risk; and
(xxii) Unknown.

(b) The expungement will only be approved if:

(i) The original CPS case did not result in an ongoing case or removal;

(ii) Ten years have passed since the case closure date with no subsequent CPS case, including unaccepted referrals; and

(iii) There was no criminal conviction for the same incident.

(c) Not eligible to make the request until a minimum of ten years after the case closure date.

(5) Allegations Never Eligible for Expungement:

(a) The following Supported or Unsupported allegations designated as Chronic and/or Severe and/or there was a criminal conviction for the same incident are never eligible for expungement:

(i) Abandonment;
(ii) Baby Doe;
(iii) Child Endangerment;
(iv) Chronic Abuse;
(v) Chronic Neglect;
(vi) Court Ordered;

(vii) Dealing in Material Harmful to a Child;
(viii) Dependency;
(ix) Domestic Violence Related Child Abuse;
(x) Educational Neglect;
(xi) Emotional Abuse;
(xii) Environmental Neglect;
(xiii) Failure to Protect;
(xiv) Failure to Thrive;
(xv) Fetal Addiction to alcohol or other substance;
(xvi) Fetal Exposure to Alcohol or other Harmful Substances;
(xvii) Juvenile Perpetrator- significant or non-significant risk of Sexual and/or Severe Physical Abuse;
(xviii) Labor Trafficking;
(xix) Lewdness;
(xx) Medical Neglect;
(xxi) Medical neglect resulting in death/disability/serious illness;
(xxii) Non-Supervision;
(xxiii) Pediatric Condition Falsification;
(xxiv) Physical Abuse;
(xxv) Physical Neglect;
(xxvi) Ritual Abuse;
(xxvii) Safe Relinquishment of a Newborn;
(xxviii) Severe Abuse;
(xxix) Severe Neglect;
(xxx) Sexual Abuse;
(xxxi) Sexual Exploitation;
(xxxii) Sexual Trafficking; and
(xxxiii) Sibling or Child at Risk.
(b) Any allegations with the following findings are never eligible for expungement:
(i) False Report;
(ii) Unable to Locate;
(iii) Unable to Complete; and
(iv) Substantiated by the Juvenile Court.

KEY: child abuse, expungement of records
June 21, 2018 **62A-4a-102**
62A-4a-1008

R590. Insurance, Administration.
R590-247. Universal Health Insurance Application Rule.
R590-247-1. Authority.

This rule is promulgated pursuant to Sections 31A-22-635 and 31A-30-102 which direct the commissioner to create a universal health insurance application.

R590-247-2. Purpose and Scope.

(1) The purpose of this rule is to establish universal applications for all insurers offering a health benefit plan in Utah outside the Federally Facilitated Marketplace.

(2) This rule applies to:

(a) all individual health benefit plans in Utah outside the Federally Facilitated Marketplace; and

(b) all small employer health benefit plans.

R590-247-3. General Instructions.

(1) Use of the Utah Individual Health Insurance Application and the Utah Small Employer Health Insurance Application by insurers or by health insurance producers is mandatory.

(2) The Utah Individual Health Insurance Application and Utah Small Employer Health Insurance Application must be used without insurer identifying logos or addresses to facilitate multiple insurer submissions using a single application.

(3) The Utah Individual Health Insurance Application and Utah Small Employer Health Insurance Application can be downloaded from the Department's website at www.insurance.utah.gov.

(4) The Utah Individual Health Insurance Application and Utah Small Employer Health Insurance Application may be altered for:

(a) purposes of electronic application and submission, including electronic signature disclaimers;

(b) languages other than English; and

(c) reasons specifically approved by the commissioner.

(5) All insurers shall offer compatible systems for electronic submission of the Utah Individual Health Insurance Application and the Utah Small Employer Health Insurance Application.

(6) If an employee chooses to waive coverage, an insurer shall not require such employee to complete any section of the Utah Small Employer Health Insurance Application other than the Waiver of Coverage section.

(7)(a) Individual health insurers shall use the Utah Individual Insurance Application dated October 2010 for all applications with coverage effective dates prior to January 1, 2014.

(ii) Individual health insurers shall use the Utah Individual Health Insurance Application dated June 2016 for coverage outside of the Federally Facilitated Marketplace.

(b)(i) Small employer insurers shall use the Utah Small Employer Health Insurance Application dated October 2010 for all applications with coverage effective dates prior to January 1, 2014.

(ii) Small employer insurers shall use the Utah Small Employer Health Insurance Application dated January 2014 for all applications with coverage effective dates on or after January 1, 2014.

R590-247-4. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under 31A-2-308.

R590-247-5. Severability.

If any provision of this rule or its application to any person or situation is held to be invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: universal health insurance application
June 15, 2016 31A-30-102
Notice of Continuation June 13, 2018

R612. Labor Commission, Industrial Accidents.
R612-100. Workers' Compensation Rules - General Provisions.
R612-100-1. Authority.

These rules are enacted pursuant to the following statutory authority:

A. Section 34A-1-104 of the Utah Labor Commission Act;

B. Section 34A-2-103, 34A-2-201.3, 34A-2-407 and 34A-2-412 of the Utah Workers' Compensation Act;

C. Section 34A-2-1001 et seq. of the Workers'; Compensation Coverage Waiver Act;

D. Section 59-9-101 of the Taxation of Admitted Insurers Act;

E. Section 63G-4-202(1) of the Utah Administrative Procedures Act; and

F. Section 78B-8-404 of Chapter 8, Title 78B, Utah Code Annotated.

R612-100-2. Definitions.

A. "Administrative Law Judge" or "ALJ" means a person designated by the Commission to hear and decide disputed cases.

B. "Claimant" means an injured employee, dependent(s)of an injured employee, medical providers, or any other person seeking relief or claiming benefits under the Utah Workers' Compensation Act or Utah Occupational Disease Act.

C. "Award" means a determination of the Commission, Appeals Board or Administrative Law Judge of the benefits due a claimant.

D. "Benefits" includes any payment, entitlement, or other relief provided under the Utah Workers' Compensation Act or Utah Occupational Disease Act.

E. "Commission" means the Utah Labor Commission.

F. "Defendant" means an employer, insurance carrier, Employers' Reinsurance Fund, Uninsured Employers' Fund or other person or entity against whom a claim for benefits is made.

G. "Division" means the Division of Industrial Accidents within the Commission.

H. "Disabled Injured Worker" means an injured worker who:

1. because of the injury or disease that is the basis for the employee being an injured worker:

a. is or will be unable to return to work in the injured worker's usual and customary occupation; or

b. is unable to perform work for which the injured worker has previous training and experience; and

2. reasonably can be expected to attain gainful employment after an evaluation provided for in accordance with Section 34A-2-413.5.

I. "Employer" is defined in Section 34A-2-103 of the Utah Workers Compensation Act and includes self-insured employers and uninsured employers.

J. "First Aid" is medical care that is:

1. administered on-site or at an employer-sponsored free clinic; and

2. limited to the following:

a. non-prescription medications at non-prescription strength:

b. tetanus immunizations;

c. cleaning and applying bandages to skin surface wounds;

d. hot or cold packs, contrast baths and paraffin;

e. non-rigid support, such as elastic bandages, wraps, and back belts;

f. temporary immobilization devices for transporting an accident victim, such as splints, slings, neck collars, or back boards;

g. drilling a fingernail or toenail to relieve pressure, or draining fluids from blisters;

h. eye patches or use of simple irrigation or a cotton swab to remove foreign bodies not embedded in or adhering to an eye;

i. use of irrigation, tweezers, or cotton swab to remove splinters or foreign material;

j. finger guards;

k. massages;

l. drinking fluids to relieve heat stress.

3. "First aid" is limited to initial treatment and one follow-up visit within a seven-day period after the initial treatment, except that if first aid treatment was provided by a licensed health professional in an employer-sponsored free clinic, first aid includes initial treatment and two follow-up visits within a fourteen-day period after the initial treatment.

4. "First aid" does not include any treatment of a work injury that results in:

a. loss of consciousness;

b. loss of work;

c. restriction of work;

d. transfer to another job.

K. "Injury" includes work-related accidental injury and occupational disease.

L. "Insurance Carrier" includes any worker's compensation insurance carriers, self-insured employer and self-insured employer's adjusting company, unless otherwise specified.

M. "Payor" means any insurance carrier, self-insured employer, or uninsured employer that is liable for any benefit or other relief under the Utah Workers' Compensation Act or Utah Occupational Disease Act.

N. "Usual and Customary Rate (UCR)" is the rate of payment using Ingenix, or a similar service, for charges for services in a particular zip code.

R612-100-3. Forms Used By Industrial Accidents Division.

A. Physician's Initial Report of Work Injury Or Occupational Disease - Form 123. This form is used by physicians to report initial treatment of injured employees as required by Subsection R612-300-4.A. This form must be completed by the physician for any treatment for which a bill is generated, and for any treatment beyond "first aid" as that term is defined in Section R612-100-2.

B. Restorative Services Authorization - Forms 221a (Spine), 221b (Upper Extremity), and 221c (Lower Extremity). These forms must be used by any medical provider billing under the "Restorative Services" provisions of Subsection R612-300-5.G.

C. Statement of Benefits Paid by Insurance Carrier or Uninsured Employer - Form 141. This form is used by insurance carriers and uninsured employers to report the initial benefits paid to a claimant as required by Subsection R612-200-1.C.1.c.

D. Employee Notification of Denial of Claim - Form 089. This form is used by insurance carriers or uninsured employers, as required by Subsection R612-200-1.C.1.b. to notify a claimant of the reasons that the claim has been denied.

E. Statement of Suspension of Benefits - Form 142. An insurance carrier or uninsured employer must use this form to notify a claimant if disability compensation benefits are to be suspended. The form must specify the reason for suspension. The form shall be mailed to the employee and filed with the Division five days before the suspension occurs. Suspension of benefits shall not occur until 5 days after the form is mailed and filed.

F. Final Report of Injury and Statement of Losses - Form 130. This form is used by insurance carriers and uninsured employers to report the total losses occurring in each claim. This form must be filed with the Division within 30 days from closure of each claim and shall include all payments, including medical, disability compensation, dependent's benefits, and any other payments.

G. Dependents' Benefit Order - Form 151. This form is used by the Division in all accidental death cases where no issue of liability for the death or establishment of dependency is raised and only one household of dependents is involved. The carrier indicates acceptance of liability by completing the top half of the form and filing it with the Division.

H. Medical Information Authorization - Form 046. This form is used to release the applicant's medical records for use by the Commission or its subdivisions.

I. Application to Change Doctors - Form 102. This form must be submitted by an injured worker seeking to change physicians as provided by Subsection R612-300-2.D.3.

J. Notice of Intent to Leave State - Form 044. As required by Subsection R612-300-2.F. an injured worker must submit this form, together with Form 043, "Attending Physician's Statement," to the Division prior to the injured worker's change of residency from Utah to another locale.

K. Attending Physician's Statement - Form 043. As required by Subsection R612-300-2.F., this form must be completed by an injured worker and his Utah attending physician and then submitted to the Division with Form 044 before the injured worker changes residency from Utah to another locale.

L. Statement of Compensation - Form 219. As required by Section R612-200-5, insurance carriers and uninsured employers shall use this form to notify injured workers or dependents of the basis upon which compensation has been computed.

M. Request for Copies from Claimant's File - Form 205. This form is used to request copies from a claimant's file in the Commission with the appropriate authorized release.

N. Reemployment Program Forms.

1. "Initial Assessment Report - Form 206" - This form is completed either by the self-insured employer, the workers' compensation insurance provider, or by a rehabilitation agency contracted by the employer/carrier. The report contains claimant demographics and insurance coverage details, and addresses the issue of need for vocational assistance.

2. "Request for Decision of Administrative Review - Form 207" - This form is completed when the employee wishes to contest the information/decision made by the carrier or rehabilitation agency.

3. "U.S.O.R. Rehabilitation Progress Report - Form 208A" - This form shall be requested from the Utah State Office of Rehabilitation at each stage of the reemployment process (eligibility determination, reemployment plan development/implementation and case closure) or at any interruption of the process. An Individualized Written Rehabilitation Program (USOR 5 IWRP) shall also be requested when a plan is developed. All other private rehabilitation providers shall submit a Form 206 for any plan progress, postponement, or interruption in the plan.

4. "Reemployment Plan - Form 209" - This form is used for either an original or amended work plan. The form contains the details and estimated costs in returning the injured worker to the work force.

5. "Reemployment Plan Closure Report - Form 210" - This form is submitted to the Division upon completion of the reemployment plan. The closure report shall detail costs by category either by dollar amounts or time expended (only in the categories of evaluation and counseling). The report shall also contain all the details on the return to work.

6. "Application for Certification as a Reemployment Provider - Form 212" - This form is completed by rehabilitation providers who wish to be certified by the Division. It contains provider demographics, Utah staff credentials, services/fees, and references.

7. "Administrative Review Determination - Form 213" - This form is used by the Division to summarize the outcome of the administrative review.

O. Medical Records - Form 302. This form is used by a claimant to request a free copy of his or her medical records from a medical provider. This form must be signed by a staff member of the Division.

R612-100-4. Designation as Informal Proceedings.

A. Pursuant to Section 63G-4-202, the following are designated as informal adjudicatory proceedings:

1. Assessment of penalty under Section 34A-2-211 against an employer conducting business without obtaining workers' compensation coverage;

2. Assessment of penalty under Section 34A-2-201.3 against an insured employer for direct payment of workers' compensation benefits;

3. Assessment of penalty under Section 34A-2-407 against an employer or insurance carrier who does not timely report an industrial accident;

4. Assessment of penalty under Section 34A-2-205 against an insurance carrier for improperly notifying the division of coverage written in this state or for this state;

5. Assessment of penalty under Section 34A-2-114 against an employer for unlawfully interfering with an employee's workers' compensation claim.

B. All subsequent adjudicative proceedings in the above-identified matters are designated as formal proceedings.

KEY: workers' compensation, administrative procedures
June 7, 2018 34A-2-101 et seq.
Notice of Continuation February 8, 2018 34A-3-101 et seq.
34A-1-104 et seq.
63G-4-102 et seq.

R651. Natural Resources, Parks and Recreation.
R651-601. Definitions as Used in These Rules.
R651-601-1. Division.
"Division" means the Division of Parks and Recreation, Department of Natural Resources.

R651-601-2. Ranger.
"Ranger" means any employee of the Division who is designated by the Director or his designee as a law enforcement officer as defined in Section 53-13-103.

R651-601-3. Division Representative.
"Division Representative" means any employee of the Division authorized by the Director or his designee to act in an official capacity.

R651-601-4. Natural and Cultural Resources.
"Natural and Cultural Resources" means those features and values including all lands, minerals, soils and waters, natural systems and processes, and all plants, animals, topographic, geologic and paleontological components of a park area as well as all historic and pre-historic, sites, trails, structures, inscriptions, rock art and artifacts representative of a given culture occurring on or within any park area.

R651-601-5. Park System.
"Park system" means all natural and cultural resource, and all buildings and other improvements owned, leased, or otherwise managed by the Division.

R651-601-6. Park Area.
"Park area" means any individual park property in the park system.

R651-601-7. Manager.
"Manager" means the Division representative in charge of a park area.

R651-601-8. Permission.
"Permission" means oral or written authorization by a park representative.

R651-601-9. Permit.
"Permit" means written authorization by a park representative.

R651-601-10. Posted.
"Posted" means displayed printed instruction or information.

R651-601-11. Person.
"Person" means individual, corporation, company, partnership, trust, firm, or association of persons.

R651-601-12. Commercial Activity.
"Commercial Activity" means any activity, private or otherwise, that is for the purpose of commercial gain, or that is part of any scheme or plan established for the purpose of obtaining commercial gain. This includes, but is not limited to:
(1) sales of goods or merchandise.
(2) rentals of equipment.
(3) collection of entrance or admission fees.
(4) collection of storage or use fees.
(5) sales of services.
(6) delivery service of rental equipment to the park area by a rental agency as part of a customer rental agreement.

R651-601-13. Commercial Gain.
"Commercial gain" means compensation in money, services, or other consideration as part of a scheme or effort to generate income or financial advantage of any kind.

R651-601-14. Concession Contract.
"Concession Contract" means a use agreement granted to an individual, partnership, corporation, or other recognized organization, for the purpose of providing services or sales of goods or merchandise for conducting commercial activity.

R651-601-15. Special Use Permit.
"Special Use Permit" means written permission given to an individual, partnership, corporation, or other recognized organization for the purpose of conducting the following: 1) special events whether commercial or non-commercial; 2) certain limited concession activities; and 3) commercial services as guides, provisioners, and/or outfitters.

R651-601-16. Cooperative Agreement.
A written instrument whereby two or more parties agree to terms governing the parties' relationship, much as a contract. Informal interoffice communication definition does not apply in this case.

R651-601-17. Definitions.
(1) "Motorized Transportation Device" means any motorized device used as a mode of transportation that includes: "Electric assisted bicycles", "Mopeds", "Motor Assisted scooters", "motorcycles", "motor-driven cycle", and "personal motorized mobility device" as defined in Utah State Code 41-6-1. "Motorized wheelchairs" are also included under this definition.

R651-601-18. Unmanned Aircraft.
(1) "Unmanned Aircraft" means an aircraft that is capable of sustaining flight and that operates with no possible direct human intervention from, on or within the aircraft.

KEY: parks, off-highway vehicles

July 28, 2016	**41-22-10**
Notice of Continuation June 13, 2018	**79-4-203**
	79-4-304
	79-4-601

R651. Natural Resources, Parks and Recreation.
R651-602. Aircraft and Powerless Flight.
R651-602-1. Landing or Taking Off of Manned Aircraft.

The landing or taking off of aircraft within the park system other than at designated lakes, reservoirs or landing areas is prohibited.

R651-602-2. Air Delivery or Pickup.

Except in emergencies, the air delivery or pickup of any person or thing without advanced permission from the park manager is prohibited.

R651-602-3. Powerless Flight Launching and Landing.

The launching or landing of gliders, hot-air balloons, hang gliders, and other devices designed to carry persons or objects through the air in powerless flight is prohibited except by Special Use Permit (see R651-608).

R651-602-4. Lakes and Reservoirs Designated as Open.

The following lakes and reservoirs are designated as open to the landing of aircraft: (1) Deer Creek; (2) Jordanelle; (3) Rockport, (4) Starvation (5) Willard Bay.

R651-602-5. Aircraft Prohibited from Landing on Lakes or Reservoirs.

Except as outlined in R651-602-2, aircraft are prohibited from landing or taking off on "designated as open" lakes or reservoirs when any one of the following conditions exists. (1) On a Friday, Saturday, Sunday, or during a holiday period between May 1 to September 30; or (2) Anytime the aircraft cannot maintain a distance of at least 500 feet from any person, vessel, vehicle or structure during landing or takeoff.

R651-602-6. Aircraft on the Water Operation Requirements.

A person operating an aircraft on the water: (1) shall not approach within 500 feet of a marina, launch ramp, boat dock, vessel or a beach occupied by person(s), when using the aircraft's primary propulsion system(s); (2) shall comply with Federal Aviation Regulations, Section 91.115, Right-of-way rules: Water operations.

R651-602-7. Parks Designated Open to Gliders.

The following parks are designated as open to launching and landing powerless paragliders and hang gliders: Flight Park State Recreation Area.

R651-602-8. Operation of Unmanned Aircraft.

A person must obtain written permission from the park manager before operating an unmanned aircraft within the park system.

KEY: parks
July 28, 2016 **79-4-501**
Notice of Continuation June 13, 2018

R651. Natural Resources, Parks and Recreation.
R651-603. Animals.
R651-603-1. Pets.

(1) All pets are prohibited in park areas unless caged, or physically controlled on a six foot maximum leash, or confined to the inside of a vehicle.

(2) Pet owners are responsible for picking up and properly disposing of all fecal matter deposited by their pets/animals within the park area.

R651-603-2. Animal Exclusions.

All animals are prohibited from public buildings, bathing beaches and adjacent waters, eating places and any other trails or locations posted closed to pets within the park system, except for guide or service dogs as authorized by Section 62A-5b-104.

R651-603-3. Unattended Animal.

Leaving any animal unattended is prohibited except by permit.

R651-603-4. Dangerous Animals.

Vicious, dangerous, or noisy animals of any kind are prohibited within the park system.

R651-603-5. Wildlife.

Feeding, touching, teasing, molesting, or intentionally disturbing any wildlife is prohibited except as approved for authorized hunting and trapping activities (see R651-614).

R651-603-6. Hitching or Tying Animals.

Hitching or tying an animal to any tree, shrub or structure in a manner that may cause damage or block or restrict foot or vehicular traffic is prohibited.

R651-603-7. Horse Use on Trails.

Horses and other saddle or pack animals are prohibited on developed trails and routes not posted open for their use.

R651-603-8. Horse Use Within a Park.

Horse and other saddle or pack animals are prohibited from all campgrounds, picnic areas and other areas of public gatherings except where trails and facilities are specifically designed and posted for such use.

KEY: parks
July 25, 2017 **79-4-304**
Notice of Continuation June 7, 2018 **79-4-501**

R651. Natural Resources, Parks and Recreation.
R651-604. Audio Devices.
R651-604-1. Operation or Use of Audio Devices.

The operation or use of any audio or noise-producing devices in such a manner or at such a time so as to unreasonably disturb any person is prohibited.

R651-604-2. Operation or Use of a Public Address System.

The operation or use of a public address system or any other high volume audio devices without a permit is prohibited.

KEY: parks

1989	**79-4-304**
Notice of Continuation June 7, 2018	**79-4-501**

R651. Natural Resources, Parks and Recreation.
R651-605. Begging and Soliciting.
R651-605-1. Prohibition of Begging.
Begging is prohibited.

R651-605-2. Prohibition of Soliciting Except by Permit.
Soliciting of any type is prohibited except by authorized concessionaires or by permit.

KEY: parks
1989 **79-4-304**
Notice of Continuation June 7, 2018 **79-4-501**

R651. Natural Resources, Parks and Recreation.
R651-606. Camping.
R651-606-1. Permit Required for Camping in Undeveloped Areas.

No person shall camp in undeveloped locations of a park area without proper permit.

R651-606-2. Reserved Campsites May Not Be Taken.

No person shall occupy or otherwise use a campsite when it is occupied or reserved for another person.

R651-606-3. Maximum Occupancy of Campsites.

Unless authorized by a park representative, individual campsites shall not be occupied by more than two vehicles and eight persons.

R651-606-4. Payment Required Before Occupancy of Campsite.

No person shall occupy camping facilities prior to payment of required fees.

R651-606-5. Time-Limit in Campsite May Not Be Exceeded.

Camping is limited to 14 consecutive days at all campgrounds except for designated long-term campsites where a long-term camping agreement has been signed by the occupant and the park manager.

R651-606-6. Use of Showers.

Showers may only be used by campers with camping or shower authorization permits and only in accordance with posted restrictions.

R651-606-7. Camping Only in Designated Areas.

All persons shall park or camp only in areas designated for those purposes.

R651-606-8. Time by Which Campsites Shall Be Vacated.

All persons shall vacate the campsite by 2:00 p.m. of the last day of the camp permit.

R651-606-9. Clean-up of Campsite Required.

All persons shall remove all personal property, debris and litter prior to departing the site.

R651-606-10. Quiet Hours.

No person shall operate or allow the operation of a generator, audio device; make or allow the making of unreasonable noises from 10:00 p.m. to 7:00 a.m., except in the following area(s): Coral Pink Sand Dunes State Park, which shall be from 10:00 p.m. to 9:00 a.m.

KEY: parks
July 25, 2017 **79-4-501**
Notice of Continuation June 7, 2018

R651. Natural Resources, Parks and Recreation.
R651-607. Disorderly Conduct.
R651-607-1. Applicability of the Utah Criminal Code.

Offenses against persons and property shall be handled through the Utah Criminal Code.

R651-607-2. Restricted Activities.

No person shall participate in a posted restricted activity.

KEY: parks
October 4, 1999 **79-4-501**
Notice of Continuation June 7, 2018

R651. Natural Resources, Parks and Recreation.
R651-608. Events of Special Uses.
R651-608-1. Permit Requirements.

A special assembly, exhibit, public speech, public demonstration, or special activity or use (in this Rule collectively called "event") shall be by special use permit ("permit").

(1) REQUESTS. The person or group desiring to conduct an event shall request a permit from the local park manager, region or the Division's main office at least 30 business days before the proposed event. Late requests may be accepted subject to the terms of subsection (4) below.

(2) REQUIREMENTS. The Division director or his designee shall have the discretion to grant or deny the request for permit. A permit may be granted only on the following requirements: (a) No event may substantially interrupt the safe and orderly operation of the park or facility; (b) No event may unduly interfere with proper fire, police, ambulance or other life-safety protection or service to areas where the activity will take place or areas contiguous thereto; (c) No event may be reasonably likely to cause injury to persons or property; (d) No event may involve pornographic or obscene materials or performances, or materials harmful to minors, as those terms are used in the Utah criminal code or in applicable local ordinances; and (f) liability insurance will be required, co-insuring the Division and meeting the minimum requirements set by the Utah Division of Risk Management.

(3) CONFLICTING REQUESTS.

(a) Considerations. When two or more persons, groups or organizations request to use a park or facility for events that conflict as to time, place, or purpose, the Division director or his designee shall evaluate: (i) the size, nature and purpose of each event; (ii) each event's historical or traditional use of the park or facility; (iii) the date and time each conflicting request was received by the Division: (iv) whether an event would require Division support services; (v) possible alternative places or times for the conflicting events; and (vi) other factors that would resolve the conflicts, protect the public safety, health, and welfare, or assist the Division in regulating the time, place, and manner of the events.

(b) Disposition. After obtaining the relevant information and weighing the relevant considerations stated in the immediately preceding paragraph, the Division director or his designee shall resolve the conflict (i) by the parties' agreement to modify the requests to avoid conflicts and accommodate the public interest; or (ii) if no voluntary agreement is reached, by ordering the time, place, and manner for each requested event; or (iii) by exercising his discretion to deny one or more or all of the requests.

(4) LATE REQUESTS. When a request for permit is not timely made under subsection (1), the request shall state the grounds for its untimeliness. If the Division director or his designee determines that the untimeliness should be excused because of exigency, unexpected circumstances, or other reasons, the request shall be processed.

(5) APPEALS. There shall be no right to administrative appeal of the decision granting or denying a request for permit.

R651-608-2. Events Prohibited without Permit.

Any person, defined as "an individual, partnership, corporation, association, governmental entity or public or private organization of any character other than an agency", or agency shall not engage, conduct, or participate in a commercial activity or scheduled event on state park property without a Special Use Permit, Cooperative Agreement or Concession Contract.

KEY: parks
June 9, 2014 **79-4-501**

Notice of Continuation June 7, 2018

R651. Natural Resources, Parks and Recreation.
R651-609. Explosives and Fireworks.
R651-609-1. Use or Possession in Parks Prohibited without Permit.

The use or possession of explosives, fireworks, or firecrackers, except by permit, is prohibited within the park system.

KEY: parks
1989 **79-4-501**
Notice of Continuation June 7, 2018

R651. Natural Resources, Parks and Recreation.
R651-610. Expulsion.
R651-610-1. Violation of Rules.

Any person or persons who are in violation of any rules promulgated under Section 79-4-304 may be expelled from the park area by a ranger or other law enforcement officer, and prohibited from returning for 48 hours.

KEY: parks, fees
December 2, 1999 79-4-501
Notice of Continuation June 7, 2018 53-13-103

R651. Natural Resources, Parks and Recreation.
R651-613. Fires.
R651-613-1. Restrictions on Lighting and Maintaining Fires.

The lighting or maintaining of a fire is prohibited except:

(1) In designated camping and picnicking areas when the fire is confined in a fireplace or grill provided for that purpose,

(2) in other locations by permit, and

(3) in stoves or lanterns using gasoline, propane, or similar fuels.

R651-613-2. Fires must be Extinguished when not in Use.

All fires shall be completely extinguished when not in use. Leaving a fire unattended is prohibited.

R651-613-3. Throwing or Dropping of Burning Material.

Throwing or dropping of a lighted cigarette or other burning material is prohibited.

R651-613-4. Posted Restrictions Prohibiting Smoking or Fires.

Smoking or lighting fires is prohibited in the park area when such restriction is posted.

KEY: parks
1989 **79-4-501**
Notice of Continuation June 7, 2018

R651. Natural Resources, Parks and Recreation.
R651-614. Fishing, Hunting and Trapping.
R651-614-1. Applicability of the Utah Fish and Game Code.

Fishing, hunting and trapping shall be in accordance with the Utah Fish and Game Code, with the following provisions.

R651-614-2. Fishing near Public Areas.

Fishing from or within 100 feet of any public float designed for water sports, developed beaches, public loading docks, or boat ramps is prohibited.

R651-614-3. Ice Fishing.

Ice fishing is prohibited in areas posted closed by the park manager.

R651-614-4. Hunting Wildlife.

Hunting of any wildlife is prohibited within the boundaries of all park areas except those designated open as follows:

(1)(a) Antelope Island State Park - By special permit only

(b) Antelope Island permits to hunt bison shall be available, distributed and utilized consistent with the following statutes and rules of the Division of Wildlife Resources to the same extent as if the bison were considered wildlife: (1) Utah Code Sections 23-13-2; 23-19-1, 23-19-5; 23-19-6, 23-19-9(11), 23-19-11 and 23-20-27; (2) Utah Administrative Code Sections R657-5-4, R657-5-8 through 12, R657-5-14 and 15, R657-5-24 and 25, R657-5-27 and 28, R657-5-34, R657-5-37, R657-5-53, R657-5-62, and Rules R657-12, R657-23, R657-32, R657-42, and R657-50.

(c) Subsection R651-614-4(1)(b) shall be applied retroactively only to the incorporation of Utah Administrative Code Sections R657-5-24, R657-5-25, R657-5-27, R657-5-34, and R657-5-37.

(2) Coral Pink Sand Dunes State Park - small game
(3) Deer Creek State Park - small game and waterfowl
(4) East Canyon State Park - small game
(5) Gunlock State Park - waterfowl
(6) Huntington State Park - waterfowl
(7) Hyrum State Park - small game
(8) Jordanelle State Park - big and small game and waterfowl
(9) Minersville - waterfowl
(10) Quail Creek State Park - waterfowl
(11) Rockport State Park - waterfowl
(12) Scofield State Park - waterfowl
(13) Starvation State Park - big and small game
(14) Steinaker State Park - waterfowl, falconry between October 15 and April 14 annually.
(15) Pioneer Trail, Mormon Flat Unit - big and small game
(16) Wasatch Mountain State Park - big and small game
(17) Yuba State Park - small game

R651-614-6. Trapping.

All trapping on park areas is prohibited except when authorized and permitted by the park manager.

KEY: parks
February 16, 2017 **79-4-501**
Notice of Continuation June 7, 2018

R651. Natural Resources, Parks and Recreation.
R651-615. Motor Vehicle Use.
R651-615-1. Traffic Rules and Regulations.

The use and operation of motor vehicles in general shall be in accordance with the Utah Traffic requirements as found in Title 41, Chapter 6 Utah Code.

R651-615-2. Blocking and Restricting Normal Use.

Blocking, restricting or otherwise interfering with the normal use of any park facility with a vehicle or towed device is prohibited.

R651-615-3. Roadway and Parking Areas.

Operating or parking a motor vehicle or trailer except on roadways and parking areas developed for that use is prohibited.

R651-615-4. Entering and Leaving Park Site.

Operating a motor vehicle in a developed park area for any purpose other than entering or leaving the site is prohibited.

R651-615-5. Off Road Use.

The operation of vehicles off road is prohibited within the boundaries of all park areas except those with designated off-highway vehicle riding areas.

R651-615-6. Off-Highway Vehicles.

Operation of off-highway vehicles is prohibited on all park area roads unless authorized in accordance with the provisions of the Utah Off-Highway Vehicle Act.

R651-615-7. Motorized Transportation Devices.

Motorized Transportation Devices (MTD) that are powered by electric motors may be used for transportation to and from facilities and structures within the state parks.

KEY: parks, off-highway vehicles
July 19, 2004 **79-4-203**
Notice of Continuation June 7, 2018 **41-22-10**
79-4-501

R651. Natural Resources, Parks and Recreation.
R651-616. Organized Sports.
R651-616-1. Organized Sports only in Designated Locations.

Organizing or participating in ball games, horseshoes, or other similar activities in picnic or campground areas is prohibited except in designated locations.

KEY: parks
1989 79-4-304
Notice of Continuation June 13, 2018 79-4-501

R651. Natural Resources, Parks and Recreation.
R651-617. Permit Violation.
R651-617-1. Revocation or Suspension of Permit.

A permit may be revoked or suspended for a time, from a minimum of seven (7) days to a maximum of the duration of the permit by the division director or individual designated by the division director if one or more of the following actions are found to have occurred, based on their severity: (1) false or fictitious statements or qualifications were provided to obtain the permit; (2) the terms or conditions of the permit were violated; or (3) the permit holder allowed the permit to be used by an unauthorized person; or (4) the permit is found to be intentionally altered or changed. In addition, a fine of $500 may be assessed.

KEY: parks
August 21, 2008 79-4-501
Notice of Continuation June 13, 2018

R651. Natural Resources, Parks and Recreation.
R651-618. Picnicking.
R651-618-1. Restrictions on Picnicking.

Picnicking is permitted except:

(1) Inside visitor centers, museums, and other park buildings not designated for such use.

(2) Where prohibited and posted.

KEY: parks
1989 **79-4-501**
Notice of Continuation June 13, 2018

R651. Natural Resources, Parks and Recreation.
R651-619. Possession of Alcoholic Beverages or Controlled Substances.
R651-619-1. Possession of Alcohol and Controlled Substances.

Offenses for the possession or use of any alcoholic beverage or controlled substance, shall be handled through Utah Code, Titles 32A, 41, 58, 73 and 76.

R651-619-2. Alcohol in Buildings.

There shall be no possession and/or consumption of any alcoholic beverage in the state park system visitor centers, museums and administrative offices, unless permission is expressly given, in writing, by the division director, or designee. Organizations dispensing such beverages are required to carry insurance coverage meeting the minimum requirements set by the Utah Division of Risk Management.

KEY: parks
June 9, 2014 79-4-203
Notice of Continuation June 13, 2018 79-4-304

R651. Natural Resources, Parks and Recreation.
R651-620. Protection of Resources Park System Property.
R651-620-1. Applicability of Criminal Code.

Offenses against capital improvements, natural and cultural resources will normally be handled through the Utah Criminal Code.

R651-620-2. Trespass.

(1) A person may be found guilty of a class B misdemeanor, as stated in Utah Code Annotated, Section 79-4-502 if that person engages in activities within a park area without specific written authorization by the division. These activities include:(a) construction, or causing to construct, any structure, including buildings, fences water control devices, roads, utility lines or towers, or any other improvements;(b)removal, extraction, use, consumption, possession or destruction of any natural or cultural resource;(c)grazing of livestock, except as provided in Utah Code Annotated, Section 72-3-112. A cause of action for the trespass of livestock may be initiated in accordance with 78B-2-305; (d)use or occupation of park area property for more than 30 days after the cancellation or expiration of permit, lease, or concession agreement; or(e)any use or occupation in violation of division rules.

(2) The provisions of this section do not apply to division employees in the performance of their duties.

(3) Violations described in section (1) are subject to penalties as provided in Utah Code Annotated, Section 76-3-204 and Section 76-3-301.

R651-620-3. Tossing, Throwing, or Rolling of Rocks and other Materials.

The tossing, throwing, or rolling of rocks or other materials into valleys or canyons or down hills and mountains is prohibited.

R651-620-4. Firewood.

Collecting or cutting of firewood is prohibited without a permit.

R651-620-5. Glass Containers.

Use or possession of glass containers is prohibited in posted areas.

R651-620-6. Metal Detecting.

Metal detecting is prohibited without a permit.

KEY: parks, trespass
November 16, 2004 79-4-502
Notice of Continuation June 13, 2018

R651. Natural Resources, Parks and Recreation.
R651-621. Reports of Injury or Damage.
R651-621-1. Reporting of Incidents to Park Representative.

All incidents resulting in personal injury or damage to property, public or private, must be reported as soon as possible to a park representative.

KEY: parks
1989 **79-4-501**
Notice of Continuation June 13, 2018

R651. Natural Resources, Parks and Recreation.
R651-622. Rock Climbing.
R651-622-1. Permit Required for Technical Rock Climbing.
Technical rock climbing is prohibited without a permit.

R651-622-2. Installation of Hardware/Equipment.
Installation of new or the removal of existing, permanently installed technical rock climbing equipment or hardware is prohibited without a permit.

KEY: parks
October 4, 1999 79-4-501
Notice of Continuation June 28, 2018

R651. Natural Resources, Parks and Recreation.
R651-623. Sale or Distribution of Printed Material.
R651-623-1. Permit Required.

The sale, posting, or distribution of printed matter is prohibited without a permit.

KEY: parks
1989 79-4-501
Notice of Continuation June 28, 2018 79-4-304

R651. Natural Resources, Parks and Recreation.
R651-624. Sanitation.
R651-624-1. Garbage and Rubbish.

Disposing of garbage and rubbish of any kind other than at points or places designated for the disposal of materials is prohibited.

R651-624-2. Trailer Refuse or Waste.

Draining or dumping refuse or wastes from any trailer or other vehicle except in places or receptacles provided for that use is prohibited.

R651-624-3. Cleaning and Washing at Hydrants.

Cleaning food or washing clothing or articles of household use at campground hydrants is prohibited.

R651-624-4. Fish Cleaning.

Cleaning fish at campground hydrants or any other facility not specifically designed for that purpose is prohibited. All fish entrails or other inedible fish parts shall be disposed of in an appropriate fish cleaning station or trash can.

KEY: parks
October 4, 1999 **79-4-501**
Notice of Continuation June 28, 2018

R651. Natural Resources, Parks and Recreation.
R651-625. Shirts and Shoes.
R651-625-1. Shirts and Shoes Required in Museums, Visitor Centers and Administrative Offices.

Persons without shirts and/or shoes are prohibited from entering museums, visitor centers and administrative offices of the park system.

KEY: parks
1989 79-4-501
Notice of Continuation June 28, 2018 79-4-304

R651. Natural Resources, Parks and Recreation.
R651-626. Skating, Skateboards and Motorized Transportation Devices.
R651-626-1. Use of Roller Skates, Inline Skates, Motorized Transportation Devices (MTD), and Skateboards.

The recreational use of roller skates, inline skates, motorized transportation devices (MTD), and skateboards is prohibited except in locations designated and posted for that activity by the park manager.

KEY: parks
July 5, 2004 79-4-304
Notice of Continuation June 28, 2018 79-4-203

R651. Natural Resources, Parks and Recreation.
R651-627. Swimming.
R651-627-1. Prohibited Swimming Areas.

Where posted, swimming is prohibited to promote safety, in accordance with the Utah Water Safety Act, 73-18b-1. (Also see R651-801)

R651-627-2. Scuba Diving.

Scuba diving shall only be participated in when in accordance with the Utah Water Safety Act, 73-18b-1. (Also see R651-801)

R651-627-3. Public Health Closures.

Swimming is prohibited when a public health closure has been posted by the park manager or other public health agency.

KEY: parks
December 2, 1999 79-4-501
Notice of Continuation June 28, 2018

R651. Natural Resources, Parks and Recreation.
R651-628. Trails and Walks.
R651-628-1. Bicycles and Motor Vehicles.

Bicycling, rollerblading, roller skating, skateboarding, or operating motor vehicles on any trail or walk not specifically designated and posted for that purpose is prohibited.

R651-628-2. Interference with Normal Use of Trails and Walks.

Blocking, restricting, or otherwise interfering with the normal use of any trail is prohibited.

R651-628-3. Must Stay on Walks and Designated Trails.

Persons are required to stay on walks and designated trails in posted areas.

KEY: parks
October 4, 1999 79-4-501
Notice of Continuation June 28, 2018

R651. Natural Resources, Parks and Recreation.
R651-629. Unattended Property.
R651-629-1. Personal Property.

Unclaimed personal property shall be handled in accordance with Title 77, Chapters 24 and 24a.

R651-629-2. Impounded Property.

Whenever property interferes with the safe or orderly operation of the park, the property may be impounded.

R651-629-3. Lost and Found Articles.

All lost and found articles shall be deposited by the finder at the park area office.

R651-629-4. Impound of Vehicle.

The impound of a vehicle shall be in compliance with Title 41, Chapter 1a.

KEY: parks
1989 **79-4-501**
Notice of Continuation June 28, 2018

R651. Natural Resources, Parks and Recreation.
R651-630. Unsupervised Children.
R651-630-1. Children under 16 must be Supervised.

Allowing children under 16 years of age to be unsupervised within the park system is prohibited.

KEY: parks
October 4, 1999 79-4-501
Notice of Continuation June 13, 2018

R651. Natural Resources, Parks and Recreation.
R651-631. Winter Sports.
R651-631-1. Permitted Areas.

Skiing, sledding, tobogganing, snowshoeing, skating, and other similar winter sports activities are allowed except where posted closed or upon roads and parking areas open to highway vehicle use.

KEY: parks
1989 **79-4-304**
Notice of Continuation June 28, 2018

R651. Natural Resources, Parks and Recreation.
R651-632. Enforcement.
R651-632-1. Authorized Law Enforcement Officers.

Any law enforcement officer authorized under Title 77, Chapter 1a may enforce the rules promulgated under this chapter.

KEY: parks
1989 79-4-501
Notice of Continuation June 28, 2018 53-13-103

R651. Natural Resources, Parks and Recreation.
R651-633. Special Closures or Restrictions.
R651-633-1. Emergency Closures or Restrictions.

No person shall be in a closed area or participate in a restricted activity which has been posted by the park manager to protect public safety or park resources.

R651-633-2. General Closures or Restrictions.

Persons are prohibited from being in a closed area or participating in a restricted activity as listed for the following park areas:

(1) Coral Pink Sand Dunes State Park - Motorized vehicle use is prohibited in the non-motorized area of the sand dunes, except for limited and restricted access through the travel corridor;

(2) Dead Horse State Park - Hang gliding, para gliding and B.A.S.E. jumping is prohibited;

(3) Deer Creek State Park - Dogs are prohibited below high water line and in or on the reservoir except for guide or service dogs as authorized by Section 62A-5b-104;

(4) Jordanelle State Park - Dogs are prohibited in the Rock Cliff area except for the Perimeter Trail and designated parking areas except for guide or service dogs as authorized by Section 62A-5b-104;

(5) Snow Canyon State Park -

(a) All hiking and walking in the park is limited to roadways, designated trails and slick rock areas and the Sand Dunes area,

(b) The last half-mile of the Johnson Canyon Trail is closed annually from March 15 through September 14 except by permit or guided walk; this portion of trail is open from September 15 through March 14.

(c) Black Rocks Canyon is closed annually from March 15 to June 30,

(d) West Canyon climbing routes are closed annually from February 1 to June 1.

(e) Dogs are prohibited on all trails and natural areas of the park unless posted open, except for guide or service dogs as authorized by Section 62A-5b-104.

(f) Hang gliding, para gliding and B.A.S.E. jumping is prohibited.

KEY: parks
July 25, 2017 **79-4-203**
Notice of Continuation June 28, 2018 **79-4-304**
79-4-501

R652. Natural Resources; Forestry, Fire and State Lands.
R652-7. Public Petitions for Declaratory Orders.
R652-7-100. Authority.

This rule implements Section 63G-4-503 which authorizes the Division of Forestry, Fire and State Lands to provide the procedures for submission, review, and disposition of petitions for agency declaratory orders on the applicability of statutes, rules, and orders governing or issued by the agency.

R652-7-200. Definitions.

Terms used in this rule are defined in Section 63G-3-102, with the exception of:

1. agency: Division of Forestry, Fire and State Lands.

2. director: director of the Division of Forestry, Fire and State Lands.

3. applicability determination: a determination whether a statute, rule, or order within the primary jurisdiction of the agency should be applied to specified circumstances and how it applies if applicable;

4. declaratory order: an administrative order arising from an applicability determination that establishes rights, status, and other legal relations under a statute, rule, or order; and

5. statute, rule, or order within the primary jurisdiction of the agency:

(a) a statute, the implementation of which is expressly or by clear implication assigned to the agency by legislative action or executive order; or

(b) a rule or order enacted or issued pursuant to express or clearly implied responsibility to implement a statute.

R652-7-300. Petition and Intervention Procedure.

1. Any person or agency may petition for a declaratory order. A petition will be denied summarily if the petitioner seeks an order concerning issues addressed in an agency adjudicative proceeding completed during the 12-month period preceding the petition date for which the petitioner had notice. A person may seek information on agency policies or positions without a formal request for a declaratory order. Information requests are handled expeditiously and without the procedural formality of the declaratory order process.

2. The petition shall be addressed and delivered to the director. Any person may petition for intervention within 30 days of the filing of a petition for a declaratory order or at least 30 days prior to a specified time established by agreement between the petitioner for a declaratory order and the agency, whichever is later.

R652-7-400. Petition Form.

1. The petition must:

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

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

(c) state specifically the factual issue, situation, or circumstance in which applicability is sought;

(d) describe the reason or need for the applicability review, including the specific relationship of the requested declaratory order to the legal rights, interests, and objectives of the petitioner;

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

(f) identify the names, addresses, and phone numbers of other persons or parties the petitioner believes or knows will be directly affected by the issuance of a declaratory order; and

(g) be signed by the petitioner or his authorized representative.

2. Any letter that expressly states the intent to request an agency declaratory order and substantially complies with the information required in this subsection shall be treated as fulfilling the requirements of this subsection even though a technical deficiency may exist in the letter.

R652-7-500. Petition Review and Disposition.

1. Upon receipt of a petition, the director or his designee shall review the petition for compliance with R652-7-400. The petition shall be denied if:

(a) the specified facts, issue, situation, or circumstance is based on disputed facts;

(b) the petition raises policy questions which have not been addressed by the agency; and

(c) the petition requests a ruling on any order other than an executed contract.

2. Incomplete, or unclear, petitions shall be returned to the petitioner with an explanation of the additional information required.

3. When a petition is complete, the director shall, in compliance with 63G-4-503(6), issue a written order:

(a) stating the applicability or nonapplicability of the statute, rule, or order at issue; the reasons for the applicability or nonapplicability of the statute, rule, or order; and any requirements imposed on the agency, the petitioner, or any other person having intervened in or consented to the applicability determination process.

(b) setting an informal hearing for the petitioner and any intervenor to examine questions not related to factual disputes;

(c) documenting an agreement to issue a declaratory order by a specified time; or

(d) denying the petition for a declaratory order.

4. Unless otherwise agreed to by the director or his designee and the petitioner, any petition for which an order is not issued pursuant to (2) above is deemed denied.

KEY: administrative procedures, public petitions
1988 63G-4-503
Notice of Continuation June 11, 2018

R652. Natural Resources; Forestry, Fire and State Lands.
R652-100. Materials Permits.
R652-100-100. Authority.

This rule implements Section 65A-7-1 which authorizes the Division of Forestry, Fire and State Lands to prescribe division objectives, standards and conditions for the issuance of materials permits and for conveyances for common varieties of sand, gravel, cinders, and similar materials on sovereign lands.

R652-100-200. Materials Permits Issued on Sovereign Lands.

The division may issue materials permits or may convey profits a prendre or similar interests on all sovereign lands when the division deems it consistent with division land use plans.

The division may issue materials permits when the sale of such materials would be exempt from sales tax under Sections 59-12-104(2) or 59-12-104(28).

The division may issue profits a prendre in all other instances using the procedures and provisions outlined in Sections R652-100-400, R652-100-500, R652-100-600, R652-100-1000, R652-100-1200, R652-100-1300 and R652-100-1500. The conveyance of a profit a prendre or similar interest in these materials will contain provisions to substantially conform to those found in Sections R652-100-300, R652-100-700, R652-100-800, and R652-100-900.

R652-100-300. Rentals and Royalties.

1. Rentals

(a) Rental rates shall be $10 per acre, or fractional part thereof, per annum.

(b) The minimum annual rental on material permits shall be determined periodically by the division.

2. Royalty Rates and Provisions

(a) The division shall charge full market value for all materials purchased under a materials permit. Market value shall be determined by the division through analysis of the local market.

(b) The division may annually establish minimum royalty rates for materials permits based on the type of material being removed.

(c) Royalty payments shall be remitted to the division on a quarterly basis and shall be accompanied by a division approved "Production and Settlement Transmittal Form".

R652-100-400. Application Procedures.

1. Application Filing

Applications for materials permits may be submitted to any office of the division during office hours.

2. Non-refundable Application Fees

All applications must be accompanied by a non-refundable application fee.

(a) If an application for a materials permit is rejected, all monies tendered by the applicant, except the application fee, will be refunded.

(b) Should an applicant desire to withdraw the application, the applicant must make a written request. If the request is received prior to the time that the application is considered for formal action, all monies tendered by the applicant, except the application fee, will be refunded. If the request for withdrawal is received after the application is approved, all monies tendered are forfeited to the division, unless otherwise ordered by the division for a good cause shown.

3. Application Review

Upon receipt of an application, the division shall review the application for completeness. Applicants submitting incomplete applications shall be provided notice of deficiency by certified mail and shall be allowed 60 days to cure the deficiency. Incomplete applications not remedied within the 60-day period may be denied. The director may approve applications for materials permits pursuant to the criteria listed below. Action on applications not meeting the criteria listed below shall be deferred pending appropriate land use designation by the division. The director shall reject applications in those instances where the division declines to designate lands for that use.

(a) When land use designations or general management plans have been approved by the division and the application conforms with the designated use, or

(b) When the subject property has previously been included in a materials permit or sand and gravel mineral lease whether or not excavation occurred and whether or not reclamation work was done, or

(c) When expected royalty income exceeds the estimated fair market value of all sovereign land affected by the permit and the use of the subject property for materials extraction conforms to local planning and zoning ordinances.

4. Bid Solicitation Processes

(a) In the absence of any valid materials permit application, and pursuant to R652-100-400(3), the division may offer for simultaneous bid material permits when exposing the site to the market could reasonably be expected to produce materials sales. A notice of lands available for simultaneous filing for materials permits shall be made in a manner to reasonably solicit simultaneous bid applications. Notices of simultaneous filing shall contain the procedure by which the division shall award the permit.

(b) Upon receipt of any materials permit application the division shall solicit competing applications through publication at least once a week for two consecutive weeks in one or more newspapers of general circulation in the county in which the permit is offered. At least 30 days prior to bid opening, certified notification will be sent to permittees of record, adjacent permittees/lessees, and adjacent landowners. Notices will also be posted in the local governmental administrative building or the county courthouse. Notification and advertising shall include the legal description of the parcel and any other information which may create interest in the parcel. The successful applicant shall bear the cost of the advertising.

(c) The division shall allow all applicants at least 20 days from the date of mailing of notice, as evidenced by the certified mail posting receipt (Postal Service form 3800), within which to submit a sealed bid containing their proposal for the subject parcel. Competing bids will be evaluated using the criteria found in R652-30-500(2)(g) and R652-80-200.

(d) If no competing applications involving sale, lease or exchanges are received by the deadline published pursuant to R652-100-400(4)(b), then the division shall award the materials permit based on the following criteria:

i) amount of bonus bid.

ii) amount and rate of proposed materials extraction.

iii) other criteria and assurances of performances as the division shall require by permit or advertise prior to bidding.

R652-100-500. Permit Execution.

The permit must be executed by the applicant and returned to the division within 60 days from the date of applicant's receipt of the permit. Failure to execute and return the documents to the division within the 60-day period may result in cancellation of the permit and the discharge of any obligation of the division arising from the approval of the application.

R652-100-600. Terms of Materials Permits.

Materials permits issued under these rules shall normally be for no greater than a five year term. Longer or shorter terms may be granted upon application if the director determines that it would be in the best interest of the beneficiaries.

R652-100-700. Materials Permit Provisions.

Each materials permit shall contain provisions necessary to ensure responsible surface management including, but not limited to, the following provisions: The rights of the permittee; rights reserved to the permitter; the term of the permit; payment obligations; transfers of permit interest by permittee; permittee's responsibility for reclamation; terms and conditions of permit forfeiture; and protection of the state from liability from all actions of the permittee.

R652-100-800. Bonding Provisions.

1. Prior to the issuance of a materials permit, or for good cause shown at any time during the term of the materials permit, upon 30 days written notice, the applicant or permittee, as the case may be, may be required to post with the division a bond in the form and amount as may be determined by the division to assure compliance with all terms and conditions of the permit.

2. All bonds posted on materials permits may be used for payment of all monies, rentals, and royalties due to the division, also for costs of reclamation and for compliance with all other terms and conditions of the permit, and rules pertaining to the permit. The bond shall be in effect even if the permittee has conveyed all or part of the permit interest to a sublessee, assignee, or subsequent operator until such time as the permittee fully satisfies the permit obligations, or until the bond is replaced with a new bond posted by the sublessee or assignee.

3. Bonds may be increased in reasonable amounts, at any time as the division may decide, provided the division first gives permittee 30 days written notice stating the increase and the reason(s) for such increase.

4. Bonds may be accepted in any of the following forms at the discretion of the division:

(a) Surety bond with an approved corporate surety registered in Utah.

(b) Cash deposit. However, the state will not be responsible for any investment returns on cash deposits.

(c) Certificates of deposit in the name of "Utah Division of Forestry, Fire and State Lands and permittee, c/o permittee's address", with an approved state or federally insured banking institution registered in Utah. Such certificate of deposit must have a maturity date no greater than 12 months, be automatically renewable, and be deposited with the division, the permittee will be entitled to and receive the interest payments. All certificates of deposit must be endorsed by the permittee prior to acceptance by the director.

(d) Other forms of surety as may be acceptable to the division.

R652-100-900. Insurance Requirements.

1. Prior to the issuance of a materials permit, the applicant may be required to obtain insurance of a type and in an amount acceptable to the division. Proof of insurance shall be in the form of a certificate of insurance containing sufficient information to satisfy the division that insurance provisions of the permit have been complied with.

2. Such insurance, if required, shall be placed with an insurer with a financial rating assigned by the Best Insurance Guide of A:X or higher, unless this requirement is waived in writing by the division.

3. The division shall retain the right to review the coverage, form, and amount of the insurance required at any time and to require permittee to obtain insurance sufficient in coverage, form, and amount to provide adequate protection upon 30 days written notice, proof of such insurance to be provided pursuant to R652-100-900(1).

R652-100-1000. Plans of Operation.

1. Prior to the commencement of any activity authorized by a materials permit the permittee shall be required to submit, for the director's approval, a plan of operations which shall include the following:

(a) A map or plat showing

i) the location and sequence of areas from which material is to be excavated;

ii) the location of any processing or stationary equipment or improvements which will be placed on the premises;

iii) transportation and access routes across the premises and adjacent properties;

iv) the location of any fuel storage tanks; and,

v) the location of stockpile areas.

(b) Elevation drawings of the premises before and after the excavation of materials.

(c) Reclamation plans prepared by any governmental agency, or if not acceptable to the director, as required by the director.

R652-100-1100. Existing Lease and Permit Conversion.

Existing sand and gravel leases and materials permits issued prior to the effective date of these rules and in good standing on such date shall continue for the term specified therein and shall be subject to the conditions and provisions contained therein; provided, however, the division may allow such lessees/permittees to convert such existing leases or permits to the new permit.

R652-100-1200. Materials Permit Assignments.

1. A materials permit may be assigned to any person, firm, association, or corporation qualified under R652-3-200, provided that the assignments are approved by the division; and no assignment is effective until approval is given. Any assignment made without such approval is void.

2. An assignment shall take effect the day of the approval of the assignment. On the effective date of any assignment, the assignee is bound by the terms of the permit to the same extent as if such assignee were the original grantee, any conditions in the assignment to the contrary notwithstanding.

3. An assignment must be a sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the easement number, and land involved, and the name and address of the assignee.

4. An assignment shall be executed according to division procedures.

R652-100-1300. Reclamation Requirements.

Following the completion of excavations, the division shall require reclamation measures to stabilize and restore natural surface conditions. Reclamation measures will generally consist of, but not necessarily be limited to, sloping and stabilization of highwalls, contouring of slopes at a ratio not greater than three feet horizontal for each one foot vertical, stabilization of access roads or the closure of access roads as determined by the division, replacement of natural topsoils, revegetation using a seed mixture and rate of application as may be specified by the division, removal of all trash and debris, and the prompt removal of all equipment, buildings, and structures owned by the permittee or permittee's agents.

R652-100-1400. Over-the-Counter Sales.

Materials permits may be issued on an "over-the-counter" basis in areas which have been designated by the director as open for such sales. The director may designate areas as open for such sales using any of the following criteria:

1. An existing pit which has not been fully reclaimed. Reclamation requirements for all or portions of existing pits may be waived by the director for the purpose of "over-the-counter" sales when the pit meets the remaining criteria.

2. Dry stream beds or similar sites where sand or gravel has accumulated, and the extraction of material will cause no degradation.

3. No sales shall be made in excess of a division-established maximum dollar amount. Sales made "over the counter" shall reflect market rates for similar sales.

R652-100-1500. Termination of Materials Permit.

Any materials permit issued by the division on sovereign land may be terminated in whole or in part for failure to comply with any term or condition of the permit or applicable laws or rules. Upon determination by the director that a materials permit is subject to termination pursuant to the terms of the permit or applicable laws or rules, the director shall issue an appropriate instrument terminating the permit.

R652-100-1600. Collection of Sales Tax.

The division shall require all permittees not exempt pursuant to Section 59-12-104 to remit sales taxes with the "Production and Settlement Transmittal Form" submitted pursuant to R652-100-300(2)(c).

KEY: administrative procedure, materials handling, permits
1993 65A-7-1
Notice of Continuation June 11, 2018

R708. Public Safety, Driver License.
R708-49. Temporary Identification Card.
R708-49-1. Purpose.

The purpose of the rule is to set forth the provisions for the issuance of a temporary regular identification card.

R708-49-2. Authority.

This rule is authorized by Subsection 53-3-104(1)(b).

R708-49-3. Definitions.

(1) "Temporary Regular Identification card" means a temporary identification card issued by the Driver License Division to a qualified U.S. Citizen, Legal Permanent Resident Alien or U. S. National who has not provided all the required documents to obtain a completed identification card.

R708-49-4. Provisions.

(1) An applicant for an identification card as defined in Section 53-3-102(17) who is unable to provide all required documentary evidence under Subsection 53-3-804(2)(a), 53-3-804(2)(b), 53-3-804(2)(c), 53-3-804(2)(d) and 53-3-804(2)(i)(i) at the time of application may be issued a temporary identification card if the applicant:

(a) pays the required application fee;

(b) is a U.S. Citizen, Legal Permanent Resident Alien or U.S. National; and

(c) has on file with the division a previous license or identification record that includes a digitized photo.

(2) The temporary identification card shall be a paper document and shall contain security features as determined by the division.

(3) The temporary identification card shall bear the applicant's digitized photo image and signature.

(4) The temporary identification card shall expire six months from the date of issue.

KEY: temporary identification card
June 30, 2013 53-3-805
Notice of Continuation June 13, 2018

R746. Public Service Commission, Administration.
R746-8. Utah Universal Public Telecommunications Service Support Fund (UUSF).
R746-8-100. Authority, Purpose, and Organization.

(1) This rule is adopted under:
(a) Utah Code Section 54-8b-10; and
(b) Utah Code Section 54-8b-15.
(2) This rule:
(a) governs the methods, practices, and procedures by which:
(b) the UUSF is created, maintained, and funded; and
(c) funds are disbursed from the UUSF to qualifying access line providers.
(3) This rule is organized into the following Parts:
(a) Part 100: Authority, Purpose and Organization;
(b) Part 200: Definitions;
(c) Part 300: UUSF Funding; and
(d) Part 400: UUSF Distributions.

R746-8-200. Definitions.

(1)(a) "Access line" is defined at Utah Code Subsection 54-8b-2(1), and is used in this rule, R746-8, to the extent consistent with federal law.
(b) For purposes of applying the statutory definition of "access line," the term "connection" is defined at Utah Code Subsection 54-8b-15(1) and is used in this rule, R746-8, to the extent consistent with federal law.
(c)(i) Providers of access lines and functionally equivalent connections are hereafter referred to jointly as "providers."
(ii) Access lines and connections are hereafter referred to jointly as "access line" or "access lines."
(2)(a) "Affordable base rate" or "ABR" means the monthly retail rate that a rate-of-return regulated provider is required to charge on a per-access line basis in order to receive ongoing disbursements from the UUSF.
(b) "Affordable base rate" may include, if itemized in the provider's Commission-approved tariff:
(i) the applicable UUSF surcharge;
(ii) mandatory extended area service fees; or
(iii) state subscriber line fees.
(c) "Affordable base rate" does not include:
(i) municipal franchise fee(s);
(ii) tax(es); or
(iii) any incidental surcharge(s) other than those identified in R746-8-200(2)(b):
(A) included in a Commission-approved tariff; or
(B) authorized under these rules.
(3) "Broadband internet access service" is defined at Utah Code Subsection 54-8b-15(1).
(4) "Carrier of last resort" is defined at Utah Code Subsection 54-8b-15(1).
(5) "Eligible telecommunications carrier" or "ETC" means a provider that, if seeking to participate in the state Lifeline program:
(a) is designated as an eligible telecommunications carrier by the commission in accordance with 47 U.S.C. Section 214(e); or
(b) is designated by the FCC as a Lifeline Broadband Provider (LBP).
(6) "Designated support area" means the geographic area used to determine a provider's UUSF support distribution, including, at a minimum, the provider's entire certificated service territory located in the State of Utah.
(7) The acronym "FCC" means the Federal Communications Commission.
(8) "Facilities-based provider" means a provider that uses:
(a) its own facilities;
(b) essential facilities or unbundled network elements obtained from another provider; or
(c) a combination of its own facilities and essential facilities or unbundled network elements obtained from another provider.
(9)(a) "Household" means any individual or group of individuals living together at the same address as one economic unit.
(b) "Economic unit" means all adult individuals contributing to and sharing in the income and expenses of a household.
(10) "Lifeline subscriber" means an individual who qualifies for state subsidization of an access line through participation in a program for low-income individuals that is recognized by the FCC.
(11) "Non-rate-of-return regulated" is defined at Utah Code Subsection 54-8b-15(1).
(12) "Rate-of-return regulated" is defined at Utah Code Subsection 54-8b-15(1).
(13) "Wholesale broadband internet access service" is defined at Utah Code Subsection 54-8b-15(1).

R746-8-300. UUSF Funding.

The following sections in the 300 series address UUSF Funding.

R746-8-301. Calculation and Application of UUSF Surcharge.

(1) The Utah Universal Public Telecommunications Service Support Fund (UUSF) shall be funded as follows:
(a) Unless Subsection R746-8-301(3) applies, providers shall remit to the Commission $0.36 per month per access line that, as of the last calendar day of each month, has a place of primary use in Utah in accordance with the Mobile Telecommunications Sourcing Act, 4 U.S.C. Sec. 116 et seq.
(b)(i) "Place of primary use" means the street address representative of where the customer's use of the telecommunications service primarily occurs.
(ii) A provider of mobile telecommunications service shall consider the customer's place of primary use to be the customer's residential street address or primary business street address.
(iii) A provider of non-mobile telecommunications service shall consider the customer's place of primary use to be:
(A) the customer's residential street address or primary business street address; or
(B) the customer's registered location for 911 purposes.
(c) A provider may collect the surcharge:
(i) as an explicit charge to each end-user; or
(ii) through inclusion of the surcharge within the end-user's rate plan.
(d) A provider that offers a multi-line service shall apply the surcharge to each concurrent real-time voice communication call session that an end-user can place to or receive from the public switched telephone network.
(e)(i) A provider that offers prepaid access lines or connections that permit access to the public telephone network shall remit to the Commission $0.36 per month per access line for such service (new access lines or connections, or recharges for existing lines or connections) purchased on or after January 1, 2018.
(ii) Subsection R746-8-301(1)(e)(i) operates in lieu of Subsection R746-8-301(1)(a) in that a provider who is required to make a remittance for an access line under Subsection R746-8-301(1)(e)(i) is not required to make an additional remittance for the same access line under Subsection R746-8-301(1)(a).
(iii)(A) Multiple recharges of a single prepaid access line during a single month do not trigger multiple remittance requirements.
(B) $0.36 per month is both the maximum and minimum amount of remittance necessary for any single access line.

(2)(a) A provider shall remit to the Commission no less than 98.69 percent of its total monthly surcharge collections.

(b) A provider may retain a maximum of 1.31 percent of its total monthly surcharge collections to offset the costs of administering this rule.

(3)(a) Subject to Subsection R746-8-301(3)(b), a provider may omit the UUSF surcharge with respect to an access line that is described in Subsection R746-8-301(1), and:

(i) generates revenue that is subject to a universal service fund surcharge in a state other than Utah for the relevant month for which the provider omits the UUSF surcharge;

(ii) for the relevant month for which the provider omits the UUSF surcharge, was not used to access Utah intrastate telecommunications services; or

(iii) subject to R746-8-403(5), receives subsidization through a federal Lifeline program approved by the FCC.

(b) A provider that omits any UUSF surcharge pursuant to Subsection R746-8-301(3)(a) shall:

(i) maintain documentation for at least 36 months that the omission complied with Subsection R746-8-301(3)(a); and

(ii) consent to any audit of the documentation requested by the:

(A) Commission; or

(B) Division of Public Utilities.

(c) A provider who omits any UUSF surcharge pursuant to Subsection R746-8-301(3)(a) shall report monthly to the Division of Public Utilities, using a method approved by the Division, the number of omissions claimed pursuant to each Subsection R746-8-301(3)(a)(i) and R746-8-301(3)(a)(ii).

R746-8-302. UUSF Surcharge Remittances.

Providers shall remit surcharge assessments to the Commission as follows:

(1) If, over a period of six months, the average monthly UUSF surcharge assessments total $1,000 or more, the provider shall remit the funds:

(a) on a monthly basis; and

(b) within 45 days of the last calendar day of each month.

(2) If, over a period of six months, the average UUSF surcharge assessments are less than $1,000 per month, the provider shall accrue the UUSF surcharge assessments and submit the accrued assessments every six months.

R746-8-400. UUSF Distributions.

The following sections in the 400 series address UUSF Distributions.

R746-8-401. Rate-of-Return Regulated Providers.

(1) A rate-of-return regulated provider is eligible for ongoing UUSF support pursuant to Utah Code Section 54-8b-15 if the provider:

(a) is a carrier of last resort;

(b) is in compliance with Commission orders and rules;

(c) unless a petition brought pursuant to Subsection R746-8-401(2) is granted after adjudication, charges, at a minimum, $18 per access line;

(d) offers Lifeline service on terms and conditions prescribed by the Commission;

(e) operates as a facilities-based provider, not a reseller; and

(f) in compliance with R746-8-401(3), demonstrates through an adjudicative proceeding that its costs as established in Utah Code Section 54-8b-15 exceed its revenues as established in Utah Code Section 54-8b-15.

(2)(a) A rate-of-return regulated provider may petition the Commission to deviate from the affordable base rate set forth in Subsection R746-8-401(1)(c).

(b) A rate-of-return regulated provider that files a petition to deviate from the affordable base rate shall:

(i) demonstrate that the affordable base rate is not reasonable in the provider's designated support area; or

(ii) impute income up to the affordable base rate in calculating the provider's UUSF disbursement.

(3) The calculation of a rate-of-return regulated provider's ongoing UUSF distribution shall conform to the following standards:

(a) The provider's state rate-of-return shall be equal to the weighted average cost of capital rate-of-return prescribed by the FCC for rate-of-return regulated carriers, as of the date of the provider's application for support, and as follows:

(i) beginning July 1, 2016: 11.0%

(ii) beginning July 1, 2017: 10.75%;

(iii) beginning July 1, 2018: 10.5%;

(iv) beginning July 1, 2019, 10.25%;

(v) beginning July 1, 2020, 10.0%; and

(vi) beginning July 1, 2021, 9.75%.

(b) The provider's depreciation costs shall be calculated as established in Utah Code Section 54-8b-15.

(4) Yearly following a change in the FCC rate-of-return, unless the provider files with the Commission a petition for review of its UUSF disbursement, the Division shall make a recommendation of whether each provider's monthly distribution should be adjusted according to:

(a) the current FCC rate-of-return as set forth in R746-8-401(3)(a); and

(b) the provider's financial information from its last Annual Report filed with the Commission.

R746-8-402. Non-rate-of-return Regulated Providers.

(1) A non-rate-of-return regulated provider may be eligible for ongoing UUSF support for the deployment and management of networks capable of providing access lines, connections, or broadband internet access, upon application to the Commission, if the provider:

(a) is a carrier of last resort; and

(b) is in compliance with Commission orders and rules.

(2) Upon receipt of an application brought under R746-8-402, the Commission shall establish the appropriate criteria for the entitlement to, and the disbursement of, UUSF funds to non-rate-of-return regulated providers.

R746-8-403. Lifeline Support.

(1) In addition to any disbursement calculated under R746-8-401 or R746-8-402, an ETC may receive an ongoing distribution through ongoing participation in a Commission-approved Lifeline program upon a specific finding of public interest by the Commission.

(2)(a) The support claimed under this Subsection R746-8-403 may not exceed $3.50 per Lifeline subscriber per month of subscription to a service that:

(i) provides service over landlines; or

(ii)(A) meets FCC broadband Lifeline requirements as set forth in 47 C.F.R. 54.408; and

(B) for wireless Lifeline, allows, at no charge beyond the basic monthly fee, unlimited texting and at least 750 voice minutes per month; or

(iii)(A) meets FCC broadband Lifeline requirements as set forth in 47 C.F.R. 54.408; and

(B) does not include a voice component.

(b) Lifeline distributions will be based on eligible Lifeline subscribers as of the first day of each month, with no prorated discounts.

(3) An ETC that is approved to participate in the Commission Lifeline program shall:

(a) provide potential Lifeline subscribers with application materials and information;

(b) provide service to any customer who is verified as eligible for participation through:

(i) the FCC's national verifier system; or

(ii) if the FCC's national verifier system is not yet operational, the program administrator with which the Commission contracts to administer the initial and continued eligibility verification of state Lifeline participants;

(c) waive, for Lifeline subscribers, the following charges:

(i) customer security deposits, if the customer voluntarily elects to receive toll blocking; and

(ii) within any 12-month period, the first nonrecurring service charge for:

(A) changing local exchange usage service to Lifeline service; and

(B) changing from flat rate service to message rate service; and

(d)(i) add the Lifeline discount to a customer's account within five (5) business days of notification of the customer's eligibility under FCC Lifeline requirements; and;

(ii) remove the Lifeline discount from a Lifeline subscriber's account within five (5) business days of notification of the Lifeline subscriber's ineligibility under FCC Lifeline requirements; and

(e) submit to the Division by May 1 of each year, a complete Lifeline subscriber list, as defined by the FCC.

(4) An ETC participating in the Commission Lifeline program may not:

(a) disconnect Lifeline telephone service for nonpayment of toll service;

(b) require a Lifeline subscriber to purchase additional services from the ETC; or

(c) prohibit a Lifeline subscriber from purchasing additional services from the ETC, unless the participant fails to comply with the ETC's terms and conditions for those additional services.

(5) For an access line for which the UUSF surcharge is omitted pursuant to R746-8-301(3)(a)(iii), the UUSF surcharge amount that otherwise would have been remitted pursuant to R746-8-301 shall be deducted from the state Lifeline support paid to the provider.

R746-8-404. One-time UUSF Distribution.

A non-rate-of-return regulated carrier of last resort may apply for a one-time UUSF distribution pursuant to Utah Code Subsection 54-8b-15(3)(d).

R746-8-405. UUSF Support for Deaf, Hard of Hearing, or Severely Speech Impaired Person.

(1) This rule governs a program to provide telecommunication devices and services to qualifying deaf, hard of hearing, or severely speech impaired persons

(2) Definitions.

(a) "Applicant" means a person applying for:

(i) a telecommunication device for the deaf, hard of hearing, or severely speech impaired;

(ii) a signal device; or

(iii) another assistive communication device.

(b) "Audiologist" means a person who:

(i)(A) has a master's or doctoral degree in audiology; or

(B) is licensed in audiology in Utah; and

(ii) holds a Certificate of Clinic Competence in Audiology from the American Speech/Language/Hearing Association or its equivalent.

(c) "Deaf" means hearing loss that requires the use of a TDD to communicate effectively on the telephone.

(d). "Hard of hearing" means hearing loss that requires use of a TDD to communicate effectively on the telephone.

(e) "Otolaryngologist" means a licensed physician specializing in ear, nose, and throat medicine.

(f) "Recipient" means a person who is approved to receive a TDD, signal device, personal communicator, or other assistive communication device.

(g) "Speech language pathologist" means a person who:

(i) has a master's or doctoral degree in Speech Language Pathology; and

(ii) holds a Certificate of Clinical Competence in Speech/Language Pathology from the American Speech Language Hearing Association or its equivalent.

(h) "Severely Speech Impaired" means a speech handicap or disorder that renders speech on an ordinary telephone unintelligible.

(i) "Signal device" means a mechanical device that alerts a deaf, deaf-blind, or hard of hearing person of an incoming telephone call.

(j) "Telecommunications Device for the Deaf" or "TDD" means an electrical device for use with a telephone that utilizes:

(i) a key board;

(ii) an acoustic coupler;

(iii) a display screen;

(iv) a braille display; or

(v) a tablet device or unlocked cellular telephone that is equipped with applications that allow a user to transmit and receive messages.

(3) Eligibility.

(a) At a minimum, applicants shall demonstrate that they:

(i) live within the State of Utah;

(ii) are

(A) deaf;

(B) hard of hearing; or

(C) severely speech impaired;

(iii) are eligible for assistance under a low-income public assistance program; and

(iv) are able to send and receive messages with a TDD or other appropriate assistive device.

(b) Qualification under Subsection R746-8-405(3)(a)(ii) shall be established by the certification of:

(i) a person who is licensed to practice medicine;

(ii) an audiologist;

(iii) an otolaryngologist;

(iv) a speech/language pathologist; or

(v) qualified personnel within a state agency.

(4) Distribution process.

(a) If approved by the Commission to receive an assistive device, the applicant shall:

(i) unless Subsection R746-8-405(4)(b) applies, sign an agreement and conditions of acceptance form supplied by the Commission; and

(ii) report, as instructed by the Commission, for training and receipt of the approved device.

(b) If the recipient is a minor or is unable to sign the agreement and conditions of acceptance form, the recipient's legal guardian may sign.

(5) Ownership and Liability.

(a)(i) An assistive device provided under this rule remains the property of the State of Utah.

(ii) A recipient shall not remove an assistive device from the state of Utah for a period of time longer than 90 days unless the recipient obtains the written consent of the Commission.

(b) A recipient shall be solely responsible for the costs of:

(i) repair of an assistive device, other than for normal wear and tear;

(ii) replacement of an assistive device;

(iii) paper required by an assistive device;

(iv) telephone and internet service; and

(v) light bulbs required by an assistive device.

(c) If an assistive device requires repair, the recipient shall return it to the Commission and may not make private arrangements for repair.

(6) Termination of Use. A recipient, or if applicable, the recipient's guardian, shall return an assistive device to the

Commission if the recipient:
(a) no longer intends to reside in Utah;
(b) becomes ineligible pursuant to R746-8-405(3); or
(c) is notified by the Commission to return the device.

R746-8-405a. New Technology Equipment Distribution Program (NTEDP).
(1) Authority and Purpose.
(a) This rule section is promulgated pursuant to Utah Code Subsection 54-8b-10(3)(b).
(b) The purposes of the NTEDP are:
(i) to explore the feasibility of using tablet devices and/or unlocked cellular telephones to address the telecommunication needs of the deaf, hard of hearing, and severely speech-impaired communities;
(ii) to determine how best to manage a program in which tablet devices and/or unlocked cellular telephones are provided; and
(iii) to determine the level of support services that would be required if tablet devices and/or unlocked cellular telephone devices are provided.
(2) Duration. The NTEDP shall terminate no later than December 31, 2018.
(3) Participation.
(a) An individual who wishes to participate in the NTEDP shall:
(i) submit a completed application form to the Relay Utah office;
(ii) provide medical documentation of:
(A) deafness;
(B) hardness of hearing; or
(C) severe speech impairment;
(iii) demonstrate that the individual is receiving assistance from a low-income public assistance program administered by a state agency;
(iv)(A) if applying for a tablet, certify that the individual has consistent access to a WiFi network; or
(B) if applying for an unlocked cellular telephone, certify that the individual has a service plan in place with a wireless telecommunications provider; and
(v) certify that the individual is able and willing to comply with Subsection (4).
(b) Priority may be given to applicants who have previously participated in the Commission's Relay Utah program.
(c) An applicant who is not selected to participate may request to be placed on a waiting list.
(d) Participation shall be limited as follows:
(i) From the inception of the program through June 30, 2017, no more than 25 participants, as follows:
(A) no more than 8 deaf individuals who are at least 13 years old;
(B) no more than 8 hard of hearing individuals who are at least 13 years old;
(C) no more than 8 severely speech impaired individuals who are at least 13 years old; and
(D) at least one deaf, hard of hearing, or severely speech impaired individual who is under 13 years of age.
(ii) From July 1, 2017 through the conclusion of the program, up to 10 additional participants in each six-month period.
(4) Participant obligations.
(a) An individual who is chosen to participate in the NTEDP shall:
(i) participate in an entrance interview with the Relay Utah office;
(ii) complete online surveys as instructed by the Relay Utah office;
(iii) promptly comply with all instructions from the Relay Utah office to download apps;
(iv) promptly respond to requests from the Relay Utah office for information and feedback;
(v) maintain the device in the storage case provided;
(vi) retain all original device packaging, instructions, and information;
(vii) contact the manufacturer's customer service department for assistance with technical support;
(viii) promptly report to the Relay Utah office:
(A) software and hardware failures; and
(B) damage to the device;
(ix) take financial responsibility for loss of, or damage to, the device if caused by the individual's misuse or negligence; and
(x) immediately return the device to the Relay Utah office if the individual:
(A) moves from the State of Utah;
(B) is disqualified by the Relay Utah office from further participation in the NTEDP; or
(C) chooses to terminate the individual's participation in the NTEDP.
(b) An individual who is chosen to participate in the NTEDP may not:
(i) reformat or attempt to reformat the device;
(ii) allow any other person to use the device, except as necessary to assist the participant with telecommunications; or
(iii) install software, apps, or other programs not authorized by the Relay Utah office.
(c) A participant who fails to comply with this Subsection (4) may be disqualified from further participation in the NTEDP.
(5) All devices distributed as part of the NTEDP shall remain the property of the State of Utah Public Service Commission.

KEY: Utah universal service fund, surcharges and disbursements, speech/hearing challenges, assistive devices and technology
June 21, 2018 **54-3-1**
54-4-1
54-8b-15
54-8b-10

R805. Regents (Board of), University of Utah, Administration.
R805-2. Government Records Access and Management Act Procedures.
R805-2-1. Purpose.

The purpose of this rule is to establish procedures for the University of Utah in accordance with the Government Records Access and Management Act ("GRAMA").

R805-2-2. Authority.

This rule is authorized by Sections 63A-12-104(2), 63G-2-204(2)(d), and 63G-3-201 of the Utah Code.

R805-2-3. Allocation of Responsibility.

All operating units of the University of Utah, e.g., departments, institutes, offices, divisions, centers, schools, and colleges, shall be considered as a single governmental entity for purposes of this rule.

R805-2-4. Requests for Access.

The University of Utah is a governmental entity of the State of Utah and is not an agency of the federal government. As such, the University of Utah is not subject to the federal Freedom of Information Act.

Access to student records held by the University of Utah is governed by the Family Educational Rights and Privacy Act and not GRAMA.

Access to records containing protected health information that are created or maintained by the University of Utah in its capacity as an entity covered by the Health Insurance Portability and Accountability Act ("HIPAA"), as amended, is governed by HIPAA and not GRAMA.

A person requesting access to a record subject to GRAMA, and held by the University of Utah, must submit a written request that identifies the requested record with reasonable specificity.

The written request must also contain the name, mailing address, and, if available, the daytime telephone number of the person making the request. Such requests shall be directed as follows:

(1) Requests for personnel records shall be sent to the Office of the Chief Human Resources Officer.

(2) Requests pertaining to financial records shall be sent to the Office of the Vice President for Administrative Services.

(3) Requests pertaining to purchasing activities shall be sent to the Director of the University Purchasing Department.

(4) Requests pertaining to athletics shall be sent to the Athletics Director.

(5) All other requests shall be sent to the office of the vice president responsible for overseeing the operating unit of the University of Utah in which the records are maintained. A list of those officials follows.

(a). Senior Vice President, Academic Affairs.
(b). Senior Vice President, Health Sciences.
(c). Vice President, Administrative Services.
(d). Vice President, General Counsel.
(e). Vice President, Government Relations.
(f). Chief Human Resources Officer.
(g). Vice President, Institutional Advancement.
(h). Vice President, Research.
(i). Vice President, Student Affairs and Services.

A person making a request should consult the University's Web site for current mailing addresses.

R805-2-5. Appeals from University Determinations.

Appeals from University determinations under GRAMA shall be directed to the Records Officer, who has been designated by the University President to hear appeals pursuant to section 63G-2-401(9).

R805-2-6. Fees.

As allowed by GRAMA, the University of Utah charges fees in connection with its response to a records request. A fee schedule may be obtained from the University Records Officer.

KEY: higher education, GRAMA, records
March 24, 2011 63G-2-204(2)
Notice of Continuation June 26, 2018 63A-12-104
63G-3-201

R986. Workforce Services, Employment Development.
R986-700. Child Care Assistance.
R986-700-701. Authority for Child Care Assistance (CC) and Other Applicable Rules.

(1) The Department administers Child Care Assistance (CC) pursuant to the authority granted in Section 35A-3-310.

(2) Rule R986-100 applies to CC except as noted in this rule.

(3) Applicable provisions of R986-200 apply to CC, except as noted in this rule or where in conflict with this rule.

R986-700-702. General Provisions.

(1) CC is provided to support employment for U.S. citizens and qualified aliens authorized to work in the U.S. Child care for approved education and training activities, job search, or for an approved temporary change as defined in R986-700-703 may be authorized in accordance with rule.

(2) CC is available, as funding permits, to the following clients who are employed or are participating in activities that lead to employment:

(a) parents;

(b) specified relatives; or

(c) clients who have been awarded custody or appointed guardian of the child by court order and both parents are absent from the home. If there is no court order, an exception can be made on a case by case basis in unusual circumstances by the Department program specialist.

(3) Child care is provided only for children living in the home and only during hours when neither parent is available to provide care for the children. To be eligible, the child must have a need for at least eight hours of child care per month as determined by the Department.

(4) If a client is eligible to receive CC, the following children, living in the household unit, are eligible:

(a) children under the age of 13; and

(b) children up to the age of 18 years if the child;

(i) meets the requirements of rule R986-700-717, and/or

(ii) is under court supervision.

(5) Clients who qualify for child care services will be paid if and as funding is available. When the child care needs of eligible applicants exceed available funding, applicants will be placed on a waiting list. Eligible applicants on the list will be served as funding becomes available. Special needs children, homeless children and FEP or FEPTP eligible children will be prioritized at the top of the list and will be served first. "Special needs child" is defined in rule R986-700-717.

(6) Payments are issued monthly based on a client's eligibility for services in that month. The amount of CC might not cover the entire cost of care.

(7) A client is only eligible for CC if the client has no other options available for child care. The client is encouraged to obtain child care at no cost from a parent, sibling, relative, or other suitable provider. If suitable child care is available to the client at no cost from another source, CC cannot be provided.

(8) CC can only be provided by an eligible provider approved by the Department and will not be provided for illegal or unsafe child care. Illegal child care is care provided by any person or facility required to be licensed or certified but where the provider has not fulfilled the requirements necessary to obtain the license or certification.

(9) CC will not be paid to a client for the care of his or her own child(ren) when the client is working in a residential setting. CC may be approved where the client is working for an approved child care center, does not regularly watch his or her own children at the center, and does not have an ownership interest in the child care center. CC will not be paid to a client for the care of his or her own child(ren) if the client is also the licensee or is a stockholder, officer, director, partner, manager or member of a corporation, partnership, limited liability partnership or company or similar legal entity providing the CC.

(10) Neither the Department nor the state of Utah is liable for injuries that may occur when a child is placed in child care even if the parent receives a subsidy from the Department.

(11) Foster care parents receiving payment from the Department of Human Services are not eligible to receive CC for the foster children.

(12) Once eligibility for CC has been established, eligibility must be reviewed once every twelve months. The review is not complete until the client has completed, signed and returned all necessary review forms to the local office. All requested verifications must be provided at the time of the review. If the Department determines the household's gross monthly income exceeds the percentage of the state median income as determined by the Department in R986-700-710(3), the Department may terminate CC even if the certification period has not expired.

R986-700-703. Client Rights and Responsibilities.

In addition to the client rights and responsibilities found in R986-100, the following client rights and responsibilities apply:

(1) A client has the right to select the type of child care which best meets the family's needs.

(2) If a client requests help in selecting a provider, the Department will refer the client to the local Care About Child Care agency.

(3) A client is responsible for monitoring the child care provider. The Department will not monitor the provider.

(4) A client is responsible to pay all costs of care charged by the provider. If the child care assistance payment provided by the Department is less than the amount charged by the provider, the client is responsible for paying the provider the difference.

(5) The only changes a client must report to the Department within ten days of the change occurring are:

(a) that the household's gross monthly income exceeds the percentage of the state median income as determined by the Department in R986-700-710(3);

(b) if the client's schedule changes so that child care is no longer needed during the hours of approved employment and/or training activities;

(c) the client is separated from his or her employment;

(d) a change of address;

(e) any of the following changes in household composition; a parent, stepparent, spouse, or former spouse moves into the home, a child receiving child care moves out of the home, or the client gets married;

(f) a change in the child care provider, including when care is provided at no cost;

(g) when the child has stopped attending child care or has not attended child care for at least eight hours during the month for which CC was authorized;

(h) a change in child custody, visitation, or parent-time, including any regular periods of extended change in visitation or parent-time such as extended holidays or vacations with a non-custodial parent;

(i) a change in the total cost of care for a client that is based on a change in a person(s) paying some or all of the total cost of care; and

(j) any other changes that would affect a client's eligibility for ESCC as described in rule R986-700-709.

(6)(a) The following are allowable temporary changes:

(i) Time-limited absences from work due to medical or other emergency, such as maternity leave, bed rest, or temporary medical issues of the client or an immediate family member living in the client's home if the client is responsible for the immediate family member's care;

(ii) Temporary fluctuations in earnings or hours, such as summer break for teachers or seasonal hours changes for IRS

employees, that would otherwise have the effect of causing the client to fail to meet the minimum work requirements for eligibility;

(iii) Scheduled holidays or breaks in a client's educational training schedule;

(iv) An eligible child turning 13 years old during an eligibility review period, unless the child no longer has a need for child care.

(b) A client who experiences an allowable temporary change and has been approved for ongoing employment support child care (ESCC) may continue to receive child care payments at the same level for the remainder of the certification period. If the allowable temporary change is a temporary loss of employment, the client must comply with Department procedures regarding eligibility verification, including but not limited to reporting the temporary loss of employment to the Department within ten days and requesting the child care continue.

(7) Once an eligibility determination is made and a full month's payment and copayment is assessed, benefits will be paid at the same level during the remainder of the certification period so long as the client remains eligible, except that:

(a) The Department may act on reported changes that result in a subsidy increase or copayment decrease, and

(b) Benefits may be reduced if a child care provider reports a lower monthly charge or the client changes to a different child care provider.

(8) If an overpayment is established and it is determined that the client was at fault in the creation of the overpayment, the client must repay the overpayment to the Department. In some situations, the client and provider may be jointly liable. In the case of joint liability, both parties can be held liable for the entire overpayment.

(9) The Department is authorized to release the following information to the designated provider:

(a) limited information regarding the status of a CC payment including that no payment was issued or services were denied;

(b) the date the child care subsidy was issued;

(c) the subsidy amount for that provider;

(d) the copayment amount;

(e) information available in the Department Provider Portal. The Provider Portal provides a provider with computer access to limited, secure information;

(f) the month the client is scheduled for review;

(g) the date the client's application was received; and

(h) general information about what additional information and/or verification is needed to approve CC such as the client's work schedule and income.

(10) If a client uses a child care provider at least eight hours in the calendar month, and that provider has been paid for that month, the Department will not pay another provider for child care for the rest of that month, even if the client changed providers, unless the maximum subsidy payment amount for the month will not be exceeded by paying the second provider and one of the following exceptions also applies:

(a) The initial provider is no longer providing child care, is no longer an approved provider, or has been disqualified by the Department;

(b) The client relocates his or her residence and it is no longer reasonably feasible to continue using the initial provider due to travel time or distance;

(c) There is a substantial change in the days or times of day when child care is needed, such as a change in the timing of the shifts the client is working, that cannot be accommodated by the initial provider; or

(d) The Department determines a change in child care providers is necessary due to an endangerment finding for the child. The Department may, in its discretion, approve payment to a second provider due to an endangerment finding even if the maximum subsidy payment amount would be exceeded.

R986-700-704. Establishment of Paternity.

The provisions of rules R986-100 and R986-200 pertaining to cooperation with ORS in the establishment of paternity and collection of child support do not apply to ES CC.

R986-700-705. Eligible Providers and Provider Settings.

(1) The Department will only pay CC to clients who select eligible providers. All eligible providers, including providers who receive CC grants from the Department, must meet all Child Care Development Fund (CCDF) requirements. The only eligible providers are:

(a) providers regulated through Department of Health Child Care Licensing (CCL):

(i) licensed homes;

(ii) licensed child care centers, except hourly centers; and

(iii) homes with a residential certificate.

(b) license exempt providers who are not required by law to be licensed and are either;

(i) license exempt centers as defined in R430-8-3. Programs or centers must have a current letter of exempt status with Department approval from CCL; or

(ii) DWS Family, Friend and Neighbor providers (FFN) as approved by CCL. The requirements for FFN approval are provided in subsection (3) of this section and in Department policy.

(2) The following providers are not eligible for receipt of a CC payment:

(a) a provider living in the same home as the parent client and providing child care in the home where they live, unless the provider is caring for a child who has special needs who cannot be otherwise accommodated;

(b) a sibling of the child living in the home can never be approved, even for a special needs child;

(c) a parent, foster care parent, stepparent or former stepparent, even if living in another residence;

(d) undocumented aliens;

(e) persons under age 18;

(f) a provider providing care for the child in another state;

(g) a sponsor of a qualified alien client applying for child care assistance;

(h) a provider who has committed an IPV as a provider, or as a recipient of any funds from the Office of Child Care including subsidy and grant payments, as determined by the Department or by a court. The disqualification for an IPV will remain in effect until the IPV disqualification period has run, any resulting overpayment has been satisfied, and the provider is otherwise eligible;

(i) any provider disqualified under R986-700-718;

(j) a provider who does not provide necessary information or cooperate with a Department investigation or audit or is not an approved provider;

(k) a provider whose child care subsidies are being taken pursuant to an IRS levy or garnishment; or

(l) a provider living in the same home as a non-custodial parent and providing child care for a child of that parent.

(3) FFN providers must comply with all CCDF and Department requirements and will not be approved for a CC subsidy payment unless all of the following requirements have been successfully completed and verification has been provided to CCL:

(a) complete, sign and submit an application to CCL;

(b) provide a copy of a certificate of completion of New Provider orientation and agree to comply with Department requirements and policy, including ongoing training, as explained in the orientation;

(c) pass a home inspection as provided in Department

policy;

(d) complete an infant/child CPR training;

(e) complete first aid training; and,

(f) the provider and all individuals 12 years old or older living in the home where care is provided must submit to and pass a background check as provided in R986-700-751 et seq.

(4) A FFN provider must also comply with all Department policy including abiding by the ratio requirements.

(5) FFN approval must be renewed annually. Renewal information is found in Department or CCL policy. The FFN CC Provider must complete an announced inspection and show compliance with all regulations at least 30 calendar days before the expiration date of the current approval.

(6) FFN CCL provider approval is for the provider and the location(s) and is not assignable or transferable.

(7) If a program or provider is not subject to licensing requirements, and the program or provider receives or wishes to receive CCDF funds but has had adverse action taken against it by CCL regarding DWS approval status or health and safety compliance, the program or provider's appeal shall be made to CCL according to CCL's procedures. An appeal based on adverse action by the Department shall be made to the Department in accordance with R986-100-123 et seq.

R986-700-706. Provider Rights and Responsibilities.

(1) Providers assume the responsibility to collect copayments and any other fees for child care services rendered. Neither the Department nor the state of Utah assumes responsibility for payment to providers.

(2) A provider may not charge clients receiving a CC subsidy a higher rate than their customers who do not receive a CC subsidy.

(3) Providers may retain the full monthly subsidy payment so long as at least eight hours of care were provided during the month and the provider is otherwise in compliance with Department rules and policies. The subsidy payment is to support an eligible client's monthly employment and training activities and allows for temporary absences and unforeseen circumstances. Having a child only attend one day per month or sporadically to receive a child care payment is a misuse of funds and will result in an overpayment and possible child care disqualification. Additionally, the subsidy payment is intended to be used to cover the provider's business expenses during the month for reserving the slot(s) and shall not be used to cover the client's out of pocket expenses, copayments, or carried forward for future months of service. Providers who choose not to apply the funds as required will be subject to an overpayment and possible child care disqualification.

(4) Providers must keep accurate records of subsidized child care payments, and time and attendance. The Department has the right to investigate child care providers and audit their records. Audits and investigations may be performed by a person or entity under contract with the Department. Time and attendance records for all subsidized clients must be kept for at least three years.

(5) Providers must provide initial verification information to determine eligibility. Providers must also cooperate with an investigation or audit to determine ongoing eligibility or if eligibility was correctly determined. Cooperation includes providing information and verification and returning telephone calls or responding to emails from Department employees or other persons authorized by the Department to obtain information such as an employee of ORS in a timely manner. "A timely manner" is usually considered to be ten business days for written documentation and two business days to return a phone call or email request. 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 eligibility. Failure to disclose a material fact that might affect the eligibility determination can also lead to criminal prosecution. If a provider fails to cooperate with an investigation or audit, provide any and all information or verification requested, or fails to keep records for three years without good cause, the provider will no longer be an approved provider. Good cause is limited to circumstances where the provider can show that the reasons for the delay in filing were due to circumstances beyond the provider's control or were compelling and reasonable. The period the provider will not be an approved provider will be from the date the information or verification was due until when it is received by the Department.

(6) If a provider accepts payment from funds provided by the Department for services which were not provided, the provider is responsible for repayment of the resulting overpayment and there may be a disqualification period and/or criminal prosecution.

(7) CCL will keep a list of all providers that have been disqualified as a provider or against whom a referral or complaint is received.

(8) All providers, except FFN providers as defined in R986-700-705(1)(b)(ii), are required to report their monthly, full-time child care rates to the local Care About Child Care agency. All providers must also report the rate for each individual child to the Department if the amount is less than the rate reported to Care About Child Care. Failure to report reduced rates may result in an overpayment.

(9) Providers are required to access the Provider Portal at jobs.utah.gov/childcare and:

(a) submit and manage bank account information;

(b) read and agree to the terms and conditions contained in the Portal;

(c) view child care payment information;

(d) manage Provider Portal user access to ensure only those users with authority to make changes can do so. The provider is liable for all changes made and information provided through the Provider Portal;

(e) report the following changes within 10 days, or by the 25th of the month, whichever is sooner:

(i) a reduced or part-time rate for an individual child in care, as applicable. This includes reporting any rate changes or updates that occur for each child once a rate has been submitted in the portal;

(ii) a child is no longer in child care;

(iii) a child is not expected to be in child care the following month;

(iv) that the provider received a greater subsidy payment amount than what was charged to the client for the month of service. Excess subsidy funds cannot be used to cover outstanding balances, copayments, or future services. The provider should notify the Department and the difference will either be deducted from the next month's subsidy payment or the funds must be returned to the Department;

(v) that a child has not attended for at least eight hours by the 25th of the month, regardless of whether the child attends or is expected to attend for at least eight hours following the 25th of the month; and

(vi) a change in financial institution account information for direct deposit.

(f) Effective February 1, 2018, between the 25th of each month and the end of the month, a licensed provider shall certify, in a manner specified by the Department, that the licensed provider has reviewed each child's attendance and reported any reportable changes in each child's attendance, including future changes known or expected by the provider.

(10) Providers are required to read and agree to the terms and conditions contained in the Provider Guide annually.

(11) Providers must submit a W-9 Form, Federal Employer Identification Number (EIN) or Social Security

Number via the DWS Provider Portal, if required by the Department, and a 1099 will be issued annually. The Federal EIN or Social Security Number must be provided within 30 days of receipt of the first subsidy payment from the Department. Failure to submit this information shall result in the provider being removed from approved provider status.

(12) A provider who provides services for any part of a month and then terminates services with the client/child during the month, must reimburse the Department for the days when care was not provided. However, if it was necessary to remove the child from care because the child or others were endangered, and the incident was reported to CCL or local authorities, the Department may waive repayment.

R986-700-707. Copayment.

(1) "Copayment" means a dollar amount which is deducted by the Department from the standard CC subsidy for Employment Support CC. The copayment is determined on a sliding scale and the amount of the copayment is based on the parent(s) countable earned and unearned income and household size.

(2) The parent is responsible for paying the amount of the copayment directly to the child care provider.

(3) If the copayment exceeds the actual cost of child care, the family is not eligible for child care assistance.

(4) The Department will deduct the full monthly copayment from the subsidy even if the client receives CC for only part of the month.

(5) The following clients are not subject to the copayment requirement:

(a) clients at or below 100% of the poverty level;

(b) clients receiving transitional child care and FEP CC as provided in rule R986-700-708.

R986-700-708. FEP CC Transitional Child Care.

(1) FEP CC may be provided to clients receiving financial assistance from FEP or FEPTP. FEP CC will only be provided to cover the hours a client needs child care to support the activities required by the employment plan.

(2) Transitional child care is available during the six months immediately following a FEP or FEPTP termination if the termination was due to increased earned income and the household meets the work requirement and income rules for ESCC. Clients receiving transitional child care are not subject to the copayment requirement. The copayment will resume in the seventh month after the termination of FEP or FEPTP. The six month time limit is the same regardless of whether the client receives TCA or not. A client does not need to fill out a new application for child care during the six month transitional period even if there is a gap in services during those six months.

R986-700-709. Employment Support (ES) CC.

(1) Parents who are not eligible for FEP CC may be eligible for Employment Support (ES) CC. To be eligible, a parent must be employed or be employed while participating in educational or training activities. Work Study is not considered employment. A parent who attends school but is not employed at least 15 hours per week, is not eligible for ES CC. ES CC will only be provided to cover the hours a client needs child care for work or work and approved educational or training activities.

(2) If the household has only one parent, the parent must be employed at least an average of 15 hours per week. An exception may be made to the minimum work requirements with Department approval when a parent with a disability is employed at his or her full capacity and provides requested documentation and/or verification.

(3) If the family has two parents, CC can be provided if:

(a) one parent is employed at least an average of 30 hours per week and the other parent is employed at least an average of 15 hours per week and their work schedules cannot be changed to provide care for the child(ren). An exception may be made to the minimum work requirements with Department approval when both parents are employed at their full capacity and provide requested documentation and/or verification. CC will only be provided during the time both parents are in approved activities and neither is available to care for the children; or

(b) one parent is employed and the other parent cannot work, or is not capable of earning $500 per month and cannot provide care for their own children because of a physical, emotional or mental incapacity. Any employment or educational or training activities invalidate a claim of incapacity except if approved by the Department. The incapacity must be expected to last 30 days or longer. The individual claiming incapacity must verify the incapacity and why the incapacity prohibits them from providing care for their children in the following ways:

(i) receipt of disability benefits from SSA if it proves the incapacity prohibits the client from providing care for their children;

(ii) 100% disabled by VA if it proves the incapacity prohibits the client from providing care for their children; or

(iii) by submitting a written statement from:

(A) a licensed medical doctor;

(B) a doctor of osteopathy;

(C) a licensed Mental Health Therapist as defined in UCA 58-60-102;

(D) a licensed Advanced Practice Registered Nurse; or

(E) a licensed Physician's Assistant.

(4) Employed or self-employed parent client(s) must make, either through wages or profit from self-employment, a rate of pay equal to or greater than minimum wage multiplied by the number of hours the parent is working. To be eligible for ES CC, a self employed parent must provide business records for the most recent three month time period to establish that the parent is likely to make at least minimum wage. If a parent has a barrier to other types of employment, exceptions can be made in extraordinary cases with the approval of the state program specialist.

(5) Americorps*Vista is not supported. Job Corps activities are considered to be training and a client in the Job Corps would also have to meet the work requirements to be eligible for ES CC.

(6) Applicants must verify identity but are not required to provide a Social Security Number (SSN) for household members. Benefits will not be denied or withheld if a customer chooses not to provide a SSN if all factors of eligibility are met. SSN's that are supplied will be verified. If an SSN is provided but is not valid, further verification will be requested to confirm identity.

R986-700-710. Income and Asset Limits for ES CC.

(1) Rule R986-200 is used to determine:

(a) who must be included in the household assistance unit for determining whose income must be counted to establish eligibility. In some circumstances, determining household composition for a ES CC household is different from determining household composition for a FEP or FEPTP household. ES CC follows the parent and the child, not just the child so, for example, if a parent in the household is ineligible, the entire ES CC household is ineligible. A specified relative may not opt out of the household assistance unit when determining eligibility for CC. The income of the specified relatives needing ES CC in the household must be counted. For ES CC, only the income of the parent/client is counted in determining eligibility regardless of who else lives in the household. If both parents are living in the household, the income of both parents is counted. Recipients of SSI benefits are included in the household assistance unit.

(b) what is counted as income except:

(i) the earned income of a minor child who is not a parent is not counted;

(ii) child support, including in kind child support payments, is counted as unearned income, even if it exceeds the court or ORS ordered amount of child support, if the payments are made directly to the client. If the child support payments are paid to a third party, only the amount up to the court or ORS ordered child support amount is counted; and

(iii) earned and unearned income of SSI recipients is counted with the exception of the SSI benefit.

(c) how to estimate income.

(2) The following income deductions are the only deductions allowed on a monthly basis:

(a) the first $50 of child support received by the family;

(b) court ordered and verified child support and alimony paid out by the household;

(c) $100 for each person with countable earned income; and

(d) a $100 medical deduction. The medical deduction is automatic and does not require proof of expenditure.

(3) The household's countable income, less applicable deductions in paragraph (2) above, must be at, or below, a percentage of the state median income as determined by the Department. The Department will make adjustments to the percentage of the state median income as funding permits. The percentage currently in use is available at the Department's administrative office.

(4) Charts establishing income limits and the copayment amounts are available at all local Department offices.

(5) An independent living grant paid by DHS to a minor parent is not counted as income.

(6) If a non-applicant parent pays a portion of the child care costs directly to the applicant parent, that amount is counted as income. If the non-applicant parent pays the child care provider directly, that amount will be deducted from the subsidy amount. If the court orders the non-applicant to pay one-half of the child care costs, the non-applicant parent must pay one-half of the total cost of child care.

(7) Clients must meet the CCDF asset limit.

R986-700-711. ES CC to Support Education and Training Activities.

(1) CC may be provided when the client(s) is engaged in education or training and employment, provided the client(s) meet the work requirements under Section R986-700-709(1).

(2) The education or training is limited to courses that directly relate to improving the parent(s)' employment skills.

(3) ES CC will only be paid to support education or training activities for a total of 24 calendar months. The months need not be consecutive.

(a) On a case by case basis, and for a reasonable length of time, months do not count toward the 24-month time limit when a client is enrolled in a formal course of study for any of the following:

(i) obtaining a high school diploma or equivalent,

(ii) adult basic education, and/or

(iii) learning English as a second language.

(b) Months during which the client received FEP child care while receiving education and training do not count toward the 24-month time limit.

(c) CC can not ordinarily be used to support short term workshops unless they are required or encouraged by the employer. If a short term workshop is required or encouraged by the employer, and approved by the Department, months during which the client receives child care to attend such a workshop do not count toward the 24- month time limit.

(4) Education or training can only be approved if the parent can realistically complete the course of study within 24 months.

(5) A client may choose to receive continued child care coverage of training participation hours for up to three months during a break in semesters to allow for continuity of care and to reserve the child care slot(s).

(6) Any child care assistance payment to cover training participation hours made for a calendar month, or a partial calendar month, counts as one month toward the 24-month limit.

(7) There are no exceptions to the 24-month time limit, and no extensions can be granted.

(8) CC is not allowed to support education or training if the parent already has a bachelor's degree.

(9) CC cannot be approved for graduate study or obtaining a teaching certificate if the client already has a bachelor's degree.

R986-700-712. CC for Certain Homeless Families.

(1) CC can be provided for homeless families with one or two parents when the family meets the following criteria:

(a) The family must present a referral for CC from an agency known by the local office to be an agency that works with homeless families, including shelters for abused women and children. This referral will serve as proof of their homeless state. Local offices will provide a list of recognized homeless agencies in local office area.

(b) The family must show a need for child care to resolve an emergency crisis.

(c) The family must meet all other relationship and income eligibility criteria.

(2) CC for homeless families is only available for up to three months in any 12-month period. When a payment is made for any part of a calendar month, that month counts as one of the three months. The months need not be consecutive.

(3) Qualifying families may use child care assistance for any activity including, but not limited to, employment, job search, training, shelter search or working through a crisis situation.

(4) If the family is eligible for a different type of CC, the family will be paid under the other type of CC.

R986-700-713. Amount of CC Payment.

CC will be paid at the lower of the following levels:

(1) the maximum monthly local market rate as calculated using the Local Market Survey. The Local Market Survey is conducted by the Department and based on the provider category and age of the child. The Survey results are available for review at any Department office through the Department web site on the Internet; or

(2) the rate established by the provider for services and, if required, reported to the local Care About Child Care agency; or

(3) the unit cost multiplied by the number of hours approved by the Department. The unit cost is determined by dividing the maximum monthly local market rate by 137.6 hours.

R986-700-714. CC Payment Method.

(1) The provider must provide a valid financial account and routing number to allow for payment by direct deposit. For open, ongoing cases, payment will be issued on the first day of the month for services to be provided during that month. The provider is not an employee of the Department, the Office of Child Care, or the state of Utah even if the provider is only providing care for one client.

(2) Under unusual or extraordinary circumstances, the Department can issue payment by check. If a provider cannot obtain a financial account for direct deposit, the provider must contact the Department and explain why direct deposit is not

possible.

(3) In the event that a check is reported as lost or stolen, the provider is required to sign a statement that they have not received funds from the original check before a replacement check can be issued. The check must be reported as lost or stolen within 60 days of the date the check was mailed. The statement must be signed on an approved Department form. If the original check has been redeemed, the Department will conduct an investigation and the provider may be required to provide a sworn, notarized statement that the signature on the endorsed check is a forgery. If the Department determines the redeemed check was a forgery, the Department may require a waiting period prior to issuing a replacement check.

(4) The Department is authorized to stop payment on a CC check without prior notice if:

(a) the Department has determined that the client or the provider was not eligible for the CC payment, the Department has confirmed with the child care provider that no services were provided for the month in question or the provider cannot be located, and the Department has made an attempt to contact the provider: or

(b) when the check has been outstanding for at least 90 days; or

(c) the check is lost or stolen.

(5) No stop payment will be issued by the Department without prior notice to the provider unless the provider is not providing services or cannot be contacted.

R986-700-715. Overpayments.

(1) An overpayment occurs when a client or provider received CC for which they were not eligible including when a provider accepts payment but does not provide care. If the Department fails to establish one or more of the eligibility criteria and through no fault of the client, payments are made, it will not be considered to have been an overpayment if the client would have been eligible and the amount of the subsidy would not have been affected.

(2)(i) Even if CC funds are authorized by the Department, a CC provider cannot receive and retain funds for any month during which no CC services were provided. If authorized or unauthorized subsidy funds received and retained by a provider but no CC services were provided during the month, the provider will be required to reimburse the Department for the excess funds and may be disqualified from receipt of further CC subsidy funds as provided in R986-700-718.

(ii) A provider is considered to have retained subsidy funds if the provider knew or should have known the child would not receive services that month and fails to notify the Department within ten days, or if the provider does not notify the Department by the 25th of the month when the child was not in care at least eight hours that month.

(iii) If the client does not use at least eight hours of child care by the 25th of the month but the child returns after the 25th of the month and attends for at least eight hours total in the month, it may result in a partial overpayment for that month. The partial overpayment may not be assessed if the provider reports by the 25th of the month that a child was not in care during that month or stopped attending care during that month and the child returns after the 25th of the month and attends for at least eight hours total in the month.

(3) In the event that excess funds were issued for the month of service, the payment cannot be used to cover the client's out of pocket expenses, copayments, or carried forward for future months of service with a provider. The payment must be returned to the Department or, if possible, the payment for the following month may be reduced to offset the over-issuance. An overpayment may also occur when a provider receives a greater subsidy payment amount than the client was charged for the month of service.

(4) All CC overpayments must be repaid to the Department.

(a) Client overpayments may be deducted from ongoing CC payments for clients who are receiving CC. If the Department is at fault in the creation of an overpayment, the Department will deduct $10 from each month's CC payment unless the client requests a larger amount.

(b) Provider overpayments. If a provider does not repay any outstanding overpayment within 30 days of notice of the overpayment, the Department will commence collection procedures which may include recouping the overpayment by deducting a portion of the overpayment from ongoing child care subsidies from the Department. This is true even if the child or client no longer receives child care from the provider. The decision whether to recoup the overpayment from ongoing child care payments or to commence collection procedures lies with the Department and not the provider or client/s.

(i) If the Department elects to recoup the overpayment from ongoing child care payments, and the overpayment is less than $1,000, the Department will recoup the full amount within 90 days. If the overpayment is more than $1,000 the Department will recoup the amount within six months. If the recoupment presents a hardship because it is more than 50% of the provider's ongoing monthly subsidy amount, the provider can contact the Department to discuss alternative arrangements for repayment.

(ii) If a provider stops providing care and has a balance due on an overpayment, and seeks approval to become a provider at a later date, approval cannot be granted until the overpayment is paid in full even if any disqualification period has expired.

(5) CC will be terminated if a client fails to cooperate with the Department's efforts to investigate alleged overpayments.

(6) If the Department has reason to believe an overpayment has occurred and it is likely that the client will be determined to be disqualified or ineligible as a result of the overpayment, payment of future CC may be withheld, at the discretion of the Department, to offset any overpayment which may be determined.

(7) A CC provider may appeal an overpayment as provided for public assistance appeals in rule R986-100. Any appeal must be filed in writing within 30 days of the date of the notice of agency action establishing the overpayment.

(8) If a provider or individual facility fails to enter into a payment plan to repay the overpayment or abide by the terms of the payment plan for 12 consecutive months, the provider will be taken off the approved provider list until all overpayments are paid in full or the arrearage on the payment plan is brought current. This is true even if there is only one overpayment.

R986-700-716. CC in Unusual Circumstances.

(1) CC may be provided for study time, to support clients in education or training activities if the parent has classes scheduled in such a way that it is not feasible or practical to pick up the child between classes. For example, if a client has one class from 8:00 a.m. to 9:00 a.m. and a second class from 11:00 a.m. to noon it might not be practical to remove the child from care between 9:00 a.m. and 11:00 a.m. These additional hours may be supported with child care.

(2) An away-from-home study hall or lab may be required as part of the class course. A client who takes courses with this requirement must verify study hall or lab class attendance. The Department will not approve more study hall hours or lab hours in this setting than hours for which the client is enrolled in school. For example: A client enrolled for ten hours of classes each week may not receive more than ten hours of this type of study hall or lab.

(3) CC may be authorized to support employment for clients who work graveyard shifts and need child care services

during the day for sleep time. If no other child care options are available, child care services may be authorized for the graveyard shift or during the day, but not for both. Hours of need cannot exceed actual work hours.

(4) CC may be authorized to support employment for clients who work at home, provided the client makes at least minimum wage from the at home work, and the client has a need for child care services. The client must choose a provider setting outside the home.

R986-700-717. Child Care for Children With Disabilities or Special Needs.

(1) The Department will fund child care for children with disabilities or special needs at a higher rate if the child has a physical, social, or mental condition or special health care need that requires;

(a) an increase in the amount of care or supervision and/or

(b) special care, which includes but is not limited to the use of special equipment, assistance with movement, feeding, toileting or the administration of medications that require specialized procedures.

(2) To be eligible under this section, the client must submit a statement from one of the professionals listed in rule R986-700-709(3)(b)(ii) or one of the following documenting the child's disability and special child care needs;

(a) Social Security Administration showing that the child is a SSI recipient,

(b) Division of Services for People with Disabilities,

(c) Division of Mental Health,

(d) State Office of Education,

(e) Baby Watch, Early Intervention Program, or

(f) by submitting a written statement from:

(i) a licensed medical doctor;

(ii) a licensed Advanced Practice Registered Nurse;

(iii) a licensed Physician's Assistant;

(iv) a licensed or certified Psychologist.

(3) Verification to support that the child is disabled and has a special need must be dated and signed by the preparer and include the following;

(a) the child's name,

(b) a description of the child's disability, and

(c) the special provisions that justify a higher payment rate.

(4) The Department may require additional information and may deny requests if adequate or complete information or justification is not provided.

(5) The higher rate is available through the month the child turns 18 years of age.

(6) Clients qualify for child care under this section if the household is at or below 85% of the state median income.

(7) The higher rate in effect for each child care category is available at any Department office.

R986-700-718. Provider Disqualification; Removal From Approved Provider Status.

(1) If a parent or provider commits an IPV, as defined in R986-100-117, the parent or provider will be responsible for repayment of the overpayment, if there is one, and will be disqualified from receipt of any funds from the Office of Child Care, including subsidy funds, grants and funds as a provider or as a parent:

(a) for a period of one year for the first IPV;

(b) for a period of two years for the second IPV; and

(c) for life for the third IPV.

(2) If the overpayment resulted from parent or provider fault not amounting to fraud or an agency error, the client and or provider will be responsible for repayment of the overpayment. There is no disqualification or ineligibility period for a fault overpayment.

(3) Effective February 1, 2018, a licensed provider that, in any six-month period, fails three times to timely certify attendance during the monthly certification period as required in rule R986-700-706(9)(f) shall be disqualified.

(4) A CC provider may appeal an overpayment, removal from approved provider status, or disqualification as provided for public assistance appeals in rule R986-100. Any appeal must be filed in writing within 30 days of the date of the notice of agency action establishing the overpayment or disqualification. A provider who has been disqualified or removed from approved provider status may not continue to receive CC subsidy funds pending appeal. The disqualification period will take effect even if the provider files an appeal of the decision issued by the ALJ. If the provider fails to file an appeal within 30 days of the date of the notice of agency action and the Department issues a default decision, and the provider files a request to set aside the default, CC subsidy funds will not continue unless or until the default is set aside by the ALJ. If the request to set aside the default is denied, the provider will be disqualified pending appeal of the denial to set aside the default.

(5) A provider is ineligible for CC subsidy funds after a disqualification until all overpayments established in conjunction with the disqualification have been paid in full even if the disqualification period has ended.

(6) A provider that intentionally breaches any program rule as provided in R986-100-117, except as provided in subsection (1) of this section, or violates CC rule R986-700-706(2) through (5) or who assumes a client's identity in order to gain access to client information or payment of Department funds will be disqualified for one year for the first offense, two years for the second offense and for life for the third offense.

(7) All disqualification periods run concurrently.

(8) A disqualification issued to a provider under this subsection will follow the facility, any successor facilities, and the principal(s) of the facility.

(a) A "successor facility" is any facility that acquires the business or acquires substantially all of the assets of a facility that has been disqualified. This includes a facility whose provider changes from one status to another like a provider who was disqualified as a licensed family provider who then changes to be a license exempt provider.

(b) "Acquired" means to come into possession of, obtain control of, or obtain the right to use the assets of a business by any legal means including a gift, lease, repossession or purchase. For purposes of succession, a purchase through bankruptcy court proceedings where assets are being liquidated is not considered an acquisition, if the court places restrictions on the transfer of liabilities to the purchaser. It is not necessary to purchase the assets in order to have acquired the right to their use, nor is it necessary for the predecessor to have actually owned the assets for the successor to have acquired them. The right to the use of the asset is the determining factor.

(c) "Assets" include any property, tangible or intangible, which has value. Assets may include the acquisition of the name of the business, customers, accounts receivable, patent rights, goodwill, employees, or an agreement by the predecessor not to compete.

(d) "Substantially all" means acquisition of 90 percent or more of all of the predecessor's assets.

(f) A "principal" is the individual or individuals who were responsible for the day to day business of the child care center provided that individual had an ownership interest in the center. An ownership interest includes a shareholder, director or officer of a corporation and a partner, member or manager of a limited liability partnership or company.

R986-700-719. Job Search Child Care (JS CC).

(1) JS CC is available to a client who is otherwise eligible for child care but is separated from his or her job and meets the

eligibility criteria.

(2) JS CC is available for a maximum of three additional months provided the client:

(a) met the minimum work requirement for a single or two-parent household, and was permanently separated from his or her job or was receiving child care for an allowable temporary change when permanently separated from his or her job;

(b) was receiving ES CC in the month of the job separation and;

(c) reports the job loss within 10 days and requests continued child care payments while searching for a job. In that case, the client will be eligible for one additional month of child care. The month of the job loss does not count.

(3) If the client verifies the job loss in a timely manner, as directed by the Department, a second and third month of CC will be paid while the client looks for a job.

(4) The JS CC copayment will be at the lowest copayment amount required by the Department for the lowest income group, disregarding all earned income during the JS CC period.

R986-700-751. Background Checks.

(1) Sections R986-700-751 through 756 apply to child care providers identified in Utah Code Section 35A-3-310.5(1) and license-exempt providers and other programs and grantees not subject to CCL requirements.

(2) The following persons must submit to a background check:

(a) The provider;

(b) Each person age 12 years old or older who is living in the household where the child care is provided; and

(c) Each person who is employed or volunteering at the facility where the child care is provided, if the person's activities involve care or supervision of children or unsupervised access to children.

(3) If child care is provided in the child's home, a background check must be done on each person age 12 years old or older living in the child's home who is not on the client's child care case.

(4) A client is not eligible for a subsidy if the client chooses a provider and any person described in Subsection (2) above has:

(a) a supported finding of severe abuse or neglect by the Department of Human Services, a substantiated finding by a Juvenile court under Subsection 78-3a-320 or a criminal conviction related to neglect, physical abuse, or sexual abuse of any person; or

(b) a conviction for an offense as identified in R986-700-754; or

(c) an adjudication in juvenile court of an act which if committed by an adult would be an offense identified in R986-700-754.

R986-700-752. Definitions.

Terms used in the section R986-700-751 through 756 are defined as followed:

(1) "Convicted" includes a conviction by a jury or court, a guilty plea or a plea of no contest, an adjudication in juvenile court or an individual who is currently subjected to a deferred judgment and sentence agreement, a deferred prosecution agreement, a deferred adjudication agreement, or a plea in abeyance.

(2) "Covered Individual" means:

(a) each person providing child care;

(b) all individuals 12 years old or older residing in a residence where child care is provided;

(c) each person who is employed or volunteering at the facility where the child care is provided, if the person's activities involve care or supervision of children or unsupervised access to children.

(3) "Supported" means a finding by the Utah Department of Human Services (DHS), at the completion of an investigation by DHS, that there is a reasonable basis to conclude that one or more of the following severe types of abuse or neglect has occurred:

(a) if committed by a person 18 years of age or older;

(i) severe or chronic physical abuse;

(ii) sexual abuse;

(iii) sexual exploitation;

(iv) abandonment;

(v) medical neglect resulting in death, disability, or serious illness;

(vi) chronic or severe neglect; or

(vii) chronic or severe emotional abuse

(b) if committed by a person under the age of 18:

(i) serious physical injury, as defined in Subsection 76-5-109(1)(f) to another child which indicates a significant risk to other children, or

(ii) sexual behavior with or upon another child which indicates a significant risk to other children.

R986-700-753. Criminal Background Checks.

(1) The Department will contract with the CCL to perform a criminal background check, which includes a review of the Bureau of Criminal Identification, (BCI) database maintained by the Department of Public Safety pursuant to Part 2 of Chapter 10, Title 53; and if a fingerprint card, waiver and fee are submitted, CCL will submit the fingerprint card and fee to the Utah Department of Public Safety for submission to the FBI for a national criminal history record check.

(2) Each client requesting approval of a covered child care provider must submit to CCL a form, which will include a certification, completed and signed by the child care provider as part of the DWS FFN approved provider process. Additional household members must give permission to run the background check. The provider shall pay all applicable background check fees. A fingerprint card and fee, prepared either by the local law enforcement agency or an agency approved by local law enforcement, shall also be submitted if required by Subsection (4) below. If the fingerprints are submitted electronically, they must be submitted in conformity with the CCL guidelines regarding electronic submissions. Fingerprints are not required to be submitted if:

(a) The covered individual has previously submitted fingerprints to CCL for a Next Generation national criminal history record check;

(b) The covered individual has resided in Utah continuously since the fingerprints were submitted; and

(c) The covered individual has not permitted his or her background check to lapse or expire since the fingerprints were submitted.

(3) The provider must state in writing, based upon the provider's best information and belief, that no covered person, including the provider's own children, has ever been convicted of a felony, misdemeanor or had a supported finding from DHS or a substantiated finding from a juvenile court of severe abuse or neglect of a child. If the provider is aware of any such conviction or supported or substantiated finding, but is not certain it will result in a disqualification, CCL will obtain information from the provider to assess the threat to children. If the provider knowingly makes false representations or material omissions to CCL regarding a covered individual's record, the provider will be responsible for repayment to the Department of the child care subsidy paid by the Department. If a provider signs an attestation, a disqualification based on a covered individual who no longer lives in the home can be cured under certain conditions.

(4) All providers, caregivers who are 16 years old and older, and covered individuals who are 18 years and older are

required to submit fingerprints under these rules as requested. In addition, the Department may conduct background checks annually.

(5) If CCL takes an action adverse to any covered individual based upon the background check, CCL will send a denial letter to the provider and the covered individual.

(6) A background check must be submitted for each covered individual:

(a) Prior to the date the person becomes a covered individual, unless:

(1) The person is turning 12 years old and resides in the facility where child care is being provided, in which case the background check form must be submitted and authorized within ten business days of the date the child turns 12 years old;

(2) The person is currently employed by another child care provider within the State and has a current background check; or

(3) The person has been separated from employment from another child care provider within the State for no more than 180 days and has a current background check; and

(b) On an annual basis for each covered individual.

(7) A person may not begin work as a covered individual until the person has completed a fingerprint-based check and the results have been received. After the fingerprint-based check has been completed but prior to full completion of the background check process, a covered individual must be supervised by a person who has fully completed and passed the background check process.

R986-700-754. Exclusion from Child Care Due to Criminal Convictions.

(1) As required by Utah Code Subsection 35A-3-310.5(4), if the criminal conviction was a felony, or is a misdemeanor that is not excluded under paragraphs (2) or (3) below, the covered individual may not provide child care or reside in a home where child care is provided.

(2) As allowed by Utah Code Subsection 35A-3-310.5(5), the Department hereby excludes the following misdemeanors and determines that a misdemeanor conviction listed below does not disqualify a covered individual from providing child care:

(a) any class B or C misdemeanor offense under Title 32A, Alcoholic Beverage Control Act, except for 32A-12-203, Unlawful sale or furnishing to minors;

(b) any class B or C misdemeanor offense under Title 41, Chapter 6a, Traffic Code except for 41-6a-502, Driving under the influence of alcohol, drugs, or a combination of both or with specified or unsafe blood alcohol concentration, when the individual had a child in the car at the time of the offense;

(c) any class B or C misdemeanor offense under Title 58, Chapter 37, Utah Controlled Substances Act;

(d) any Class B or C misdemeanor offense under Title 58, Chapter 37a, Utah Drug Paraphernalia Act;

(e) any class B or C misdemeanor offense under Title 58, Chapter 37b, Imitation Controlled Substances Act;

(f) any class B or C misdemeanor offense under Title 76, Chapter 4, Inchoate Offenses, except for 76-4-401, Enticing a Minor;

(g) any class B or C conviction under Chapter 6, Title 76, Offenses Against Property, Utah Criminal Code;

(h) any class B or C conviction under Chapter 6a, Title 76, Pyramid Schemes, Utah Criminal Code;

(i) any class B or C misdemeanor offense under Title 76, Chapter 7, Subsection 103, Adultery, and 104, Fornication;

(j) any class B or C conviction under Chapter 8, Title 76, Offenses Against the Administration of Government, Utah Criminal Code except 76-8-1201 through 1207, Public Assistance Fraud; and 76-8-1301 False statements regarding unemployment compensation;

(k) any class B or C conviction under Chapter 9, Title 76, Offenses Against Public Order and Decency, Utah Criminal Code, except for:

(i) 76-9-301, Cruelty to Animals;

(ii) 76-9-301.1, Dog Fighting;

(iii) 76-9-301.8, Bestiality;

(iv) 76-9-702, Lewdness;

(v) 76-9-702.5, Lewdness Involving Child; and

(vi) 76-9-702.7, Voyeurism; and

(l) any class B or C conviction under Chapter 10, Title 76, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code, except for:

(i) 76-10-509.5, Providing Certain Weapons to a Minor;

(ii) 76-10-509.6, Parent or guardian providing firearm to violent minor;

(iii) 76-10-509.7, Parent or Guardian Knowing of a Minor's Possession of a Dangerous Weapon;

(iv) 76-10-1201 to 1229.5, Pornographic Material or Performance;

(v) 76-10-1301 to 1314, Prostitution; and

(vi) 76-10-2301, Contributing to the Delinquency of a Minor and

(m) any class A misdemeanor where the conviction occurred more than ten years ago and the offense would be an excludable offense listed in this section.

(3) The Department will rely on the criminal background screening as conclusive evidence of the conviction and the Department may revoke or deny approval for a provider based on that evidence.

(4) If a covered individual causes a provider to be disqualified as a provider based upon the criminal background screening and the covered individual disagrees with the information provided by BCI, the covered individual may challenge the information by contacting BCI directly. If the information causing the disqualification came from a Utah court, the covered individual must contact that court or seek an expungement as provided in Utah Code Ann. Sections 77-18-10 through 77-18-15.

(5) All child care providers must report all felony and misdemeanor arrests, charges or convictions of covered individuals to DOH within 48 hours of the arrest, notice of the charge, or conviction. All child care providers must also report a person aged 12 or older moving into the home where child care is provided within ten calendar days of that person moving in. A release for a background check must also be provided for that person within the time requested by the Department or DOH.

(6)(a) Pursuant to Utah Code Ann. Section 35A-3-310.5(5)(b), the Department's designee for considering and exempting individual cases is the Child Care Licensing Administrator within the Utah Department of Health.

(b) The Department's designee may exempt a covered individual from being excluded from providing child care due to a criminal conviction if the Department's designee determines that the nature of the background check finding or relevant mitigating circumstances indicate the covered individual does not pose a risk to children.

(c) Notwithstanding Subsection (b) above, the Department's designee shall not exempt a covered individual convicted of any of the following:

(i) Any offense specifically not excluded under Subsection (2) above;

(ii) Any "violent felony" as that term is used in Section 76-3-203.5(1)(c) of the Utah Code;

(iii) Any felony against a child, including child pornography;

(iv) Any felony involving abuse or neglect of a spouse, child, or vulnerable adult;

(v) Any felony involving rape or sexual assault;

(vi) Any felony involving kidnapping;

(vii) Any felony involving arson;

(viii) Any felony involving physical assault or battery;

(ix) Any drug-related felony, unless the offense was a non-violent offense and occurred at least ten years prior to the date of the background check; or

(x) Any violent misdemeanor committed as an adult against a child, including offenses involving child abuse, child endangerment, sexual assault, or child pornography.

R986-700-755. Covered Individuals with Arrests or Pending Criminal Charges.

If CCL determines there exists credible evidence that a covered individual has been arrested or charged with a felony or a misdemeanor that would not be excluded under R986-700-754, the Department will act to protect the health and safety of children in child care that the covered individual may have contact with. The Department may revoke or suspend approval of the provider if necessary to protect the health and safety of children in care.

R986-700-756. Exclusion From Child Care Due to Finding of Abuse, Neglect, or Exploitation.

(1) Pursuant to Utah Code Subsection 62A-4a-1005(2)(a)(v) CCL will screen all covered individuals, including children residing in a home where child care is provided, for a history of a supported finding of severe abuse, neglect, or exploitation from the licensing information system maintained by the Utah Department of Human Services (DHS) and the juvenile court records. The juvenile court records need only be accessed as provided in 35A-3-310.5(2)(c).

(2) If a covered individual appears on the licensing information system, the threat to the safety and health of children will be assessed. The Department or CCL may revoke any existing approval and refuse to permit child care in the home until the Department or CCL is reasonably convinced that the covered individual no longer resides in the home.

(3) If the Department or CCL denies or revokes approval of a child care subsidy based upon the licensing information system, the Department will send a written decision to the client.

(4) If the DHS determines a covered individual has a supported finding of severe abuse, neglect or exploitation after the Department approves a child care subsidy, the covered individual has ten calendar days to notify CCL. Failure to notify CCL may result in the child care provider being liable for an overpayment for all subsidy amounts paid to the client between the finding and when it is reported or discovered.

R986-700-757. Consequences for Failure to Comply; Appeals.

(1) A child care provider that fails to comply with Sections R986-700-751 through -756 will be removed from approved provider status until the provider complies. The child care provider may also be held liable for additional penalties under Section R986-700-718 if the requirements for liability under that section are met.

(2) A child care provider or covered individual may appeal an adverse action related to the background check requirements by following the procedure for appeals set forth in Section R986-700-705(7).

R986-700-775. High Quality School Readiness Grant Program.

(1) The Office of Child Care (OCC) administers this program pursuant to the authority granted in Utah Code Section 53A-1b-106.

(2) The OCC will solicit proposals from eligible private providers and eligible home-based educational technology providers and make recommendations to the School Readiness Board (SRB) as provided in 53A-1b-106(3).

(3) Eligible private providers and eligible home-based educational technology providers must submit an application, together with a proposal to the OCC by the date provided in the application.

(4) The proposal must contain the components outlined in 53A-1b-105(1) or (2) and details as required in 53A-1b-106(7).

(5) A grant recipient must report annually to the OCC the information required in 53A-1b-106(12) in addition to other information as required by the OCC.

R986-700-776. Intergenerational Poverty School Readiness Scholarship Program.

(1) Scholarships are available, as funding permits, for a child who

(a) will be four years of age on or before September 2 of the school year in which the individual intends to participate in a school readiness program;

(b) has not entered kindergarten; and

(c) is experiencing intergenerational poverty, as determined by the Department.

(2) The Department will mail scholarship applications to individuals who the Department has identified as potentially eligible and who live in an area where one or more high quality preschool programs is available. Individuals who do not receive an application from the Department may still apply by contacting the OCC and requesting an application. The Department will notify potential applicants of the due date for filing a completed application.

(3) An applicant may be required to show that transportation to a high quality preschool program is available if the child does not live within a reasonable commuting distance from the high quality preschool.

(4) An applicant may be required to provide verification and supporting documentation if necessary to determine eligibility.

(5) The value of the scholarship will be determined by which program the parent chooses.

(6) Scholarships are transferable however funds cannot be prorated during a given month. So if a child attends one day or more during a given month at one program, and wishes to transfer to a second program at any time during that month, the full scholarship payment will be made to the first program.

(7) Payment will be made directly to the high quality preschool provider. The provider must send the OCC an invoice at the end of the month, or as soon thereafter as feasible, when services were provided.

R986-700-777. Prioritizing Criteria.

If the Department does not receive sufficient funding to award scholarships to all eligible individuals, the Department will award scholarships by ranking eligible children who are considered at the highest risk according to Department policy. A list of the criteria for determining highest risk is available from the Department.

R986-700-778. Training and Scholarships for Early Childhood Teachers.

The Department may contract without outside entities, as funding permits, to provide training, scholarships and consulting services to assist individuals who intend to receive a Child Development Associate Credential (CDA).

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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).

(1) 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 is based on the reason for the separation from the THC and not the reason for the separation from the client company. Once the Department determines the type of separation, it will then use the following rules to determine eligibility:

(a) R994-405-101 et seq. for a voluntary quit;

(b) R994-405-201 et seq. for a discharge or reduction of force;

(c) R994-405-210 et seq. for a discharge for a crime.

(2) If there is no contact between the claimant and the THC within a reasonable period of time after the assignment ends, the separation is considered a voluntary quit. 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.

(a) If it is an initial or reopened claim, the contact must be before the claim is filed or it is considered a voluntary quit.

(b) If the THC informs the claimant about the end of an assignment, the requirement for contact is considered to have been satisfied.

(3) If the claimant and the THC have the required contact and:

(a) the THC is willing to send the claimant out on future assignments, but no new work is offered, the separation is considered a reduction of force;

(b) the THC refuses to send the claimant out on any future assignments, the separation is considered a discharge;

(c) the THC suspends the claimant from future assignments for a specific period of time, the separation will be adjudicated as a discharge if the claimant files a claim during the suspension period. If the claim is filed after the suspension period is over, and no new work has been offered, the separation is considered a reduction of force; or

(d) the claimant refuses an offer for a new assignment, the job separation is a quit if the new assignment is similar to his or her 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 elements listed in R994-405-306 should be considered in determining if the new assignment is similar to past assignments.

(i) If the only work available is the assignment the claimant just left and the claimant refuses to return to that assignment, the separation is considered a voluntary quit.

(ii) If the 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 when it is available, the separation is considered a quit and the THC may be eligible for relief of charges.

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 one or more educational institutions at the next regular year or term as set forth in Rule R994-405-805.

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) unless the claimant otherwise has a reasonable assurance of returning to work that is not substantially less suitable under Subsection (4) below.

(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. Reasonable assurance exists if the terms and conditions of the 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. For purposes of this section, new work in the educational field is considered to be substantially less suitable if the claimant will not earn from all educational employers at least 90% of the amount earned from all educational employers during the previous academic year or term at issue. 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 (as defined in Rule R994-405-805) of working in any capacity for one or more educational institutions 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 reasonable assurance of employment, as defined in Rule R994-405-805, for one or more educational institutions 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 terminations

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