

UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
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The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah State Government. The Department of Administrative Services, Division of Administrative Rules produces the *Bulletin* under authority of Section 63G-3-402.

Inquiries concerning the substance or applicability of an administrative rule that appears in the *Bulletin* should be addressed to the contact person for the rule. Questions about the *Bulletin* or the rulemaking process may be addressed to: Division of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone 801-538-3764, FAX 801-537-9240. Additional rulemaking information, and electronic versions of all administrative rule publications are available at: <http://www.rules.utah.gov/>

The information in this *Bulletin* is summarized in the *Utah State Digest (Digest)*. The *Digest* is available by E-mail or over the Internet. Visit <http://www.rules.utah.gov/publicat/digest.htm> for additional information.

Division of Administrative Rules, Salt Lake City 84114

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SPECIAL NOTICES

Health Health Care Financing, Coverage and Reimbursement Policy

Notice for June 2012 Medicaid Rate Changes

Effective June 1, 2012, Utah Medicaid will adjust its rates consistent with approved methodologies. Rate adjustments include new codes priced consistent with approved Medicaid methodologies as well as potential adjustments to existing codes. All rate changes are posted to the web and can be viewed at: <http://health.utah.gov/medicaid/stplan/bcrp.htm>

End of the Special Notices Section

NOTICES OF PROPOSED RULES

A state agency may file a **PROPOSED RULE** when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between April 17, 2012, 12:00 a.m., and May 01, 2012, 11:59 p.m. are included in this, the May 15, 2012 issue of the *Utah State Bulletin*.

In this publication, each **PROPOSED RULE** is preceded by a **RULE ANALYSIS**. This analysis provides summary information about the **PROPOSED RULE** including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the **RULE ANALYSIS**, the text of the **PROPOSED RULE** is usually printed. New rules or additions made to existing rules are underlined (e.g., example). Deletions made to existing rules are struck out with brackets surrounding them (e.g., [~~example~~]). Rules being repealed are completely struck out. A row of dots in the text between paragraphs (.) indicates that unaffected text from within a section was removed to conserve space. Unaffected sections are not printed. If a **PROPOSED RULE** is too long to print, the Division of Administrative Rules will include only the **RULE ANALYSIS**. A copy of each rule that is too long to print is available from the filing agency or from the Division of Administrative Rules.

The law requires that an agency accept public comment on **PROPOSED RULES** published in this issue of the *Utah State Bulletin* until at least June 14, 2012. The agency may accept comment beyond this date and will indicate the last day the agency will accept comment in the **RULE ANALYSIS**. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency hold a hearing on a specific **PROPOSED RULE**. Section 63G-3-302 requires that a hearing request be received by the agency proposing the rule "in writing not more than 15 days after the publication date of the proposed rule."

From the end of the public comment period through September 12, 2012, the agency may notify the Division of Administrative Rules that it wants to make the **PROPOSED RULE** effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a **CHANGE IN PROPOSED RULE** in response to comments received. If the Division of Administrative Rules does not receive a **NOTICE OF EFFECTIVE DATE OF A CHANGE IN PROPOSED RULE**, the **PROPOSED RULE** lapses and the agency must start the process over.

The public, interest groups, and governmental agencies are invited to review and comment on **PROPOSED RULES**. *Comment may be directed to the contact person identified on the Rule Analysis for each rule.*

PROPOSED RULES are governed by Section 63G-3-301; Rule R15-2; and Sections R15-4-3, R15-4-4, R15-4-5, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page

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

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 36112
FILED: 04/30/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Because of an increase in gas prices, food, and lodging-related expenses, the Division has determined that reimbursement rate should also increase.

SUMMARY OF THE RULE OR CHANGE: The rule increases the reimbursement rate for mileage, lodging, and food.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-3-106 and Section 63A-3-107

ANTICIPATED COST OR SAVINGS TO:

- THE STATE BUDGET: There will potentially be an increased cost to the state as most reimbursements are increasing.
LOCAL GOVERNMENTS: There will be no costs to local governments because the rule only governs reimbursements by the state to individuals traveling on state business.
SMALL BUSINESSES: Small business may see an increase in revenue.
PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Individuals eligible for reimbursement will see an increase in their reimbursement amounts.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Because the amendment only changes reimbursement rates and does not require any new action on the part of persons applying for reimbursements, there are no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed these changes with the Division of Finance Director and believe these changes are reasonable and warranted.

increase will be as that depends on the amount of travel by individuals eligible for reimbursement.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT: ADMINISTRATIVE SERVICES FINANCE ROOM 2110 STATE OFFICE BLDG 450 N STATE ST SALT LAKE CITY, UT 84114-1201 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO: Richard Beckstead by phone at 801-538-3100, by FAX at 801-538-3562, or by Internet E-mail at rbeckstead@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2012

AUTHORIZED BY: John Reidhead, Director

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 establishing per diem rates.

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) "Per diem" means an allowance paid daily.
(6) "Policy" means the policies and procedures of the Division of Finance, as published in the "Accounting Policies and Procedures."
(7) "Rate" means an amount of money.
(8) "Reimbursement" means money paid to compensate an employee for money spent.

(9) "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 ~~[\$36]~~\$38.00 and is computed according to the rates listed in the following table.

TABLE 1

In-State Travel Meal Allowances

Meals	Rate
Breakfast	\$9.00
Lunch	[\$11] \$13.00
Dinner	\$16.00
Total	[\$36] \$38.00

(b) The daily travel meal allowance for out-of-state travel is ~~[\$45]~~\$47.00 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	[\$21] \$23.00
Total	[\$46] \$47.00

(4) When traveling to premium cities (New York, Los Angeles, Chicago, San Francisco, Washington DC, Boston, San Diego, Orlando, Atlanta, Baltimore, and Arlington), the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the actual meal cost, with original receipts, up to ~~[\$59]~~\$62 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 ~~[\$59]~~\$62 premium allowance as follows:

(i) If breakfast is provided deduct \$14, leaving a premium allowance for lunch and dinner of actual up to ~~[\$45]~~\$48.

(ii) If lunch is provided deduct ~~[\$18]~~\$19, leaving a premium allowance for breakfast and dinner of actual up to ~~[\$41]~~\$43.

(iii) If dinner is provided deduct ~~[\$27]~~\$29, leaving a premium allowance for breakfast and lunch of actual up to ~~[\$32]~~\$33.

(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 or to be reimbursed at the reasonable, actual meal cost, with original receipts.

(a) The traveler may combine the 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.	2nd Quarter a.m.	3rd Quarter p.m.	4th Quarter p.m.
12: [01]00 - [6:00]5:59	6: [01]00 - [noon]11:59	12: [01]00 - [6:00]5:59	6: [01]00 - [midnight]11:59
*B, L, D	*L, D	*D	*no meals
In-State [[\$36]] \$38.00	[[\$27]] \$29.00	\$16.00	\$0
Out-of-State [[\$45]] \$47.00	[[\$35]] \$37.00	[[\$21]] \$23.00	\$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.

(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.	2nd Quarter a.m.	3rd Quarter p.m.	4th Quarter p.m.
12:[01]00-[6:00]5:59	6:[01]00-[noon]11:59	12:[01]00-	
[7:00]6:59	7:[01]00-[midnight]11:59		
*no meals	*B	*B, L	*B, L, D
In-State \$0	\$9.00	[\$20] <u>\$22.00</u>	[\$36] <u>\$38.00</u>
Out-of-State \$0	\$10.00	\$24.00	[\$45] <u>\$47.00</u>

*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 from their home base and the employee does not stay overnight.

(a) Breakfast is paid when the employee leaves their home base before 6:01 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 7 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. Meal Per Diem 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 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 \$65 per night for single occupancy plus tax except as noted in the table below:

TABLE 5
Cities with Differing Rates

American Fork	\$75.00 plus tax
Beaver	\$70.00 plus tax
Blanding	\$70.00 plus tax
Cedar City	\$70.00 plus tax
Delta	\$70.00 plus tax
Ephraim	\$70.00 plus tax
Fillmore	\$70.00 plus tax
Green River	\$70.00 plus tax
Heber City/Midway	\$90.00 plus tax
Kanab	\$75.00 plus tax
Layton	\$70.00 plus tax
Logan	\$75.00 plus tax
Moab	\$90.00 plus tax
Nephi	\$70.00 plus tax
Ogden	\$70.00 plus tax
Panguitch	\$70.00 plus tax
Park City	\$90.00 plus tax
Price	\$75.00 plus tax
Provo/Orem/Lehi	\$75.00 plus tax
Roosevelt	\$90.00 plus tax
Salina	\$70.00 plus tax
Salt Lake City Metropolitan Area (Draper to Centerville), Tooele	\$90.00 plus tax
St George/Washington/Springdale	\$75.00 plus tax
Tremonton	\$70.00 plus tax
Torrey	\$70.00 plus tax
Vernal	\$90.00 plus tax]
American Fork	\$75.00 plus tax
Beaver	\$70.00 plus tax
Blanding	\$75.00 plus tax
Bryce	\$70.00 plus tax
Cedar City	\$70.00 plus tax
Delta	\$70.00 plus tax
Ephraim	\$70.00 plus tax
Fillmore	\$70.00 plus tax
Green River	\$75.00 plus tax
Heber City / Midway	\$90.00 plus tax
Kanab	\$75.00 plus tax
Layton	\$75.00 plus tax
Logan	\$75.00 plus tax
Moab	\$95.00 plus tax
Monticello	\$70.00 plus tax
Nephi	\$70.00 plus tax
Ogden	\$75.00 plus tax
Park City	\$90.00 plus tax
Price	\$75.00 plus tax
Provo / Orem / Lehi	\$75.00 plus tax
Roosevelt	\$85.00 plus tax
Salt Lake City Metropolitan Area (Draper to Centerville), Tooele	\$95.00 plus tax
Springville	\$70.00 plus tax
St George / Washington / Springdale	\$75.00 plus tax
Torrey	\$70.00 plus tax
Tremonton	\$90.00 plus tax
Vernal	\$90.00 plus tax
All Other Utah Cities	\$65.00 plus tax

(3) State employees traveling less than 50 miles in excess of their normal office commute are not entitled to lodging reimbursement.

(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, 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 for in-state or out-of-state travel stays where the department/traveler makes reservations through the State Travel Office.

(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 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) The tissue copy of the charge receipt is not acceptable.

(b) 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, signature of agent, 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 and transportation costs.

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

(b) No other gratuities will be reimbursed.

(c) Include an original receipt for each individual incidental item above \$20.00 and for all airport parking.

(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) Parking at the Salt Lake City airport will be reimbursed at a maximum of the airport long-term parking rate with a receipt for amounts of \$20 or more.

(3) Registration should be paid in advance on a state warrant.

(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 made during stays of five nights or more.

(5) Allowances for personal telephone calls made while out of town on state business overnight will be based on the number of nights away from home.

(a) Four nights or less - actual amount up to \$2.50 per night (documentation is not required for personal phone calls made during stays of four nights or less)

(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.

(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.

(d) In order to preserve insurance coverage and because of federal security regulations, travelers must fly on tickets in their names only.

(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 airport long-term parking rate.

(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 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 [36]38 cents per mile or [54]55.5 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]55.5 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 [36]38 cents per mile.

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

(d) Exceptions must be approved in writing by the Director of Finance.

(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 [36]38 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) An itinerary 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 ~~[75]~~55.5 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

Date of Enactment or Last Substantive Amendment: ~~[July 1, 2011]~~2012

Notice of Continuation: April 29, 2008

Authorizing, and Implemented or Interpreted Law: 63A-3-107; 63A-3-106

**Alcoholic Beverage Control,
Administration
R81-4F-7
Sale and Purchase of Alcoholic
Beverages**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36113

FILED: 04/30/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to implement S.B. 66 passed by the Legislature in the 2012 General Session. S.B. 66 added a requirement that licensees submit an annual report demonstrating that their receipts from the sale of alcoholic product do not exceed 30% of its total annual receipts. This proposed amendment reflects that change.

SUMMARY OF THE RULE OR CHANGE: This proposed amendment to the Reception Center License agency under Section R81-4F-7, amends the rule to conform to the requirement that the Reception Center Licensee submit an annual report demonstrating that their receipts from the sale of an alcohol product do not exceed 30% of its total annual receipts.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32B-1-607 and Section 32B-6-805

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** None--Any cost or savings result directly from S.B. 66 (2012), not from this rule filing which simply makes the Department of Alcoholic Beverage Control (DABC) rules consistent with the new statute.

◆ **LOCAL GOVERNMENTS:** None--Any cost or savings result directly from S.B. 66 (2012), not from this rule filing which simply makes the DABC rules consistent with the new statute.

◆ **SMALL BUSINESSES:** None--Any cost or savings result directly from S.B. 66 (2012), not from this rule filing which simply makes the DABC rules consistent with the new statute.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--Any cost or savings result directly from S.B. 66 (2012), not from this rule filing which simply makes the DABC rules consistent with the new statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Any cost results directly from S.B. 66 (2012), not from this rule filing which simply makes the DABC rules consistent with the new statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Any cost or savings result directly from S.B. 66 (2012), not from this rule filing which simply makes the DABC rules consistent with the new statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION

1625 S 900 W

SALT LAKE CITY, UT 84104-1630

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Nina McDermott by phone at 801-977-6805, by FAX at 801-977-6888, or by Internet E-mail at nmcdermott@utah.gov
 ◆ Vickie Ashby by phone at 801-977-6801, by FAX at 801-977-6889, or by Internet E-mail at vickieashby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2012

AUTHORIZED BY: Francine Giani, Executive Director

R81. Alcoholic Beverage Control, Administration.**R81-4F. Reception Center License.****R81-4F-7. Sale and Purchase of Alcoholic Beverages.**

(1) The reception center licensee may not maintain in excess of 30% of its total annual receipts from the sale of an alcoholic product which includes mix for an alcoholic product, or a charge in connection with the furnishing of an alcoholic product pursuant to 32B-6-805(9).

(2) The restaurant shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, liquor, wine, set-ups, service charges, and all other sales. These records shall be reported to the department on an annual basis as part of the application for renewal of the reception center license. Additionally, these records should be available for inspection and audit by representatives of the department, and maintained for a period of three years.

(3) If any inspection or audit discloses that the sales of alcoholic products exceed 30% of the reception center licensee's total receipts for any quarterly period, the department shall immediately put the licensee on a probationary status and closely monitor the licensee's alcohol sales during the next quarterly period to determine that the licensee is able to prove to the satisfaction of the department that the sales of alcohol do not exceed 30% of the business. Failure of the licensee to provide satisfactory proof of the required alcohol percentage within the probationary period shall result in issuance of an order to show cause by the department to determine why the license should not be revoked by the commission.

(4) Liquor dispensing shall be in accordance with Section 32B-5-304 and Section R81-1-9 (Liquor Dispensing Systems).

KEY: alcoholic beverages, reception center licenses

Date of Enactment or Last Substantive Amendment: [~~October 1, 2011~~] **2012**

Authorizing, and Implemented or Interpreted Law: 32B-2-202; 32B-6-805(3)

**Alcoholic Beverage Control,
Administration
R81-4F-13
Agreement for Alcoholic Beverage
Service**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36115

FILED: 04/30/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to implement S.B. 66 passed by the Legislature in the 2012 General Session. Reception Center Licenses may hold an event pursuant to a contract with a third party host. S.B. 66 authorizes the commission to define a third party host so that a licensee and third party host are not owned or operated by the same person. S.B. 66 also adds a requirement that, with the exception of a non-profit organization once a year, a reception center licensee may not hold an event that is open to the public in which an alcoholic product is sold. This proposed amendment reflects that change.

SUMMARY OF THE RULE OR CHANGE: This proposed rule Reception Center License agency Section R81-4F-13 defines "third party host" for the purposes of Section 32B-6-805 "Specific operational requirements for a reception center license" as required by S.B. 66.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32B-2-202 and Section 32B-6-805

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** None--Any cost or savings result directly from S.B. 66 (2012), not from this rule filing which simply makes the Department of Alcoholic Beverage Control (DABC) rules consistent with the new statute.

◆ **LOCAL GOVERNMENTS:** None--Any cost or savings result directly from S.B. 66 (2012), not from this rule filing which simply makes the DABC rules consistent with the new statute.

◆ **SMALL BUSINESSES:** None--Any cost or savings result directly from S.B. 66 (2012), not from this rule filing which simply makes the DABC rules consistent with the new statute.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--Any cost or savings result directly from S.B. 66 (2012), not from this rule filing which simply makes the DABC rules consistent with the new statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None-- Any cost results directly from S.B. 66 (2012), not from this rule filing which simply makes the DABC rules consistent with the new statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Any cost or savings result directly from S.B. 66 (2012), not from this rule filing which simply makes the DABC rules consistent with the new statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 ALCOHOLIC BEVERAGE CONTROL
 ADMINISTRATION
 1625 S 900 W
 SALT LAKE CITY, UT 84104-1630
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Nina McDermott by phone at 801-977-6805, by FAX at 801-977-6888, or by Internet E-mail at nmcdermott@utah.gov
 ♦ Vickie Ashby by phone at 801-977-6801, by FAX at 801-977-6889, or by Internet E-mail at vickieashby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2012

AUTHORIZED BY: Francine Giani, Executive Director

R81. Alcoholic Beverage Control, Administration.
R81-4F. Reception Center License.
R81-4F-13. Agreement For Alcoholic Beverage Service.

(1) "Third Party Host" is a party that contracts with the reception center licensee to provide alcoholic beverage service at an event to be held on a specific date and time for a pre-arranged, guaranteed number of attendees at a negotiated price.

(a) With the exception of a nonprofit organization holding an event as described in 32B-6-805(19)(a), the reception center licensee may not contract with a third party host to hold an event that is open to the public where an alcoholic product is sold or offered for sale.

(b) With the exception of a nonprofit organization holding an event as described in 32B-6-805(19)(a), a third party host may not collect a cover charge or entry fee for admission to the private event.

(c) With the exception of a nonprofit organization holding an event as described in 32B-6-805(19)(a), a third party host may not receive any proceeds from the sale of alcoholic product from the event.

(d) A Reception Center Licensee may host an event for an immediate family member provided that the event is not an event that is open to the public where an alcoholic product is sold or offered for sale, and the Reception Center Licensee does not collect a cover charge or entry fee to the event.

KEY: alcoholic beverages, reception center licenses
Date of Enactment or Last Substantive Amendment: ~~October 1, 2011~~ 2012
Authorizing, and Implemented or Interpreted Law: 32B-2-202; 32B-6-805(3)

**Alcoholic Beverage Control,
 Administration
 R81-7
 Single Event Permits**

NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 36114
 FILED: 04/30/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to implement S.B. 66 passed by the Legislature in the 2012 General Session. S.B. 66 authorizes the director to issue or deny issuance of Single Event Permits with the approval of the Compliance, Licensing, and Enforcement Subcommittee, and subject to revocation or issuance by the Commission. The proposed rule amendment seeks to amend agency rules related to single event permits to reflect these changes.

SUMMARY OF THE RULE OR CHANGE: This proposed amendment to the Single Event Permits agency Rule R81-7, amends the rule to provide for approval of single event permits by the Department of Alcoholic Beverage Control (DABC) executive director and provides that notifications, requests for meetings, and requirements to inform be submitted electronically.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32-9-202 and Section 32B-2-202

ANTICIPATED COST OR SAVINGS TO:

- ♦ THE STATE BUDGET: None--Any cost or savings result directly from S.B. 66 (2012), not from this rule filing which simply makes the DABC rules consistent with the new statute.
- ♦ LOCAL GOVERNMENTS: None--Any cost or savings result directly from S.B. 66 (2012), not from this rule filing which simply makes the DABC rules consistent with the new statute.
- ♦ SMALL BUSINESSES: None--Any cost or savings result directly from S.B. 66 (2012), not from this rule filing which simply makes the DABC rules consistent with the new statute.
- ♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: None--Any cost or savings result directly from S.B. 66 (2012),

not from this rule filing which simply makes the DABC rules consistent with the new statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None-- Any cost results directly from S.B. 66 (2012), not from this rule filing which simply makes the DABC rules consistent with the new statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Any cost or savings result directly from S.B. 66 (2012), not from this rule filing which simply makes the DABC rules consistent with the new statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY, UT 84104-1630
or at the Division of Administrative Rules.

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INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2012

AUTHORIZED BY: Francine Giani, Executive Director

R81. Alcoholic Beverage Control, Administration.

R81-7. Single Event Permits.

R81-7-1. Application Guidelines.

(1) A single event permit is issued to those who are conducting a convention, civic or community enterprise.

(a) "Conducting" means the conduct, management, control or direction of an event. The organization directly benefiting from the event, monetarily or otherwise, shall be deemed to be conducting the event.

(b) "Convention, civic or community enterprise" means a function that is in the nature of a temporary special event such as a social, business, religious, political, governmental, educational, recreational, cultural, charitable, athletic, theatrical, scholastic, artistic, or scientific event. A "civic or community enterprise" generally is a gathering that brings members of a community together for the common good.

(2) An application for a single event permit application shall be ~~[included on the agenda of the monthly commission meeting for consideration]~~ considered for issuance of a single event permit when the requirements of Section 32B-1-304 and 32B-9-201, -203 and -304 have been met, and a completed application has been received by the department.

(a) Once received, the application will be considered in compliance with section 32B-9-202.

(b) All approvals, notifications, requests for meetings or requirements to inform under section 32B-9-202 shall be done electronically.

(3) Pursuant to Section 32B-9-303, ~~[the commission]~~ Subject to the requirements of 32B-9-202(2)(f)(g)and(h) and 32B-9-202(3)(a)(b)(c)and(d), the director may grant single event permits to a bona fide partnership, corporation, limited liability company, church, political organization, or incorporated association, and to each bona fide and recognized subordinate lodge, chapter or local unit of any qualifying parent entity. To be a "bona fide" and "recognized" subordinate or local entity, the applicant must have been in existence for at least one year prior to the date of the application and must furnish proof thereof.

(4) If the applicant is a bona fide incorporated association, corporation, or a separately incorporated subordinate lodge, chapter or local unit thereof, the applicant shall submit a copy of its certificate and articles of incorporation from the state, which reflect that the applicant has been in existence for at least one year prior to date of application.

(5) If the applicant is a bona fide limited liability company, the applicant shall submit a copy of its limited liability company certificate of existence from the state, which reflects that the applicant has been in existence for at least one year prior to date of application.

(6) If the applicant is a bona fide church, political organization, or recognized subordinate chapter or local unit thereof, the applicant shall submit proof of its tax exempt status as provided by the Internal Revenue Service.

(7) Any subordinate or local entity of a parent entity must also establish that it is duly "recognized" by the parent entity by providing written verification of its "recognized" status such as a letter from, or bylaws of the parent entity. The subordinate or local unit shall also furnish proof that the parent entity qualifies under sections (1), (2), (3), (4), and (5) of this rule. These requirements shall not apply in situations where the subordinate or local unit is separately incorporated.

(8) Single event permits are issued to state agencies, political subdivisions of the state, and organizations listed in Subsection (2) that are conducting a convention, civic or community enterprise. Single event permits may not be issued to or obtained by an entity or organization for the purpose of avoiding or attempting to avoid the requirement of state retail alcohol licensing.

To ensure compliance with this Subsection (7), the ~~[commission]~~ director may consider factors such as:

- (a) the purpose of the entity or organization;
- (b) the nature and purpose of the event;
- (c) the type of entertainment, if any, at the event;
- (d) the location of the event;
- (e) the frequency of events held at the same location;
- (f) whether the location is government owned and operated; and
- (g) the extent to which the event:
 - (i) benefits the community;
 - (ii) is held for charitable purposes; or
 - (iii) is held for the profit of the entity or organization.

(9) Calendar year is defined as January 1 through December 31.

(10) The single event permit bond, as required by Section 32B-9-304(3), shall not be released back to the single event permittee until the permittee provides to the department the required data regarding liquor purchases, sales, prices charged, and net profit generated at the event for which the single event permit was issued.

(11) If an organization or individual other than the one applying for the single event permit posts the \$1,000 bond required by Section 32B-9-304(3), an affidavit must be submitted attesting that the \$1,000 bond is for the permittee's compliance with the provisions of the Act and the commission rules, and that if a violation occurs at the single event, the bond may be forfeited.

(12) The [commission]director may authorize multiple sales outlets on different properties under one single event permit, provided that each site conforms to location requirements of Section 32B-9-201(4). The commission may authorize simultaneous sale and consumption hours at multiple sales outlets.

R81-7-2. Guidelines for Issuing Permits for Outdoor or Large-Scale Public Events.

(1) Purpose. The sale of alcohol at outdoor public events such as street festivals, fairs, concerts, and rodeos poses special control issues for event organizers and law enforcement officials. Furthermore, the sale of alcohol at public events attended by large numbers of people, many of whom may be under the age of 21, also poses special control issues. In deciding whether to issue a single event permit for such events, the [commission]director must be satisfied that sufficient controls will be in place to minimize the possibility of minors being sold or furnished alcohol or adults being over-served alcohol at the event. This rule identifies control measures that must be in place before the [commission]director will issue a single event permit for an outdoor or a large-scale public event. However, this rule gives the [commission]director discretion not to require specific control measures under certain circumstances after considering the facts and circumstances of a particular event.

(2) Definitions.

(a) For purposes of this rule, "large-scale public event" includes any event that is open to the general public and the estimated attendance at the event is in excess of 1000 people.

(3) Authority. This rule is enacted under the authority of Sections 63G-3-201, 32B-2-202 and 32B-9-202 and -303.

(4) Policy.

(a) Before a single event permit will be issued by the [commission]director to allow the sale of alcoholic beverages at an outdoor or a large-scale public event, the following control measures must be present at the event:

(i) There must be at least one location at the event where those wanting to purchase alcoholic beverages must show proof of age and either have their hand stamped or be issued a non-transferable wristband.

(A) The proof of age location(s) shall be separate from the alcoholic beverage sales and dispensing location(s).

(B) Proof of age may be established by:

(I) a current valid driver's license that includes date of birth and has a picture affixed and is issued in this state under Title 53, Chapter 3, Uniform Driver License Act, or in accordance with the laws of another state;

(II) a current valid identification card that includes date of birth and has a picture affixed issued by this state under Title 53,

Chapter 3, Part 8, identification Card Act, or issued by another state that is substantially similar to this state's identification card;

(III) a current valid military identification that includes date of birth and has a picture affixed; or

(IV) a current valid passport.

(C) Any person assigned to check proof of age shall have completed the alcohol server-training seminar outlined in 62A-15-401.

(D) The use of hand stamps or issuance of wristbands does not relieve those selling and dispensing alcoholic beverages from asking for proof of age if they suspect a person attempting to purchase an alcoholic beverage is under the age of 21 years.

(ii) Alcoholic sales and dispensing location(s) shall be separate from food and non-alcoholic beverage concession locations. However, if the consumption of alcohol at the event is limited to a confined, restricted area such as a "beer garden", then alcoholic beverages, food and non-alcoholic beverages may be sold at the same sales locations within the confined, restricted area.

(iii) Alcoholic beverages shall be served in readily identifiable cups or containers distinct from those used for non-alcoholic beverages.

(iv) No more than two alcoholic beverages shall be sold to a customer at a time.

(v) At least one person who has completed the alcohol server training seminar outlined in 62A-15-401 shall be at each location where alcoholic beverages are sold and dispensed to supervise the sale and dispensing of alcoholic beverages.

(vi) If minors may attend the event, all dispensing and consumption of alcoholic beverages shall be in a designated, confined, and restricted area where minors are not allowed without being accompanied by a parent or guardian, and where alcohol consumption may be closely monitored.

(b) Notwithstanding Subsection (a), the [commission]director, after reviewing the facts and circumstances of a particular outdoor or large-scale public event, ~~may in its~~ has the discretion to relax any of the control measures outlined in Subsection (a) above.

(c) After reviewing the facts and circumstances of the outdoor or large-scale public event, the [commission]director ~~may in its~~ has the discretion to require additional control measures as a condition of issuing a single event permit. These can include but are not limited to the following:

(i) Placing limits on the variety of alcoholic beverages served at the event.

(ii) Requiring that alcoholic beverages be distinguishable in appearance from non-alcoholic beverages.

(iii) Requiring a certain minimum number of law enforcement and/or security personnel at the event.

(5) Procedure. The following procedure shall govern applications for single event permits for outdoor or large-scale public events:

(a) In addition to providing a description of the times, dates, location, nature and purpose of the event, the applicant shall include in the single event permit application a summary of all control measures that will be taken at the event to reduce the possibility of minors being furnished alcohol and adults being over-served alcohol at the event.

(b) Department staff shall provide this information to the ~~commissioners~~director prior to the ~~commission~~director's consideration of the single event permit application.

(c) The ~~commission~~director shall review the application to determine if all statutory requirements are in place, to determine if all controls listed in Subsections (4)(a)(i) through (vi) are in place, to consider any request to waive any of the controls listed in Subsections (4)(a)(i) through (vi), and to assess whether any additional control measures such as those listed in Subsection (4)(c) should be required prior to issuing the single event permit.

R81-7-3. Price Lists.

(1) A single event permittee shall have a printed alcoholic beverage price list available for inspection containing prices of mixed drinks, wine, beer, and heavy beer. The list shall include any charges for the service of packaged wines or heavy beer, and any service charges for the supply of glasses, chilling, or wine service.

(2) The permittee or an employee of the licensee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the event premises.

KEY: alcoholic beverages; single event permits

Date of Enactment or Last Substantive Amendment:
~~[November 17, 2010]~~2012

Notice of Continuation: May 10, 2011

Authorizing, and Implemented or Interpreted Law: 32A-1-107

Alcoholic Beverage Control, Administration **R81-10B** Temporary Special Event Beer Permits

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36116

FILED: 04/30/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to implement S.B. 66 passed by the Legislature in the 2012 General Session. S.B. 66 authorizes the director to issue or deny issuance of temporary beer event permits with the approval of the Compliance, Licensing, and Enforcement Subcommittee, and subject to revocation or issuance by the Commission. The proposed rule amendment seeks to amend agency rules related to temporary beer event permits to reflect these changes.

SUMMARY OF THE RULE OR CHANGE: This proposed amendment to the temporary beer event permits agency Section R81-10B-1 amends the rule to provide for approval of temporary beer event permits by the Department of Alcoholic Beverage Control (DABC) executive director and provide that

notifications, requests for meetings and requirements to inform be submitted electronically.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32B-2-202 and Section 32B-9-403

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** None--Any cost or savings result directly from S.B. 66 (2012), not from this rule filing which simply makes the DABC rules consistent with the new statute.

◆ **LOCAL GOVERNMENTS:** None--Any cost or savings result directly from S.B. 66 (2012), not from this rule filing which simply makes the DABC rules consistent with the new statute.

◆ **SMALL BUSINESSES:** None--Any cost or savings result directly from S.B. 66 (2012), not from this rule filing which simply makes the DABC rules consistent with the new statute.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** None--Any cost or savings result directly from S.B. 66 (2012), not from this rule filing which simply makes the DABC rules consistent with the new statute.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Any cost results directly from S.B. 66 (2012), not from this rule filing which simply makes the DABC rules consistent with the new statute.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Any cost or savings result directly from S.B. 66 (2012), not from this rule filing which simply makes the DABC rules consistent with the new statute.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION

1625 S 900 W

SALT LAKE CITY, UT 84104-1630

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Nina McDermott by phone at 801-977-6805, by FAX at 801-977-6888, or by Internet E-mail at nmcdermott@utah.gov

◆ Vickie Ashby by phone at 801-977-6801, by FAX at 801-977-6889, or by Internet E-mail at vickieashby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2012

AUTHORIZED BY: Francine Giani, Executive Director

R81. Alcoholic Beverage Control, Administration.**R81-10B. Temporary [Special Event] Beer Event Permits.****R81-10B-1. Application Guidelines.**

(1) A temporary special event beer permit application shall be ~~included in the agenda of the monthly commission meeting for consideration~~ considered for issuance of the permit, when the requirements of 32B-1-304 and 32B-9-201, -203 and -405 have been met, and a completed application has been received by the department.

(a) Once received -- the application will be considered in compliance with section 32B-9-202.

(b) All approvals, notifications, requests for meetings or requirements to inform under section 32B-9-202 shall be done electronically.

(2) The sale of beer under a series of permits issued to the same person may not exceed a total of 90 days in any one calendar year. "Calendar year" means January 1 through December 31.

(3) Pursuant to 32B-9-403, a temporary special event beer permit may be issued to a person for the sale of beer for on-premise consumption at a temporary special event that does not last longer than 30 days. The sale of beer under a series of permits issued to the same person may not exceed a total of 90 days in any one calendar year. However, temporary special event beer permit may not be issued or obtained for the purpose of avoiding or attempting to avoid the requirement of obtaining a state on-premise beer license under 32B-9-403. To ensure compliance with this Subsection (3), the ~~commission~~ director may consider factors such as:

- (a) the purpose of the entity or organization;
- (b) the nature and purpose of the event;
- (c) whether the event is a convention, community or civic enterprise;
- (d) the type of entertainment, if any, at the event;
- (e) the location of the event;
- (f) the frequency of events held at the same location;
- (g) whether the location is government owned and operated; and
- (h) the extent to which the event:
 - (i) benefits the community;
 - (ii) is held for charitable purposes; or
 - (iii) is held for the profit of the entity or organization.

(4)(a) The temporary special event beer permit bond, as required by Section 32B-9-405(3), shall not be released back to the permittee sooner than 30 days following the event.

(b) If an organization or individual other than the one applying for the permit posts the bond, an affidavit must be submitted attesting that the bond is for the permittee's compliance with the provisions of the Act and the ~~commission~~ director rules, and that if a violation occurs at the event, the bond may be forfeited.

(5) The ~~commission~~ director may authorize multiple sales outlets on different properties under one temporary special event beer permit, provided that each site conforms to location requirements of Section 32B-9-201(4). The ~~commission~~ director may authorize simultaneous sale and consumption hours at multiple sales outlets.

R81-10B-2. Guidelines for Issuing Permits for Outdoor or Large -Scale Public Events.

(1) Purpose. The sale of alcohol at outdoor public events such as street festivals, fairs, concerts, and rodeos poses special control issues for event organizers and law enforcement officials. Furthermore, the sale of beer at public events attended by large numbers of people, many of whom may be under the age of 21, also poses special control issues. In deciding whether to issue a temporary special event beer permit for such events, the ~~commission~~ director must be satisfied that sufficient controls will be in place to minimize the possibility of minors being sold or furnished beer or adults being over-served beer at the event. This rule identifies control measures that must be in place before the ~~commission~~ director will issue a temporary special event beer permit for an outdoor or a large-scale public event. However, this rule gives the ~~commission~~ director discretion not to require specific control measures under certain circumstances after considering the facts and circumstances of a particular event.

(2) Definitions.

(a) For purposes of this rule, "large-scale public event" includes any event that is open to the general public and the estimated attendance at the event is in excess of 1000 people.

(3) Authority. This rule is enacted under the authority of Sections 63G-3-201, 32B-2-202 and 32B-9-202 and -403.

(4) Policy.

(a) Before a temporary special event beer permit will be issued by the ~~commission~~ director to allow the sale of beer at an outdoor or a large-scale public event, the following control measures must be present at the event:

(i) There must be at least one location at the event where those wanting to purchase beer must show proof of age and either have their hand stamped or be issued a non-transferable wristband.

(A) The proof of age location(s) shall be separate from the beer sales and dispensing location(s).

(B) Proof of age may be established by:

(I) a current valid driver's license that includes date of birth and has a picture affixed and is issued in this state under Title 53, Chapter 3, Uniform Driver License Act, or in accordance with the laws of another state;

(II) a current valid identification card that includes date of birth and has a picture affixed issued by this state under Title 53, Chapter 3, Part 8, identification Card Act, or issued by another state that is substantially similar to this state's identification card;

(III) a current valid military identification that includes date of birth and has a picture affixed; or

(IV) a current valid passport.

(C) Any person assigned to check proof of age shall have completed the alcohol server-training seminar outlined in 63A-15-401.

(D) The use of hand stamps or issuance of wristbands does not relieve those selling and dispensing beer from asking for proof of age if they suspect a person attempting to purchase beer is under the age of 21 years.

(ii) Beer sales and dispensing location(s) shall be separate from food and non-alcoholic beverage concession locations.

However, if the consumption of beer at the event is limited to a confined, restricted area such as a "beer garden", then beer, food and non-alcoholic beverages may be sold at the same sales locations within the confined, restricted area.

(iii) Beer shall be served in readily identifiable cups or containers distinct from those used for non-alcoholic beverages.

(iv) No more than two beers shall be sold to a customer at a time.

(v) At least one person who has completed the alcohol server training seminar outlined in 62A-15-401 shall be at each location where beer is sold and dispensed to supervise the sale and dispensing of beer.

(vi) If minors may attend the event, all dispensing and consumption of beer shall be in a designated, confined, and restricted area where minors are not allowed without being accompanied by a parent or guardian, and where beer consumption may be closely monitored.

(b) Notwithstanding Subsection (a), the ~~commission~~director, after reviewing the facts and circumstances of a particular outdoor or large-scale public event, ~~may in its~~has the discretion to relax any of the control measures outlined in Subsection (a) above.

(c) After reviewing the facts and circumstances of the outdoor or large-scale public event, the ~~commission~~director ~~may in its~~has the discretion to require additional control measures as a condition of issuing a temporary special event beer permit. These can include but are not limited to the following:

(i) Requiring that beer products be distinguishable in appearance from non-alcoholic beverages.

(ii) Requiring a certain minimum number of law enforcement and/or security personnel at the event.

(5) Procedure. The following procedure shall govern applications for temporary special event beer permits for outdoor or large-scale public events:

(a) In addition to providing a description of the times, dates, location, nature and purpose of the event, the applicant shall include in the permit application a summary of all control measures that will be taken at the event to reduce the possibility of minors being furnished beer and adults being over-served beer at the event.

(b) Department staff shall provide this information to the ~~commissioners~~director prior to the ~~commission~~director's consideration of the permit application.

(c) The ~~commission~~director shall review the application to determine if all statutory requirements are in place, to determine if all controls listed in Subsections (4)(a)(i) through (vi) are in place, to consider any request to waive any of the controls listed in Subsections (4)(a)(i) through (vi), and to assess whether any additional control measures such as those listed in Subsection (4)(c) should be required prior to issuing the permit.

R81-10B-3. Price Lists.

(1) A temporary special event beer event permittee shall have a printed price list or menu available for inspection containing beer prices.

(2) The permittee or an employee of the licensee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the event premises.

KEY: alcoholic beverages, temporary beer event permits

Date of Enactment or Last Substantive Amendment: ~~May 26, 2010~~2012

Notice of Continuation: July 31, 2008

Authorizing, and Implemented or Interpreted Law: 32A-1-107; 32A-10

Commerce, Administration **R151-4-306**

Motion to Recuse or Disqualify a Board or Commission Member

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36104

FILED: 04/27/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to provide a procedure to resolve potential challenges to the composition of a board or commission panel in an adjudicative proceeding.

SUMMARY OF THE RULE OR CHANGE: This rule filing provides a procedure for a party in an adjudicative proceeding to file a motion to disqualify a board or commission member from the proceeding, and the procedure for resolving such a motion. The vehicle franchise boards are exempted from this rule because the New Automobile Franchise Act and the Powersport Vehicle Franchise Act have a specific provision regarding board member conflicts.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 13-1-6 and Subsection 63G-4-102(6)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** No costs to the state budget are anticipated in this filing which provides a procedure to challenge the participation of a board or commission member in an adjudicative proceeding.

◆ **LOCAL GOVERNMENTS:** Local governments are generally not affected by adjudicative proceedings in this agency. Even if they were, this rule filing simply provides a procedure for challenges to board or commission member participation in proceedings and should result in no costs.

◆ **SMALL BUSINESSES:** In the event that small businesses are involved in any adjudicative proceeding, this filing provides a procedure for challenges to board or commission member participation in proceedings and should result in no costs.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule filing provides a procedure for challenges to board or commission member participation in proceedings and should result in no costs to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule filing provides a procedure for challenges to board or commission member participation in proceedings and should result in no costs to affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated from this filing which provides a procedure for challenges to board or commission member participation in proceedings.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE
ADMINISTRATION
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Masuda Medcalf by phone at 801-530-7663, by FAX at 801-530-6446, or by Internet E-mail at mmedcalf@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2012

AUTHORIZED BY: Francine Giani, Executive Director

R151. Commerce, Administration.

R151-4. Department of Commerce Administrative Procedures Act Rule.

R151-4-306. Motion to Recuse or Disqualify a Board or Commission Member.

(1)(a) A motion to recuse or disqualify a Board or Commission member must be filed no later than 14 days prior to the scheduled hearing before the Board or Commission. Service of such motion to the opposing party shall be by electronic mail, facsimile or overnight mail.

(b) A response to a motion to recuse or disqualify a Board or Commission member is permitted but not mandatory. Any response shall be filed no later than seven days before the scheduled hearing. Service of a response to the opposing party shall be by electronic mail, facsimile or overnight mail.

(c) No reply is permitted.

(2)(a) The decision on a motion to recuse or disqualify a Board or Commission member shall be made by the Board or

Commission member the motion seeks to recuse or disqualify. A written decision is not necessary.

(b) At the beginning of the scheduled hearing, the Board or Commission member shall state on the record his or her decision. The Board or Commission member may choose to notify the presiding officer of his or her decision prior to the hearing, and the presiding officer shall then state the decision on the record.

(c) The Board or Commission member may ask the advice of the other members at the beginning of a scheduled hearing, but the Board or Commission member shall not be bound by any such advice.

(d) The Division, presiding officer, or filing party may not subject the Board or Commission member to questioning or examination on the motion.

(e) The Division or presiding officer may not reverse a recusal or disqualification decision made by a Board or Commission member.

(f) Like all interlocutory matters, a decision on a motion to recuse or disqualify a Board or Commission member is not subject to appeal or agency review.

(3) This rule does not apply to any adjudicative proceedings under the New Automobile Franchise Act, Utah Code Ann. Section 13-14-101 et seq., or the Powersport Vehicle Franchise Act, Utah Code Ann. Section 13-35-101 et seq.

KEY: administrative procedures, adjudicative proceedings, government hearings

Date of Enactment or Last Substantive Amendment: [November 7, 2011]2012

Authorizing, and Implemented or Interpreted Law: 13-1-6; 63G-4-102(6)

Commerce, Occupational and
Professional Licensing
R156-9
Funeral Service Licensing Act Rule

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 36117
FILED: 04/30/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and Funeral Service Board reviewed the rule and determined changes should be made with respect to number of times examinations required for licensure can be taken by applicants for licensure. Also statutory citations have been updated where appropriate.

SUMMARY OF THE RULE OR CHANGE: In Subsections R156-9-102(2) and (4), statutory citations are updated. In Section R156-9-302a, proposed amendments delete the 30-day waiting period before an applicant is able to retake a

failed examination and also further define the number of times an examination can be retaken by an applicant. Subsection R156-9-617(1) is deleted since no second paragraph exists in this section.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-9-504 and Subsection 58-1-106(1) (a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: The Division will incur minimal costs of approximately \$75 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

◆ LOCAL GOVERNMENTS: The proposed amendments only apply to licensed funeral service classifications and applicants for licensure in those classifications. As a result, the proposed amendments do not apply to local governments.

◆ SMALL BUSINESSES: The proposed amendment simplifying examination requirements only applies to applicants for licensure as a funeral service director or as a preneed sales agent. Those applicants for licensure may work in a small business; however, the proposed amendments would not directly affect the business.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendment simplifying examination requirements for funeral service director and preneed sales agent applicants may slightly affect some applicants; however, any exact costs or savings cannot be determined.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendment simplifying examination requirements for funeral service director and preneed sales agent applicants may slightly affect some applicants; however, any exact costs or savings cannot be determined.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing simplifies testing requirements for applicants and could result in some cost savings to applicants. No fiscal impact to businesses is anticipated.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE
OCCUPATIONAL AND PROFESSIONAL
LICENSING
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Clyde Ormond by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at cormond@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 05/31/2012 10:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2012

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-9. Funeral Service Licensing Act Rule.

R156-9-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 9, as defined or used in this rule:

(1) "Contract" means a guaranteed preneed funeral arrangement contract.

(2) "Funeral service establishment" is defined in Subsection[s] 58-9-102(18)(12)(a)(i) and (ii), and (b)(i) and (ii).

(3) "Guaranteed product contract" means a contract wherein goods or services are selected which will be provided at the time of need for the consideration specified in the contract regardless of the market price at the time of need.

(4) "Recipient of goods and services" is synonymous with "beneficiary" as defined in Subsection 58-9-102(12), and is used herein to avoid confusion with various common meanings of the term "beneficiary".

(5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 9, is further defined in accordance with Subsection 58-1-203(1)(e) in Section R156-9-501.

R156-9-302a. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(1)(g) and 58-1-301(3), the qualifications for licensure in Subsections 58-9-302(1)(g), 58-9-302(2)(e), 58-9-302(4)(e) and 58-9-306(6) and (7) are defined, clarified, or established as follows:

(1) An applicant for licensure as a funeral service director shall be required to pass the National Board Examinations (science and art sections) of the Conference of Funeral Service Examining Boards. The examination may be taken while the individual is enrolled in an approved funeral service school.

(2) An applicant for licensure as a funeral service intern shall answer correctly all the law and rule questions in the open book examination contained in the application.

(3) An applicant for licensure as a funeral service director, preneed sales agent or funeral service director by endorsement shall pass the Utah Funeral Service Law and Rule Examination with a score of at least 75%.

(4) An individual who fails the Utah Funeral Service Law and Rule Examination may retake the failed examination:

(a) ~~no earlier than 30 days following any failure;~~

~~(b) no more than three failures times within a six month period; and~~

(e) no earlier than ~~six~~three months following any failure thereafter.

R156-9-617. Maximum Revocation Fee.

~~(4)~~If a buyer revokes or defaults under a guaranteed preneed funeral arrangement contract, the funeral service establishment may retain a revocation fee from the trust corpus, not to exceed 25% of the amount received from the sale of the contract and trust earnings thereupon, provided the revocation fee is clearly identified in the contract.

KEY: funeral industries, licensing, funeral directors, preneed funeral arrangements

Date of Enactment or Last Substantive Amendment: ~~November 29, 2010~~2012

Notice of Continuation: September 26, 2011

Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-9-504

Commerce, Occupational and Professional Licensing

R156-22

Professional Engineers and Professional Land Surveyors Licensing Act Rule

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36090

FILED: 04/24/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule filing makes the following amendments: 1) provides needed clarification in regard to applicants for the land surveyor license that have foreign education; 2) makes the requirement to waive the Fundamentals of Engineering (FE) examination more consistent with the education requirement for a professional engineer license; 3) adds passing of an equivalent state written exam as a method of fulfilling the structural engineer exam requirement; and 4) makes minor technical changes. These amendments are proposed at the request of the Professional Engineers and Professional Land Surveyors Licensing Board.

SUMMARY OF THE RULE OR CHANGE: Subsection R156-22-302b(2)(d) is added to clarify the education requirement for applicants for the land surveyor license with foreign education. The clarified language mirrors the existing requirement for professional and structural engineers. In Subsection R156-22-302d(1), the current requirements to waive the FE examination include: 1) an undergraduate degree from an Engineering Accreditation Commission/ Accreditation Board for Engineering and Technology

(EAC/ABET) accredited program; and 2) a PhD or doctorate degree in engineering from an EAC/ABET accredited program. The Professional Engineer and Land Surveyor Licensing Board believes that it is not reasonable to require an undergraduate degree from an EAC/ABET accredited program if an applicant is able to verify that they completed a PhD or doctorate degree in engineering from a program that is accredited by EAC/ABET at the bachelor's level. For this reason, the rule filing removes completion of an undergraduate degree from an EAC/ABET accredited program as a requirement to waive the FE exam requirement. The rule filing also amends the criteria for waiving of the FE exam requirement for applicants who completed a PhD or doctorate degree from a foreign institution if the engineering curriculum is determined by the NCEES Credentials Evaluations to fulfill the required curricular content of the NCEES Engineering Education Standard. In Subsection R156-22-302d(2), the rule currently requires that applicants for the structural engineer license demonstrate passing the National Council of Examiners in Engineering and Surveying Structural Engineering Examination (NCEES SE exam). This requirement is an obstacle to licensure for some structural engineers already licensed in other states who are seeking licensure in Utah because the NCEES SE exam was not administered in some states until 2003. For example, prior to 2003, California used the 16-hour Western States SE exam. For this reason, the Board and Division propose that passing an equivalent 16-hour state written exam be added as a method of fulfilling the structural engineer exam requirement. The Board and Division also propose that passing the NCEES Structural II exam and an equivalent 8-hour written exam be added as a method of fulfilling the exam requirement.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-22-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The Division will incur minimal costs of approximately \$100 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.
- ◆ **LOCAL GOVERNMENTS:** The proposed amendments only impact professional engineers, professional structural engineers, professional land surveyors and applicants for licensure in those classifications. As a result, the proposed amendments do not apply to local governments.
- ◆ **SMALL BUSINESSES:** The proposed amendments only impact professional engineers, professional structural engineers, professional land surveyors and applicants for these licenses. The proposed amendments will create a quicker and cheaper path to licensure for some applicants. For example, current applicants for license by endorsement as a professional structural engineer must demonstrate passing the NCEES SE examination. If applicants for licensure by endorsement qualified for a structural engineer license in California prior to 2003, they would have never taken and passed the NCEES SE exam. Despite having

practiced in California for several years, they would be required to take and pass the NCEES SE exam to qualify for a license in Utah. Under this proposed rule amendment, applicants will have a cheaper and quicker path to licensure because their passing of an equivalent examination in California will cause them to avoid having to wait to take and pass the NCEES SE exam. In these cases, some businesses may experience a financial benefit; however, the Division is unable to estimate the extent of the cost savings.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The proposed amendments only impact professional engineers, professional structural engineers, professional land surveyors, and applicants for these licenses. The proposed amendments will create a quicker and cheaper path to licensure for some applicants. For example, some applicants for license by endorsement from California who passed the 16-hour Western States SE exam will no longer be required to pass the NCEES SE exam. As a result, this group of applicants will not be required to pay the \$510 NCEES SE exam application fee. In addition, they will no longer have to cover the cost of preparing for the exam. In these cases, applicants will experience a financial benefit; however, the Division is unable to estimate how many applicants will be impacted by the changes. Some applicants who do not qualify for waiver of the FE exam under the current rule will qualify for an FE exam waiver under the proposed rule. This group of applicants will no longer be required to pay the \$125 NCEES FE exam fee. In addition, they will no longer have to cover the cost of preparing for the exam. In these cases, applicants will experience a financial benefit; however, the Division is unable to estimate how many applicants will be impacted by the changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only impact professional engineers, professional structural engineers, professional land surveyors, and applicants for these licenses. The proposed amendments will create a quicker and cheaper path to licensure for some applicants. For example, some applicants for license by endorsement from California who passed the 16-hour Western States SE exam will no longer be required to pass the NCEES SE exam. As a result, this group of applicants will not be required to pay the \$510 NCEES SE exam application fee. In addition, they will no longer have to cover the cost of preparing for the exam. In these cases, applicants will experience a financial benefit; however, the Division is unable to estimate how many applicants will be impacted by the changes. Some applicants who do not qualify for waiver of the FE exam under the current rule will qualify for an FE exam waiver under the proposed rule. This group of applicants will no longer be required to pay the \$125 NCEES FE exam fee. In addition, they will no longer have to cover the cost of preparing for the exam. In these cases, applicants will experience a financial benefit; however, the Division is unable to estimate how many applicants will be impacted by the changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As indicated in the rule summary, this filing's amendment of certain education and examination requirements could make it easier and cheaper for some license applicants to obtain licensure in Utah. That impact cannot be estimated. No impact is anticipated from the remaining technical changes made in this filing.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE
OCCUPATIONAL AND PROFESSIONAL
LICENSING
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Rich Oborn by phone at 801-530-6767, by FAX at 801-530-6511, or by Internet E-mail at roborn@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 05/16/2012 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2012

AUTHORIZED BY: Mark Steinagel, Director

R156. Commerce, Occupational and Professional Licensing.
R156-22. Professional Engineers and Professional Land Surveyors Licensing Act Rule.
R156-22-302b. Qualifications for Licensure - Education Requirements.

(1) Education requirements - Professional Engineer and Professional Structural Engineer.

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

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

(b) The post graduate engineering degree, when not accredited by EAC/ABET or CEAB, shall be earned from an institution which offers a bachelors or masters degree in an engineering program accredited by EAC/ABET or CEAB in the same specific engineering discipline as the earned post graduate degree and the applicant is responsible to demonstrate that the

combined engineering related coursework taken (both undergraduate and post graduate) included coursework that meets or exceeds the engineering related coursework required for the EAC/ABET accreditation for the bachelor degree program.

(c) If the degree was earned in a foreign country, the engineering curriculum shall be determined by the NCEES Credentials Evaluations, formerly known as the Center for Professional Engineering Education Services (CPEES), to fulfill the required curricular content of the NCEES Engineering Education Standard. Only deficiencies in course work in the humanities, social sciences and liberal arts and no more than five semester hours in math, science or engineering, not to exceed a total of 10 semester hours noted by the credentials evaluation may be satisfied by successfully completing the deficiencies in course work at a recognized college or university approved by the Division in collaboration with the Board. Engineering course work deficiencies must be completed at an EAC/ABET approved program.

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

(2) Education requirements - Professional Land Surveyor. In accordance with Subsection 58-22-302(3)(d), an equivalent land surveying program for licensure as a professional land surveyor is defined as an earned bachelors or higher education degree and completion of a minimum of 30 semester hours or 42 quarter hours of course work in land surveying which shall include the following courses:

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

- (i) boundary law;
- (ii) writing legal descriptions;
- (iii) photogrammetry;
- (iv) public land survey system;
- (v) studies in land records or land record systems; and
- (vi) surveying field techniques[~~;~~and].

(b) [†]The remainder of the 30 semester hours or 42 quarter hours may be made up of successful completion of courses from the following content areas:

- (i) algebra, calculus, geometry, statistics, trigonometry, not to exceed six semester hours or eight quarter hours;
- (ii) control systems;
- (iii) drafting, not to exceed six semester hours or eight quarter hours;
- (iv) geodesy;
- (v) geographic information systems;
- (vi) global positioning systems;
- (vii) land development; and
- (viii) survey instrumentation[~~;~~].

(c) [†]The degree and courses shall be completed in an education institution accredited by one of the following:

- (i) Middle States Association of Colleges and Schools;
- (ii) New England Association of Colleges and Schools;
- (iii) North Central Association of Colleges and Schools;
- (iv) Northwest Commission on College and Universities;
- (v) Southern Association of Colleges and Schools; or
- (vi) Western Association of Schools and Colleges.

(d) If the degree was earned in a foreign country, the land surveying curriculum shall be determined by the NCEES Credential Evaluations, formerly known as the Center for Professional

Engineering Education Services (CPEES), to fulfill the required curricular content of the NCEES Education Standard. Only deficiencies in course work in the humanities, social sciences and liberal arts and no more than five semester hours in math, science or land surveying, not to exceed a total of 10 semester hours noted by the credential evaluation, may be satisfied by successfully completing the deficiencies in course work at a recognized college or university approved by the Division in collaboration with the Board.

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

(1) Examination Requirements - Professional Engineer.

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

(i) the NCEES FE examination with a passing score as established by the NCEES except that an applicant who has completed one of the following is not required to pass the FE examination: [an undergraduate degree from an EAC/ABET accredited program and has completed]

(A) a Ph.D. or doctorate degree in engineering from an institution that offers EAC/ABET undergraduate programs in the Ph.D. field of engineering [is not required to pass the FE examination]; or

(B) A Ph.D. or doctorate degree in engineering from a foreign institution if the engineering curriculum is determined by the NCEES Credentials Evaluations, formerly known as the Center for Professional Engineering Education Services (CPEES), to fulfill the required curricular content of the NCEES Engineering Education Standard.

(ii) the NCEES PE examination or the NCEES SE examination with a passing score as established by the NCEES; and

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

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

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

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

(2) Examination Requirements - Professional Structural Engineer.

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

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

(ii) the NCEES FE examination with a passing score as established by the NCEES;

(iii)(A) the NCEES SE examination~~[-and]~~;

~~(B) prior to April 2011, the NCEES Structural I and Structural II Examinations with a passing score as established by the NCEES;[-and]~~

~~(C) prior to January 1, 2004, an equivalent 16-hour state written examination with a passing score; or~~

~~(D) the NCEES Structural II exam and an equivalent 8-hour state written examination with a passing score.~~

(b) Prior to submitting an application for pre-approval to sit for the NCEES SE examination, an applicant must have successfully completed two out of the three years of the experience requirements set forth in Subsection R156-22-302c(3).

(3) Examination Requirements - Professional Land Surveyor.

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

(i) the NCEES FS examination with a passing score as established by the NCEES;

(ii) the NCEES PS examination with a passing score as established by the NCEES; and

(iii) the Utah Local Practice Examination with a passing score of at least 75. An applicant who fails the Utah Local Practice Examination may retake the examination as follows:

(A) no sooner than 30 days following any failure, up to three failures; and

(B) no sooner than six months following any failure thereafter.

(b) Prior to submitting an application for pre-approval to sit for the NCEES PS examination, an applicant must have successfully completed the education requirement set forth in Subsection R156-22-302b(2) and three out of the four years of the qualifying experience requirements set forth in Subsection R156-22-302c(4).

(4) Examination Requirements for Licensure by Endorsement.

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

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

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

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

(b) Professional Structural Engineer: An applicant for licensure as a professional structural engineer by endorsement shall

comply with the examination requirements in Subsection R156-22-302d(2) except that the Board may waive the NCEES FE examination for an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FE examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

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

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

Date of Enactment or Last Substantive Amendment:

~~[September 8, 2011]~~2012

Notice of Continuation: November 15, 2007

Authorizing, and Implemented or Interpreted Law: 58-22-101; 58-1-106(1)(a); 58-1-202(1)(a)

Commerce, Occupational and Professional Licensing **R156-40a** Athletic Trainer Licensing Act Rule

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 36089

FILED: 04/24/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Athletic Trainers Licensing Board reviewed the rule and are now proposing amendments to define unprofessional conduct as violating any provision of the Board of Certification Standards of Professional Practice and incorporate those standards by reference.

SUMMARY OF THE RULE OR CHANGE: In Section R156-40a-102, the proposed amendment adds a definition section in order to define unprofessional conduct in the rule. In Section R156-40a-104, the term "division" is capitalized. In Section R156-40a-502, the proposed amendment defines unprofessional conduct as violating any provision of the Board of Certification Standards of Professional Practice, dated 01/01/2006, and incorporates that document by reference.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-40a-101 and Subsection 58-1-106(1)(a) and Subsection 58-1-202(1)(a)

SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

MATERIALS INCORPORATED BY REFERENCES:
 ♦ Adds Board of Certification Standards of Professional Practice, published by Board of Certification, Inc., 01/01/2006

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Rich Oborn by phone at 801-530-6767, by FAX at 801-530-6511, or by Internet E-mail at roborn@utah.gov

ANTICIPATED COST OR SAVINGS TO:
 ♦ THE STATE BUDGET: The Division will incur minimal costs of approximately \$100 to print and distribute the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget. Adding a definition of unprofessional conduct to the rule that incorporates the Board of Certification Standards of Professional Practice will clarify standards of conduct in cases of unprofessional conduct relating to licensed athletic trainers. This may translate into a cost savings for the Division but it is impossible to estimate the extent of the cost savings.
 ♦ LOCAL GOVERNMENTS: The proposed amendments only apply to licensed athletic trainers. As a result, the proposed amendments do not apply to local governments.
 ♦ SMALL BUSINESSES: The proposed amendments only apply to licensed athletic trainers. Licensees may work in a small business; however, the proposed amendments would not directly affect the business.
 ♦ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: The proposed amendments only apply to licensed athletic trainers. Adding a definition of unprofessional conduct to the rule that incorporates the Board of Certification Standards of Professional Practice is not expected to have any cost or savings impact on individual licensees.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/20/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
 ♦ 06/20/2012 09:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/27/2012

AUTHORIZED BY: Mark Steinagel, Director

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments only apply to licensed athletic trainers. Adding a definition of unprofessional conduct to the rule that incorporates the Board of Certification Standards of Professional Practice is not expected to have any cost or savings impact on individual licensees. It should be noted that the standards being incorporated can be found on the Internet.

R156. Commerce, Occupational and Professional Licensing.
R156-40a. Athletic Trainer Licensing Act Rule.
R156-40a-102. Definitions.
In accordance with Subsection 58-1-203(1)(e), the definition of unprofessional conduct in Title 58, Chapters 1 and 40 is further defined in Section R156-40a-502.

R156-40a-104. Authority - Purpose.
 This rule is adopted by the [d]Division under the authority of Subsection 58-1-106(1)(a) to enable the [d]Division to administer Title 58, Chapter 40a.

R156-40a-502. Unprofessional Conduct.
"Unprofessional conduct" includes violating any provision of the Board of Certification Standards of Professional Practice, implemented January 1, 2006, which is hereby adopted and incorporated by reference.

KEY: licensing, occupational licensing, athletic trainers
Date of Enactment or Last Substantive Amendment: ~~February 22, 2007~~ 2012
Notice of Continuation: November 21, 2011
Authorizing, and Implemented or Interpreted Law: 58-40a-101; 58-1-106(1)(a); 58-1-202(1)(a)

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing clarifies the unprofessional conduct definition to include violation of any standards of practice in the profession. No fiscal impact to businesses is anticipated from such clarification.

Environmental Quality, Water Quality
R317-11
 Certification Required to Design,
 Inspect and Maintain Underground
 Wastewater Disposal Systems, or
 Conduct Percolation and Soil Tests for
 Underground Wastewater Disposal
 Systems

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 COMMERCE
 OCCUPATIONAL AND PROFESSIONAL
 LICENSING
 HEBER M WELLS BLDG
 160 E 300 S

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36135

FILED: 05/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Some problems have been discovered since the last change in the rule that are addressed in this proposed revision. The objective has been to simplify the certification renewal process, add a reinstatement process, and implement the legislation of Section 19-5-121.

SUMMARY OF THE RULE OR CHANGE: The following changes are made: 1) change the title of the Rule to "Certification Required to Design, Inspect and Maintain Underground Wastewater Disposal Systems, or Conduct Soil Evaluations or Percolation Tests for Underground Wastewater Disposal Systems"; 2) addition of language describing authority and purpose of the rule; 3) addition of definition for "onsite professional;" 4) change the description for the higher levels of certification; 5) the higher levels will still require initial certification at all lower levels, but will then include the qualifications and certifications of the lower levels so that one certificate for the highest level achieved may be tracked and there is only one expiration date; 6) change the length of term required for renewals from "five years" for Levels 1 and 2 and "two years" for Level 3 to "three years" for all levels; 7) change "percolation and soil tests" to "soil evaluations or percolation tests;" 8) change citations for "licensed contractor" to reference language used in legislation; 9) certificates are "renewed" if they are still valid, but a "reinstatement" option has been added to allow six months to reinstate expired certificates; 10) added the option of exceptions to be considered by the Executive Secretary; and 11) several grammatical and typographic corrections and changes to accommodate the new sections.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-5-104 and Section 19-5-121

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** No cost or savings to the state budget is anticipated in this amendment. The changes to this rule affect the requirements and options available to individuals who have these certifications. The proposed changes would increase the number of applications that state staff would need to process for the lower levels of certification, but would decrease the number of applications for the higher levels which would net no change in cost.

♦ **LOCAL GOVERNMENTS:** There is no extra cost to local government due to this amendment. The changes to this rule affect the individuals and their personal certifications, not the government. The costs for maintaining those certifications may be paid by the employer or the employee, but the current practice is to waive the certification fee for government employees.

♦ **SMALL BUSINESSES:** Small businesses which employ individuals certified as "Onsite Professionals" will be affected.

This change increases the frequency of training required for the lower levels of certification, but the higher levels will not see an increase in overall cost to maintain the certifications.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** No cost to anyone not certified as an "Onsite Professional".

COMPLIANCE COSTS FOR AFFECTED PERSONS: Average compliance costs will increase about \$140 per year per person certified at lower levels.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Local Health Departments (CLEHA and Health Officers) have requested increasing the frequency for training for the Onsite Certification program. Average compliance costs will increase annually \$140 to \$280 per business (typically they employ 1 or 2 certified individuals).

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

ENVIRONMENTAL QUALITY
WATER QUALITY
THIRD FLOOR
195 N 1950 W
SALT LAKE CITY, UT 84116

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Judy Etherington by phone at 801-536-4344, by FAX at 801-536-4301, or by Internet E-mail at jetherington@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2012

AUTHORIZED BY: Walter Baker, Director

R317. Environmental Quality, Water Quality.

R317-11. Certification Required to Design, Inspect and Maintain Underground Wastewater Disposal Systems, or Conduct Soil Evaluations or Percolation [~~and Soil~~]-Tests for Underground Wastewater Disposal Systems.

R317-11-1. Authority, Purpose and Scope.

1.1. This rule describes the procedures for certification and recertification of individuals who design, inspect and maintain underground wastewater disposal systems, or conduct soil evaluations or percolation tests for underground wastewater disposal systems as set forth in Title 19, Chapter 5, Section 121.

1.2. The purpose of this rule is to define the minimum requirements for those persons who design, inspect, and maintain underground wastewater disposal systems, or conduct soil evaluations or percolation tests for underground wastewater disposal systems as directed by the board and establish methods for compliance and evaluating non-compliance.

~~1.3.~~ These certification rules apply to any person who designs, inspects, or maintains underground wastewater disposal systems, or who conducts soil evaluations or percolation tests [~~or soil evaluations~~] for underground wastewater disposal systems. Certification is required by any person who performs these activities as provided below.

R317-11-2. Definitions.

2.1. "Alternative onsite wastewater system" means a system for treatment and disposal of domestic wastewater or wastes which consists of a building sewer, a septic tank or other sewage treatment or storage unit, and a disposal facility or method which is not a conventional system; but not including a surface discharge to the waters of the state.

2.2. "Board" means the Utah Water Quality Board.

2.3. "Certificate" means a certificate issued by the Executive Secretary stating that the recipient has met the minimum requirements to be certified as described in this rule.

2.4. "Conventional system" means an onsite wastewater system which consists of a building sewer, a septic tank, and an absorption system consisting of a standard trench, a shallow trench with capping fill, a chambered trench, a deep wall trench, a seepage pit, or an absorption bed.

2.5. "Division" means the Utah Division of Water Quality.

2.6. "Executive Secretary" means the Executive Secretary of the Utah Water Quality Board.

2.7. "Onsite professional" means a person who is certified at Level 1, 2, or 3 according to this rule.

2.8. "Training Center" means the Utah On-site Wastewater Treatment Training Center which has been designated by the Executive Secretary for training and administration of examinations for certification of persons who design, inspect[;] and maintain underground wastewater disposal systems, or conduct soil evaluations [~~and~~] or percolation tests for underground wastewater disposal systems.

2.8-9. "Underground Wastewater Disposal System" means a system for underground disposal of [domestic] wastewater. It usually consists of a building sewer, a septic tank, and an absorption system. It includes onsite wastewater systems and large underground wastewater disposal systems as defined in R317-1.

R317-11-3. Classes of Certification.

3.1 There are three classes of onsite professional certification, Level 1 being the lowest and Level 3 being the highest:

A. Level 1, soil evaluation and percolation testing;

B. Level 2, design, inspection and maintenance of conventional underground wastewater disposal systems, including soil evaluations and percolation testing; and

C. Level 3, design, inspection and maintenance of alternative or conventional underground wastewater disposal systems, including soil evaluations and percolation testing.

~~3.2. Certification at any level also requires current certification for all lower levels.~~

]

R317-11-4. Individuals Not Required to Obtain Certification.

4.1. An individual is not required to obtain certification to maintain an underground wastewater disposal system that serves a noncommercial, private residence owned by the individual or a member of the individual's family and in which the individual or a member of the individual's family resides or an employee of the individual resides without payment of rent.

4.2. An uncertified individual may conduct soil evaluations or percolation [~~or soil~~] tests for an underground wastewater disposal system that serves a noncommercial, private residence owned by the individual and in which the individual resides or intends to reside, or which is intended for use by an employee of the individual without payment of rent, if the individual:

A. Has the capability of properly conducting the tests, as determined by the local health department and

B. Is supervised by a certified individual when conducting the tests.

4.3. A person involved in the pumping of an underground wastewater disposal system does not have to be certified under this rule, although licensing by the local health department is required under R317-550.

4.4. Licensed plumbers and electricians, when maintaining electrical equipment or wastewater drainage lines leading to the underground wastewater disposal systems are not required to be certified under this rule.

4.5. Uncertified employees, subordinates or associates of a certified individual are not required to be certified under this rule when working on activities related to underground wastewater disposal systems under the supervision of a certified individual. Supervision means that a certified individual is personally responsible for the work, and reviews, corrects and approves work done by an uncertified employee, subordinate or associate. Such work must be signed by a certified individual.

R317-11-5. Qualifications for Certification.

5.1. Level 1, Soil Evaluations and Percolation Testing. In order to qualify for initial Level 1 certification, a person must:

A. Attend a training course provided by the Training Center specifically for the purpose of certification at Level 1, and

B. Demonstrate knowledge of course subject matter by successfully passing an examination to be given at the conclusion of the Level 1 training course.

5.2. Level 2, Design, Inspection and Maintenance of Conventional Underground Wastewater Disposal Systems, including soil evaluations and percolation testing. In order to qualify for initial Level 2 certification, a person must:

A. Attend a training course provided by the Training Center specifically for the purpose of certification at Level 2,

B. Demonstrate knowledge of course subject matter by successfully passing an examination to be given at the conclusion of the Level 2 training course, and

C. Be certified for soil evaluations and percolation testing at Level 1.

5.3. Level 3, Design, Inspection and Maintenance of Alternative or Conventional Underground Wastewater Disposal Systems, including soil evaluations and percolation testing. In order to qualify for initial Level 3 certification, a person must:

A. Attend a training course provided by the Training Center specifically for the purpose of certification at Level 3,

B. Demonstrate knowledge of course subject matter by successfully passing an examination to be given at the conclusion of the Level 3 training course, and

C. Be certified for soil evaluations and percolation testing at Level 1, and certified for design, inspection and maintenance of conventional systems at Level 2.

5.4. An environmental health scientist licensed under Title 58, Chapter 20a, Environmental Health Scientist Act, may waive attendance at the respective training course and elect to be tested as required in this section to obtain certification for Level 1, 2, or 3. In order to qualify for waiver of training, the Environmental Health Scientist must provide to the Executive Secretary evidence of current licensure in Utah and 2 years experience appropriate to the class of certification requested.

5.5. A professional engineer licensed under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act, may waive attendance at the respective training course and elect to be tested as required in this section to obtain certification for Level 1, 2, or 3. In order to qualify for waiver of training the professional engineer must provide to the Executive Secretary evidence of current Utah licensure.

5.6. A person who is a ~~[licensed contractor in Utah]~~ contractor licensed under Title 58, Chapter 55, Utah Construction Trades licensing Act, may waive attendance at the respective training course and elect to be tested as required in this section to obtain certification for Level 1 or 2. In order to qualify for waiver of training the ~~[licensed]~~ licensed contractor must provide evidence of at least five years of experience in constructing ~~[onsite]~~ underground wastewater disposal systems.

5.7. Evidence of current licensure and experience appropriate to the class of certification must be provided to the Executive Secretary ~~[prior to eligibility to test]~~ at the time of application for certification.

R317-11-6. Application for Certification.

6.1. In order to become certified at any level, a person must:

A. Complete the relevant training course(s) with the Training Center (See R317-11-5.4 - 5.6 above for alternate requirements for licensed environmental health scientists, engineers, and contractors);

B. Pass the corresponding test(s); and

C. Submit an application to the Executive Secretary on forms approved by the Division, along with payment of applicable fees.

R317-11-7. Training and Examinations.

Training will be provided by the Training Center. Examinations will be given at the conclusion of each training session. Training will be provided at least twice per year, but may be given more often at the discretion of the Training Center.

R317-11-8. Certificates.

8.1. Certificates will be issued by the Executive Secretary upon receipt of the completed application, required fees, and evidence that the requirements of R317-11-5 above have been met.

8.2. Date of issuance of an initial certificate will be determined by the date the exam is passed.

8.3. Certificates will expire on December 31 of the appropriate calendar year, in accordance with R317-11-9.

R317-11-9. Renewal of Certification.

9.1. ~~Certification renewal is required every 3 years for all levels of certification. [For those certified at Level 1 for soil evaluation and percolation testing, or Level 2 for design, inspection and maintenance of conventional underground wastewater disposal systems, certification will be valid for a period of up to five years from the date of issuance of a certificate under R317-11-8 above. For those certified at Level 3 for design, inspection and maintenance of alternative underground wastewater disposal systems, certification will be valid for a period of up to two years from the date of issuance of a certificate under R317-11-8 above. Certificate renewal is required for all levels of certification.]~~

9.2. Eligibility for renewal of certificates is based on continuous certification.

9.3. Renewal of a certificate may be obtained within 12 months of certificate expiration by:

A. Making application to the Executive Secretary along with payment of applicable fees; and

B. ~~[Showing e]~~ Evidence of successfully completing the refresher course(s) as provided by the Training Center[;] or other training obtained prior to certificate expiration that is approved by the Executive Secretary[; ~~within twelve months prior to certificate expiration; and~~

~~C. Maintaining all lower level certifications].~~

R317-11-10. Lapsed Certifications.

10.1. Expired certifications may be reinstated within 6 months after the expiration date by:

A. Completing the refresher course(s) as provided by the Training Center, and

B. Submitting a renewal application and reinstatement fee to the Division.

10.2. After the reinstatement period, initial certification requirements must be met in order to be certified.

R317-11-11. Exceptions.

The Executive Secretary has authority to consider exceptions to this rule upon written request.

R317-11-12. Suspension, Revocation, or Annulment of Certification.

~~1[0]2.1.~~ Grounds for suspending, revoking, or annulling a person's certificate may be, but are not limited to, any of the following:

A. Demonstrated disregard for the public health and safety;

B. Misrepresentation or falsification of information or reports submitted to the Division;

C. Cheating on a certification exam;

D. Falsely obtaining or altering a certificate; or

E. Incompetence, misconduct or gross negligence in the performance of work done pursuant to the certification.

1[0]2.2. Disciplinary action such as suspension, revocation, or annulment of certificate by the Executive Secretary may result where it is shown that the circumstances and events relative to the work done pursuant to the certification were under the individual's jurisdiction and control. Circumstances beyond the control of the individual shall not be grounds for disciplinary action.

1[0]2.3. Any certificate not issued through due process of this rule will be annulled.

1[0]2.4. Recommendations may be made to the Executive Secretary regarding the suspension, revocation, or annulment of a certificate. Prior to making any such recommendation, the individual shall be informed in writing of the reasons for such a recommendation. The individual shall be allowed an opportunity for an informal hearing before a review committee appointed by the Executive Secretary. Any request for an informal hearing shall be made within 30 days of the date the notification is mailed.

1[0]2.5. Following an informal hearing, or the expiration of the period for requesting a hearing, the Executive Secretary shall be notified of the final recommendation.

1[0]2.6. A challenge to the Executive Secretary's determination may be made as provided in R317-9-3.

R317-11-1[4]3. Certification Requirements and Effective Dates.

After January 1, 2002, no person shall design, inspect, maintain, or conduct soil evaluations or percolation [~~or soil~~] tests for an underground wastewater disposal system unless they hold current certification from the Executive Secretary, except as exempted in R317-11-4.

R317-11-1[2]4. Noncompliance.

1[2]4.1. Noncompliance with these Certification rules is a violation of Section 19-5-121 Utah Code Annotated.

1[2]4.2. Cases of noncompliance with this rule shall be referred to the Executive Secretary.

KEY: waste water, occupational licensing, certification, onsite professional

Date of Enactment or Last Substantive Amendment: [~~January 26, 2007~~]**June 27, 2012**

Notice of Continuation: June 27, 2011

Authorizing, and Implemented or Interpreted Law: 19-5-104; 19-5-121

Governor, Criminal and Juvenile Justice (State Commission on)

R356-1

Procedures for the Calculation and Distribution of Funds to Reimburse County Correctional Facilities Housing State Probationary Inmates or State Parole Inmates

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36141

FILED: 05/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Recent changes in legislation necessitate changes to the rule. Also, discussions between state agencies and sheriffs' offices have identified information that will facilitate the reimbursement process.

SUMMARY OF THE RULE OR CHANGE: Pursuant to recent legislative changes, the amended rule specifies that jail reimbursements are made based on the average number of inmate days for the preceding five fiscal years. The amended rule also adds additional data elements that will expedite the reimbursement process.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 64-13e-104

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** These amendments will have no cost or savings to the state budget. The formula for distribution of funds will change to a five-year average according to state statute. However, the amendments will not change the amount of funds distributed.

◆ **LOCAL GOVERNMENTS:** Because the distribution formula is changing to a five-year average pursuant to state statute, the amounts distributed to each county will change. Some counties will receive more and some counties will receive less than they would have received under the old formula.

◆ **SMALL BUSINESSES:** These amendments will not result in costs or savings to small businesses. Small businesses do not request funds under this rule.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** These amendments will not result in costs or savings to other persons because no other persons are directly affected by this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Utah Department of Corrections and Counties requesting reimbursement will be required to provide additional data with their reimbursement request. The amount of time necessary to obtain and provide this data will be minimal and will not result in quantifiable costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule impacts the Utah Department of Corrections and county governments. It does not impact businesses and will have no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

GOVERNOR
CRIMINAL AND JUVENILE JUSTICE (STATE COMMISSION ON)
ROOM SUITE 330 SENATE BUILDING
STATE CAPITOL COMPLEX
420 N STATE STREET
SALT LAKE CITY, UT 84114
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Ronald Gordon by phone at 801-538-1432, by FAX at 801-538-1024, or by Internet E-mail at rbgordon@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2012

AUTHORIZED BY: Ronald Gordon, Executive Director

R356. Governor, Criminal and Juvenile Justice (State Commission on).

R356-1. Procedures for the Calculation and Distribution of Funds to Reimburse County Correctional Facilities Housing State Probationary Inmates or State Parole Inmates.

R356-1-1. Authority and Purpose.

(1) This rule is authorized in accordance with Subsection 64-13e-104(5)(b).

(2) The purpose of this rule is to establish procedures to reimburse counties for incarcerating state probationary inmates or state parole inmates and to determine the rate at which the counties shall be reimbursed.

R356-1-2. Definitions.

In addition to terms defined in Section 64-13e-102:

(1) "Total Inmate Days" means the total number of eligible probationary and state parole inmate incarceration days.

(2) "Business Day" means Monday through Friday excluding holidays.

R356-1-3. Conditions for Reimbursement of State Probationary Inmates.

Counties shall be eligible for reimbursement for days served in county correctional facilities under the following conditions:

(1) The inmate has been convicted of a felony, and as a condition of probation, has been sentenced to a county correctional facility for a period not exceeding one year. The reimbursement period will begin with the sentencing date.

(2) Days served under Subsection 1 which are eligible for reimbursement may include:

(a) Consecutive felony probation jail sentences, pursuant to Section 76-3-401;

(b) The inmate is sentenced by the courts to a county correctional facility following a violation of felony probation (Order

to Show Cause). If the inmate's probation has been terminated it must be reinstated for the county to be eligible for reimbursement;

(c) The inmate is sentenced by the courts to a county correctional facility after a court has formally entered a guilty plea that had been held in abeyance as a conviction.

R356-1-4. Conditions Not Eligible for Reimbursement of State Probationary Inmates.

Counties are not eligible for reimbursement for incarcerating inmates in the following circumstances:

(1) Time served in a county correctional facility prior to sentencing, notwithstanding an order from the court for credit for time served;

(2) Time served in a county correctional facility following an unsuccessful termination of probation;

(3) Time served in a county correctional facility under a Plea in Abeyance agreement prior to the entering of the guilty plea as a conviction in the case;

(4) Time served on a felony probation sentence outside a correctional facility on electronic monitoring;

(5) Time served in a county correctional facility on a federal Immigration and Customs Enforcement hold beyond the number of days sentenced to jail by the Courts, even if probation is still in effect;

(6) Time served in a county correctional facility under the jurisdiction of the Juvenile Court;

(7) Time served in a county correctional facility on a probationary 3-day hold.

R356-1-5. Conditions for Reimbursement of State Parole Inmates.

(1) Counties shall be eligible for reimbursement for days served in county correctional facilities by state parole inmates when the inmate is being held on a 3-day hold issued by the Board of Pardons and Parole.

(2) Counties shall be reimbursed for state parole inmates on a 3-day hold for up to 3 business days plus weekends and holidays for a maximum of 6 days of reimbursement per 3 day hold.

R356-1-6. Monthly Billing Invoices.

(1) Counties requesting reimbursement for incarcerating state probationary inmates or state parole inmates shall submit, on a monthly basis, the following information in the format specified below in an MS Excel file to CCJJ:

(a) Inmate name (last, first, middle initial);

~~_____ (b) Court case number(s) authorizing jail as a condition of probation;~~

_____ (b) Inmate date of birth (mm/dd/yyyy);

_____ (c) Sentencing date (mm/dd/yyyy);

~~_____ (d) Court case number(s) authorizing jail as a condition of probation;~~

_____ (e) Court location identified by Originating Agency Identifier;

_____ (f) Name of judge assigned to case;

_____ (g) Whether the requested reimbursement is for a 72 hour hold;

_____ (h) UDC offender number if the requested reimbursement is for a 72 hour hold;

~~(+)~~(i) Incarceration start date (mm/dd/yyyy);

~~(e)~~(j) Release date from correctional facility (mm/dd/yyyy);

(k) Length (number of days) of court-ordered sentence;

~~(f) Total number of state inmates (probation and parole) for which the county is requesting reimbursement; and~~

~~(g)~~(l) Total number of state probationary inmate days of incarceration and total number of state parole inmate days of incarceration for which the county is requesting reimbursement; and

~~(m) Total number of state inmates (probation and parole) for which the county is requesting reimbursement.~~

(2) Counties shall be reimbursed for all inmate incarceration days (felony probation and felony parole) beginning on the first day of incarceration after sentencing (day of sentencing shall be included), but never the last day of incarceration (day of release). Counties incarcerating inmates beyond eligible sentence days shall only be reimbursed for those days the inmate was eligible for reimbursement.

(3) Monthly billing invoices shall be submitted to CCJJ by the 10th business day of each month unless prior approval has been authorized by the Executive Director of CCJJ or designee. Invoices shall be submitted by email to the following email address: jailreimburse@utah.gov.

(4) CCJJ shall audit each billing invoice for accuracy, using Utah State Courts X-Change program and Department of Corrections Otrack-Ftrack data systems to verify information. When necessary, CCJJ shall contact the correctional facility or sentencing court to verify accuracy of information.

(5) Back billings or late billings are eligible for reimbursement within the same fiscal year period. The 10th business day of August shall be the final day to submit late billings for the previous fiscal year.

(6) For each monthly billing invoice submitted, CCJJ shall return to the county:

(a) An approval sheet listing total inmate days of incarceration submitted to the Division of Finance for reimbursement; and

(b) A copy of the original billing invoice with any corrections that were made to the original billing.

(7) CCJJ may request counties to submit additional information regarding inmate booking and release when necessary to complete invoice audits.

R356-1-7. Calculation of Payments to Counties for Reimbursement for Housing State Probationary Inmates and State Parole Inmates.

To ensure compliance with Subsection 64-13e-104(5)(c), CCJJ shall prepare two calculations of payment for counties. CCJJ shall determine which calculation to use based upon funds appropriated by the Legislature for payment.

(1) When funds appropriated by the Legislature are sufficient to reimburse counties at a rate of 50% of the final daily incarceration rate for the preceding fiscal year established pursuant to Section 64-13e-105, the Division of Finance shall reimburse each county that houses a state probationary inmate or state parole inmate at a rate of 50% of the state daily incarceration rate multiplied by the ~~total~~average inmate days of incarceration established in the Administrative Rule Section R356-1-6 for the preceding five fiscal ~~year~~years.

(2) When funds appropriated by the Legislature are not sufficient to reimburse counties under Subsection 64-13e-104(2), each county that houses a state probationary inmate or state parole inmate shall be reimbursed by a rate calculated on a pro rata basis, based on the total inmate days of incarceration that were approved for each county for the preceding five fiscal ~~year~~years. The funds appropriated by the legislature will be divided by the total of inmate days of incarceration of all counties during the previous five years to establish a pro rata rate. Each county shall be reimbursed by multiplying the pro rata rate established under this subsection by the total inmate days of incarceration for each county established in this Administrative Rule Section R356-1-6 for the preceding five fiscal ~~year~~years.

KEY: jail reimbursement, state probationary inmates, state parole inmates

Date of Enactment or Last Substantive Amendment: [January 4, 2010]2012

Authorizing, and Implemented or Interpreted Law: 64-13e-104

**Governor, Economic Development,
Pete Suazo Utah Athletic Commission
R359-1-506
Drug Tests**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 36130

FILED: 04/30/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to update the section to reference the 2012 version of the World Anti-Doping Agency (WADA) list, to add the procedure for commission to consider Therapeutic Use Exemptions (TUEs), and to make administrative textual changes.

SUMMARY OF THE RULE OR CHANGE: Updates rule to reference the 2012 version of the World Anti-Doping Agency (WADA) list, adds the procedure for commission to consider Therapeutic Use Exemptions (TUEs) for unarmed combat contestants, and makes administrative textual changes.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63C, Chapter 11

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates The World Anti-Doping Code - The 2012 Prohibited List - International Standard, published by World Anti-Doping Agency, 08/24/2011

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: The proposed change will not result in any aggregate anticipated cost or savings to the state

budget. The proposed changes can be accommodated within the existing commission staffing and budget.

♦ **LOCAL GOVERNMENTS:** The proposed change will not result in any aggregate anticipated cost or savings to local governments. Local governments do not regulate unarmed combat other than through issuance of business licenses and permits. This proposed change provides additional guidance on drug testing policy and issuance of TUEs.

♦ **SMALL BUSINESSES:** The proposed change will not result in any aggregate anticipated cost or savings to small businesses since they are not impacted by the commission's drug testing policy or issuance of TUEs.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Unarmed combat contestants are currently prohibited from using drugs, performance enhancing measures, and substances contained on the 2011 WADA Prohibited List. Currently, there is no provision for the issuance of therapeutic use exemptions (TUEs) for athletes who may require them for medical reasons. The proposed amendment would establish a policy and procedure for obtaining a TUE for qualified applicants. This process may be costly and may exceed \$1,000, but will vary depending on whether or not they have personal insurance and the specific TUE they request. However, currently there is no procedure in place for the commission to grant a TUE for an unarmed contestant and the use of substances listed on the WADA prohibited list would prevent them from legally participating in unarmed combat sports.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Unarmed combat contestants seeking a TUE would have to pay the full costs of any required medical tests, blood and/or urine compliance testing, and costs to prepare and review their respective TUE application. This process may be costly and may exceed \$1,000, but will vary depending on whether or not they have personal insurance and the specific TUE they request. However, currently there is no procedure in place for the commission to grant a TUE for an unarmed contestant and the use of substances listed on the WADA prohibited list would prevent them from legally participating in unarmed combat sports.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Unarmed combat contestants are currently prohibited from using drugs, performance enhancing measures, and substances contained on the 2011 WADA Prohibited List. Currently, there is no provision for the issuance of therapeutic use exemptions (TUEs) for athletes who may require them for medical reasons. The proposed amendment would establish a policy and procedure for obtaining a TUE for qualified applicants. The proposed change may impact a few unarmed combat contestants, but will have no impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

GOVERNOR
ECONOMIC DEVELOPMENT, PETE SUAZO UTAH
ATHLETIC COMMISSION
60 E SOUTH TEMPLE
THIRD FLOOR
SALT LAKE CITY, UT 84111
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Bill Colbert by phone at 801-538-8876, by FAX at 801-538-8888, or by Internet E-mail at bcolbert@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/26/2012

AUTHORIZED BY: Bill Colbert, Director

R359. Governor, Economic Development, Pete Suazo Utah Athletic Commission.

R359-1. Pete Suazo Utah Athletic Commission Act Rule.

R359-1-506. Drug ~~[Fests]~~Testing.

In accordance with Section 63C-11-~~[347]~~309, the following shall apply to drug testing:

(1) The administration of or use of any:

- (a) Alcohol;
- (b) Illicit drug;
- (c) Stimulant; or

(d) Drug or injection that has not been approved by the Commission, including, but not limited to, the drugs or injections listed R359-1-506~~-(2)~~, in any part of the body, either before or during a contest or exhibition, to or by any unarmed combatant, is prohibited.

(2) The following types of drugs, injections or stimulants are prohibited for any unarmed combatant pursuant to R359-1-506 (1):

(a) Afrinol or any other product that is pharmaceutically similar to Afrinol.

(b) Co-Tylenol or any other product that is pharmaceutically similar to Co-Tylenol.

(c) A product containing an antihistamine and a decongestant.

(d) A decongestant other than a decongestant listed in R359-1-506 (4).

(e) Any over-the-counter drug for colds, coughs or sinuses other than those drugs listed in R359-1- 506 (4). This paragraph includes, but is not limited to, Ephedrine, Phenylpropanolamine, and Mahuang and derivatives of Mahuang.

(f) Any drug or substance identified on the ~~[2011]~~2012 edition of the Prohibited List published by the World Anti-Doping Agency, which is hereby incorporated by reference. The ~~[2008]~~2012 edition of the Prohibited List may be obtained, free of charge, at www.wada-ama.org.

(3) The following types of drugs or injections are not prohibited pursuant to R359-1-506 (1), but their use is discouraged by the Commission for any unarmed combatant:

- (a) Aspirin and products containing aspirin.
- (b) Nonsteroidal anti-inflammatories.

(4) The following types of drugs or injections are accepted by the Commission:

- (a) Antacids, such as Maalox.
- (b) Antibiotics, antifungals or antivirals that have been prescribed by a physician.

(c) Antidiarrheals, such as Imodium, Kaopectate or Pepto-Bismol.

(d) Antihistamines for colds or allergies, such as Bromphen, Brompheniramine, Chlorpheniramine Maleate, Chlor-Trimeton, Dimetane, Hismal, PBZ, Seldane, Tavist-1 or Teldrin.

- (e) Antinauseants, such as Dramamine or Tigan.
- (f) Antipyretics, such as Tylenol.

(g) Antitussives, such as Robitussin, if the antitussive does not contain codeine.

(h) Antiulcer products, such as Carafate, Pepcid, Reglan, Tagamet or Zantac.

(i) Asthma products in aerosol form, such as Brethine, Metaproterenol (Alupent) or Salbutamol (Albuterol, Proventil or Ventolin).

(j) Asthma products in oral form, such as Aminophylline, Cromolyn, Nasalide or Vanceryl.

(k) Ear products, such as Auralgan, Cerumenex, Cortisporin, Debrox or Vosol.

(l) Hemorrhoid products, such as Anusol-HC, Preparation H or Nupercainal.

(m) Laxatives, such as Correctol, Doxidan, Dulcolax, Efferyllium, Ex-Lax, Metamucil, Modane or Milk of Magnesia.

(n) Nasal products, such as AYR Saline, HuMist Saline, Ocean or Salinex.

- (o) The following decongestants:

- (i) Afrin;
- (ii) Oxymetazoline HCL Nasal Spray; or
- (iii) Any other decongestant that is pharmaceutically similar to a decongestant listed in R359-1-506 (1) or (2).

(5) At the request of the Commission, the designated Commission member, or the ringside physician, a licensee shall submit to a test of body fluids to determine the presence of drugs or other prohibited substances. A licensee shall give an adequate sample or it will deem to be a denial. The promoter shall be responsible for any costs of testing.

(6) If the test results in a finding of the presence of a [drug] prohibited substance or metabolite or if the licensee is unable or unwilling to provide a sample of body fluids for such a test within 60 minutes of notification, the Commission may take one or more of the following actions:

- (a) immediately suspend the licensee's license in accordance with Section R359-1-403;
- (b) stop the contest in accordance with Subsection 63C-11-316(2);
- (c) initiate other appropriate licensure action in accordance with Section 63C-11-~~340~~303; or
- (d) withhold the contestant's purse in accordance with Subsection 63C-11-~~324~~303.

(7) A contestant who is disciplined pursuant to the provisions of this Rule and who was the winner of a contest shall be disqualified and the decision of the contest shall be changed to "no contest[-]" and shall be fined a minimum of their win bonus.

(8) Unless the commission determines otherwise at a scheduled meeting, a licensee who tests positive for [illegal drugs] prohibited substances or their metabolites shall be penalized as follows:

- (a) First offense - 180 day suspension.

(b) Second offense - 1 year suspension, and mandatory completion of a supervisory treatment program approved by the commission that licensed the event.

(c) Third offense - 2 year suspension, and mandatory completion of a supervisory treatment program approved by the commission that licensed the event.

(d) Failure by the contestant to fully disclose all medications taken within 30 days of their pre-fight physical, prior to their bout, shall be deemed unprofessional conduct and double the length of any applicable suspension.

- (10) Therapeutic Use Exemptions (TUEs).

(a) An applicant or licensee who believes he or she has a therapeutic reason to use a substance described in R359-1-506(2) may request a Therapeutic Use Exemption (TUE) to permit continued use of that substance. Such a request may only be granted by the commission itself after a public hearing. The applicant or licensee shall submit the request in writing to the commission. The request shall be accompanied by supporting medical information sufficient to allow the commission to determine whether to grant their request. In reaching its decision, the commission will, at a minimum, determine whether all of the following criteria have been met:

(i) The applicant or licensee would experience a significant impairment to health if the prohibited substance were to be withheld in the course of treating an acute or chronic medical condition;

(ii) The therapeutic use of the prohibited substance would produce no additional enhancement of performance other than that which might be anticipated by a return to a state of normal health following the treatment of a legitimate medical condition;

(iii) The Use of any Prohibited Substance or Prohibited Method to increase "low-normal" levels of any endogenous hormone is not considered an acceptable Therapeutic intervention;

(iv) Either reasonable therapeutic alternatives to the use of the otherwise prohibited substance have been tried or no reasonable alternative exists; and

(v) The necessity for the use of the otherwise prohibited substance is not a consequence, wholly or in part, of a prior non-therapeutic use of any substance described in R359-1-506(2).

(b) The commission may, in its sole discretion, either grant or deny the request or refer the request to the Voluntary Anti-Doping Association (VADA) or similar evaluating body for a recommendation. The evaluating body shall obtain such evaluation and expert consultation as the body deems necessary. The evaluating body shall present the commission with a written recommendation and a detailed basis for that recommendation.

(c) The applicant shall be responsible to pay any costs associated with the TUE evaluation and all subsequent mandated compliance testing.

(d) The TUE shall be cancelled, if:

(i) The contestant does not promptly comply with any requirements or conditions imposed by the commission.

(ii) The term for which the TUE was granted has expired.

(iii) The contestant is advised that the TUE has been withdrawn by the commission.

(11) Failure to disclose the use of a substance described in Rule R359-1-506(2) constitutes unprofessional conduct and subject to additional disciplinary action under Section 63C-11-303.

KEY: licensing, boxing, unarmed combat, white-collar contests
Date of Enactment or Last Substantive Amendment:
[December 15, 2011]2012

Notice of Continuation: March 30, 2012

Authorizing, and Implemented or Interpreted Law: 63C-11-101 et seq.

Health, Family Health and Preparedness, Children With Special Health Care Needs

R398-5

Birth Defects Reporting

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36109

FILED: 04/30/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes, mostly additions, in Sections R398-5 and R398-5-3 would allow for additional information to be sent to the Utah Birth Defect Network (UBDN) to improve identification and monitoring of congenital heart defects. The addition under Section R398-5-5 is somewhat broader as it pertains to all of the identified birth defects collected and would greatly improve the potential to address the issues of transition into young adulthood, an area which is a large and growing problem. Lastly the removal of an obsolete reference to criminal penalties for violating a rule that is no longer supported by statutory delegation of this authority by the Legislature (see H.B. 32, 2009 General Session).

SUMMARY OF THE RULE OR CHANGE: The changes add language to the rule that will allow for additional information to be sent to the UBDN to better monitor congenital heart defects; and add language which will allow the UBDN to address issues of quality of life for those identified with a birth defect. A reference to criminal penalties for violating this rule is removed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 26-10-1(d) and Subsections 26-1-30(2)(c), (d), (e), (g), (p), (t)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** It is possible that increased focus on use of civil money penalties could have a positive impact on the state's budget, but any impact is expected to be minimal.

♦ **LOCAL GOVERNMENTS:** This rule does not affect local governments because they do not report birth defects to the Department of Health. Therefore, this change has no fiscal impact on them.

♦ **SMALL BUSINESSES:** The Division is unaware of any small businesses that may be affected by this rule amendment, although in the unlikely event that there is a birthing center that qualifies as a small business the impact of these changes would only require that a few additional fields be added to the current monthly report that they would already be reporting. Therefore, no fiscal impact is anticipated for these groups.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule amendment imposes no new costs on businesses, individuals, local governments, or persons that are not small businesses. These facilities already send monthly reports to the UBDN and this amendment would only require that a few additional fields be added to the current report. Therefore, no fiscal impact is anticipated for these groups.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is possible that increased focus on use of civil money penalties could have a minimal impact on small and large business. No significant change to current enforcement practices is predicted and compliance costs are not expected to change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Regulated entities have been consulted on this rule change. This additional data will serve an important public health function and their support for the rule change is expected. Fiscal impact is expected to be minimal.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
 FAMILY HEALTH AND PREPAREDNESS,
 CHILDREN WITH SPECIAL HEALTH CARE NEEDS
 44 N MARIO CAPECCHI DR
 SALT LAKE CITY, UT 84113
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Amy Nance by phone at 801-883-4661, by FAX at 801-323-1578, or by Internet E-mail at aenance@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/22/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

R398. Health, Family Health and Preparedness, Children with Special Health Care Needs.

R398-5. Birth Defects Reporting.

R398-5-1. Purpose and Authority.

This rule establishes reporting requirements for birth defects and stillbirths in Utah and for related test results. Sections 26-1-30(2)(c), (d), (e), (g), (p), (t), 26-10-1(2), and 26-10-2 authorize this rule.

R398-5-2. Definitions.

As used in this rule:

(1) "Birthing center" means a birthing center licensed under Title 26, Chapter 21.

(2) "Birth defect" means any medical disorder of organ structure, function or biochemistry which is of possible genetic or prenatal origin. This includes any congenital anomaly, indication of hypoxia or genetic metabolic disorder listed in the ICD-9-CM (International Classification of Diseases, 9th Revision, Clinical Modification, established by the United States Center for Health Statistics) with any of the following diagnostic codes: 243, 255.2, 255.4, from 269.2 to 279.9, ~~and~~ from 740.0 to 759.9~~;~~ and from 768.0 to 768.9; or listed in the ICD-10 (International Classification of Diseases, 10th Revision, established by the World Health Organization) with any of the following diagnostic codes: E03, E25, from E70 to E90, from D55 to D58, J96.00 to J96.91, P09, and from Q00-Q99.

(3) "Hospital" means general acute hospital, children's specialty hospital, remote-rural hospital licensed under Title 26, Chapter 21.

(4) "Stillbirth" means a pregnancy resulting in a fetal death at 20 weeks gestation or later.

(5) "Clinic" means physician-owned or operated clinic that regularly provide services for the diagnosis or treatment of birth defects, genetic counseling, or prenatal diagnostic services.

R398-5-3. Reporting by Hospitals and Birthing Centers.

Each hospital or birthing center that admits a patient and detects or screens for a birth defect as a result of any outcome of pregnancy, or admits a child under 24 months of age with a birth defect, or is presented with the event of a stillbirth shall report or cause to report to the department within 40 days of discharge the following:

- (1) if live born, child's name;
- (2) child's date of birth (or date of delivery);
- (3) mother's name;
- (4) mother's date of birth;
- (5) delivery hospital;
- (6) birth defects and hypoxia/hypoxemia diagnoses;
- (7) pulse oximetry results for all initial and repeat screenings, including limb location;
- (~~7~~8) mother's state of residency at delivery;
- (~~8~~9) child's sex; and
- (~~9~~10) mother's zip code.

R398-5-4. Reporting by Laboratories.

Each laboratory operating in the state that identifies a human chromosomal or genetic abnormality or other evidence of a birth defect shall report the following on a calendar quarterly basis to the department within 40 days of the end of the preceding calendar quarter:

- (1) if live born, child's name and date of birth;
- (2) mother's name;
- (3) mother's date of birth;
- (4) date the sample is accepted by the laboratory;
- (5) test conducted;
- (6) test result; and
- (7) mother's state of residency at delivery.

R398-5-5. Record Abstraction.

Hospitals, birthing centers, and clinics as well as community health care providers shall allow personnel from the department or its contractors to abstract information from the mother's and child's files on their demographic characteristics, family history of birth defects, prenatal and postnatal procedures or treatments (including diagnostics) related to the birth defect or stillbirth, and outcomes of that and other pregnancies by that mother. Hospitals, birthing centers, and clinics as well as community health care providers shall allow personnel from the department or its contractors to abstract information from the affected child's files, throughout their lifespan.

R398-5-6. Liability.

As provided in Title 26, Chapter 25, persons who report, either voluntarily or as required by this rule, information covered by this rule may not be held liable for reporting the information to the Department of Health.

R398-5-7. Penalties.

Pursuant to Section 26-23-6, any person that willfully violates any provision of this rule may be assessed an administrative civil money penalty not to exceed \$1,000 upon an administrative finding of a first violation and up to \$3,000 for a subsequent similar violation within two years. A person may also be subject to penalties imposed by a civil or criminal court, ~~which may not exceed \$5,000 or a class B misdemeanor for the first violation and a class A misdemeanor for any subsequent similar violation within two years.~~

KEY: birth defects, birth defect reporting

Date of Enactment or Last Substantive Amendment: ~~[July 3, 2008]~~ **2012**

Notice of Continuation: September 28, 2009

Authorizing, and Implemented or Interpreted Law: 26-1-30(2) (c), (d), (e), (g), (p), (t); 26-10-1(2); 26-10-2; 26-25-1

Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-1-29
Provider-Preventable Conditions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36102

FILED: 04/27/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify legal authority and reporting requirements for provider-preventable conditions as established under administrative rules and state and federal law.

SUMMARY OF THE RULE OR CHANGE: This amendment clarifies legal authority and reporting requirements for provider-preventable conditions. It also specifies the federal statute that prohibits reimbursement for provider-preventable conditions, and the sections of the Medicaid State Plan that implement that authority.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: 42 CFR 447.26 and Section 26-1-5 and Section 26-18-3

MATERIALS INCORPORATED BY REFERENCES:

- ◆ Updates 42 CFR 447.26, published by Government Printing Office, 10/01/2011

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The Department does not anticipate any impact to the state budget because this amendment only clarifies legal authority and reporting requirements for provider-preventable conditions. It does not impose new requirements on hospital and providers.
- ◆ **LOCAL GOVERNMENTS:** The Department does not anticipate any impact to local governments because they do not fund or provide Medicaid services.
- ◆ **SMALL BUSINESSES:** The Department does not anticipate any impact to small businesses because this amendment only clarifies legal authority and reporting requirements for provider-preventable conditions. It does not impose new requirements on small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Department does not anticipate any costs or savings to other persons because this amendment only clarifies legal authority and reporting requirements for provider-preventable conditions. It does not impose new requirements on Medicaid providers and does not create out-of-pocket expenses for Medicaid recipients.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Department does not anticipate any compliance costs because this amendment only clarifies legal authority and reporting requirements for provider-preventable conditions. It does not impose new requirements on a single Medicaid provider and does not create out-of-pocket expenses for a single Medicaid recipient.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After extensive meetings with regulated providers and other interested parties, these amendments are proposed to meet federal requirements in a less burdensome manner.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-1. Utah Medicaid Program.****R414-1-29. Provider-Preventable Conditions.**

~~[The following applies to inpatient hospital services provided to Medicaid recipients and dual eligible beneficiaries:~~

(1) In accordance with ~~[76 FR 32837]~~42 CFR 447.26, October 1, 2011 ed., which is incorporated by reference, Medicaid will not reimburse providers or contractors for provider-preventable conditions ~~[as defined in this CMS rule]~~as noted therein. Please see Utah Medicaid State Plan Attachments 4.19-A and 4.19-B for detail. ~~[Providers and contractors are prohibited from submitting claims for payment of these conditions except as permitted in 76 FR 32837 when the provider-preventable condition existed prior to the initiation of treatment by the provider.]~~

(2) Medicaid providers who treat Medicaid eligible patients must report all provider-preventable conditions whether or not reimbursement for the services is sought. Medicaid providers shall meet this requirement by complying with existing state reporting requirements (rules and legislation) of these events that include:

- (a) Rule R380-200;
- (b) Rule R380-210;
- (c) Rule R386-705;
- (d) Rule R428-10; and
- (e) Section 26-6-31.

~~(3) Utilizing the reporting mechanism from one of the rules noted above shall not impact confidentiality and privacy protections for reporting entities as noted in Title 26, Chapter 25, Confidential Information Release. [must complete the Provider-Preventable Conditions Report as found at <http://health.utah.gov/medicaid/index.html>. Completed reports must be mailed to one of the following addresses within 30 calendar days of the event, as appropriate:~~

~~(a) Via U.S. Post Office: Utah Department of Health, DHCF, BCRP, Attn: Provider-Preventable Conditions Reporting, PO Box 143102, Salt Lake City, UT 84114-3102; or~~

~~(b) Via UPS or FedEx: Utah Department of Health, DHCF, BCRP, Attn: Provider-Preventable Conditions Reporting, 288 North 1460 West, Salt Lake City, UT 84116-3231.]~~

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: ~~February 21,~~ **2012**

Notice of Continuation: **March 2, 2012**

Authorizing, and Implemented or Interpreted Law: **26-1-5; 26-18-3; 26-34-2**

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-2A
Inpatient Hospital Services**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 36107
FILED: 04/27/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to update the 30-day hospital readmission policy to refer to Section R414-1-12, which describes the Superior System Waiver's use for hospital utilization reviews.

SUMMARY OF THE RULE OR CHANGE: This amendment updates the 30-day hospital readmission policy to refer to Section R414-1-12. It also clarifies the limitations of inpatient hospital services as they relate to medical necessity.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** The Department does not anticipate any impact to the state budget because this amendment only clarifies and updates inpatient hospital limitations and admission policies.

♦ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund or provide inpatient hospital services to Medicaid recipients.

♦ **SMALL BUSINESSES:** The Department does not anticipate any impact to small businesses because this amendment only clarifies and updates inpatient hospital limitations and admission policies.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Department does not anticipate any impact to Medicaid providers and to Medicaid recipients because this amendment only clarifies and updates inpatient hospital limitations and admission policies.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Department does not anticipate any impact to a single Medicaid provider or to a Medicaid recipient because this amendment only clarifies and updates inpatient hospital limitations and admission policies.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change updates necessary references to support hospital policy and no fiscal impact is predicted.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-2A. Inpatient Hospital Services.

R414-2A-6. Service Coverage.

(1) Inpatient hospital services encompass all medically necessary and therapeutic medical services and supplies that the physician or other practitioner of the healing arts orders that are appropriate for the diagnosis and treatment of a patient's illness. Inpatient hospital care is limited to medical treatment of symptoms that will lead to medical stabilization of the patient. This medical stabilization care is irrespective of any underlying psychiatric diagnosis.

(2) The Department does not pay for physician services rendered by a non-Medicaid provider.

(3) Diagnostic services performed by the admitting hospital or by an entity wholly owned or operated by the hospital within three days prior to the date of admission to the hospital, are inpatient services.

(4) Medical supplies, appliances, drugs, and equipment required for the care and treatment of a client during an inpatient stay are reimbursed as part of payment under the DRG.

(5) Services associated with pregnancy, labor, and vaginal or C-section delivery are reimbursed as inpatient service as part of payment under the DRG, even if the stay is less than 24 hours

(6) Services provided to an inpatient that could be provided on an outpatient basis are reimbursed as part of payment under the DRG.

(7) Inpatient hospital psychiatric services are available only to clients not residing in a county covered by a prepaid mental health plan.

R414-2A-7. Limitations.

(1) Inpatient admissions for 24 hours or more solely for observation or diagnostic evaluation do not qualify for reimbursement under the DRG system.

(2) ~~[Inpatient hospital care for treatment of alcoholism or drug dependency is limited to medical treatment of symptoms associated with drug or alcohol detoxification.]~~ Detoxification for a substance use disorder in a hospital is limited to medical detoxification for acute symptoms of withdrawal when the patient is in danger of experiencing severe or life-threatening withdrawal. The Department does not cover any lesser level of detoxification in an inpatient hospital.

(3) Abortion procedures must first be reviewed and preauthorized by the Department as meeting the requirements of Section 26-18-4 and 42 CFR 441.203.

(4) Sterilization and hysterectomy procedures must first be reviewed and preauthorized by the Department as meeting the requirements of 42 CFR 441, Subpart F.

(5) Organ transplant services are governed by Rule R414-10A, Transplant Services Standards.

(6) Take home supplies, dressings, non-rental durable medical equipment, and drugs are reimbursed as part of payment under the DRG.

(7) Hyperbaric oxygen therapy is limited to service in a facility in which the hyperbaric unit is accredited by the Undersea and Hyperbaric Medical Society.

(8) Inpatient services solely for pain management do not qualify for reimbursement under the DRG system. Pain management is adjunct to other Medicaid services.

(9) Medicaid does not cover inpatient admissions for the treatment of eating disorders.

(10) Physician services provided by a physician who is paid by a hospital are inpatient services reimbursed as part of payment billed on a 1500 form. Payment for physician services provided by providers who are not paid by the hospital is governed by Rule R414-10.

(11) Inpatient rehabilitation services must first be reviewed and preauthorized.

(12) Inpatient psychiatric services not covered by mental health contractual agreements must first be reviewed and

preauthorized by the Department to assure that the admission meets the requirements of 42 CFR 412.27 and Part 441, Subpart D.

R414-2A-9. Reimbursement Methodology.

(1) Payments for inpatient hospital services are paid on a prospectively determined amount for each qualifying patient discharge under a Diagnosis Related Group (DRG) system. DRG weights are established to recognize the relative amount of resources consumed to treat a particular type of patient. The DRG classification scheme assigns each hospital patient to one of over 500 categories or DRGs based on the patient's diagnosis, age and sex, surgical procedures performed, complicating conditions, and discharge status. Each DRG is assigned a weighting factor which reflects the quantity and type of hospital services generally needed to treat a patient with that condition. A preset reimbursement is assigned to each DRG. The DRG system allows for outliers for those discharges that have significant variance from the norm.

(2) For purposes of reimbursement, the day of admission is counted as a full day and the day of discharge is not counted.

(3) When a patient receives SNF-level, ICF-level, or other sub-acute care in an acute-care hospital or in a hospital with swing-bed approval, payment is made at the swing-bed rate.

~~[(4) Reimbursement for services in the emergency department is limited to codes and diagnoses that are medically necessary emergency services. The provider manual lists appropriate emergency codes. The provider must list the discharge diagnosis on the claim form as one of the first five diagnoses.]~~

~~[(5) If a patient is readmitted for the same or a similar diagnosis within 30 days of a discharge, please refer to Section R414-1-12. the Department may review and evaluate both claims to determine if, based on severity of illness and intensity of service, the claims should be combined into a single DRG payment or paid separately. Cost effectiveness may also be part of this determination but is not a primary factor.]~~

~~[(6) Exceptions to the 30-day readmission policy must still meet the severity of illness requirements for the allowance of a second DRG payment and are limited to:~~

- ~~— (a) pregnancy;~~
- ~~— (b) chemotherapy; and~~
- ~~— (c) hyperbilirubinemia appearing in newborn infants within the first week of life.]~~

~~[(7) The Department pays for physician interpretation of laboratory services separately from the DRG payment. Laboratory technical services are included within the DRG for the inpatient admission.]~~

~~[(8) If an observation stay meets the intensity and severity for inpatient hospitalization, the patient becomes an inpatient and the observation services are reimbursed as part of payment under the DRG.]~~

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: ~~January 11, 2012~~

Notice of Continuation: November 8, 2007

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-18-3.5

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-9-5
Alternative Payment Method**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 36106
FILED: 04/27/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to clarify alternative payment methods for Federally Qualified Health Centers (FQHCs).

SUMMARY OF THE RULE OR CHANGE: This amendment clarifies that a FQHC must calculate only covered beneficiary charges when it calculates the Ratio of Beneficiary Charges to Total Charges Applied to Allowable Cost as part of its agreement with the federal government.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** The Department does not anticipate any impact to the state budget because this change only clarifies alternative payment methods for FQHCs.
- ◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund Medicaid services for Medicaid recipients.
- ◆ **SMALL BUSINESSES:** The Department does not anticipate any impact to small businesses because this change only clarifies alternative payment methods for FQHCs.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The Department does not anticipate any impact Medicaid providers, FQHCs, and to Medicaid recipients because this change only clarifies alternative payment methods for FQHCs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Department does not anticipate any impact to a single Medicaid provider, a single FQHC, or to a Medicaid recipient because this change only clarifies alternative payment methods for FQHCs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Changes in this rule will clarify how regulated entities calculate allowable costs and should reduce the regulatory burden.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-9. Federally Qualified Health Centers.

R414-9-5. Alternate Payment Method.

(1) The Department adopts an Alternate Payment Method (APM). An FQHC is required to calculate the Ratio of Covered Beneficiary Charges to Total Charges Applied to Allowable Cost as part of its agreement with the federal government. As part of that calculation, it allocates allowable costs to Medicaid. The Department multiplies the Medicaid allowable costs by the Medicaid charge percentage to determine the amount to pay. The Department makes interim payments on the basis of billed charges from the FQHC, which reduce the annual settlement amount. Third party liability collections by the FQHC for Medicaid patients also reduce the final cost settlements.

(2) An FQHC participating in the APM must provide the Department annual cost reports and other cost information required by the Department necessary to calculate the annual settlement within ninety days from the close of its fiscal year, including its calculations of its anticipated settlement. The Department reviews submitted cost reports and provides a preliminary payment, if applicable, to FQHCs. Within six months after the end of the FQHC's fiscal year, the Department conducts a review or audit of submitted cost reports and makes a final settlement. This allow for inclusion of late filed claims and adjustments processed after the submitted cost report was prepared. If the Department overpaid an FQHC, the FQHC must repay the overpayment. If the Department underpaid an FQHC, the Department shall pay the FQHC the underpaid amount.

(3) The Department compares the APM reimbursements with the reimbursements calculated using the PPS methodology described in R414-9-4 and pays the greater amount to the FQHC.

KEY: Medicaid, facility, reimbursement

Date of Enactment or Last Substantive Amendment: [~~February 3, 2004~~2012]

Notice of Continuation: January 26, 2009

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

Health, Health Care Financing, Coverage and Reimbursement Policy **R414-49-3** Client Eligibility Requirements

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36105

FILED: 04/27/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to comply with mandates set forth in the 2012 General Session of the Utah Legislature reinstating emergency dental to non-pregnant adult Medicaid clients.

SUMMARY OF THE RULE OR CHANGE: This change allows non-pregnant adults 21 years and older to receive limited emergency dental services.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** This amendment is anticipated to be budget neutral as increased costs in the dental program are anticipated to be offset by savings in emergency room visits.

♦ **LOCAL GOVERNMENTS:** There may be some reduction in revenues to local governments that own hospitals, because of reductions in emergency room visits resulting from this change.

♦ **SMALL BUSINESSES:** There is an increase in annual revenue of approximately \$832,224 for small dental businesses due to the changes in emergency dental services for non-pregnant adults ages 21 and older set forth by the Utah Legislature. There is also anticipated to be an \$832,224 decrease in emergency room visit expenditures due to this change.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There is an increase in annual revenue of some portion of the amount noted above for businesses. There is also anticipated to be a decrease of some portion of the amount noted above in emergency room visit expenditures due to this change. Medicaid recipients who take advantage of the emergency dental program for non-pregnant adults ages 21

and older will see savings from not paying out of pocket expenses for these services.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Dental providers will see an increase in revenues and emergency room providers will see a decrease in revenues resulting from this amendment. It is difficult to quantify the specific compliance costs for any specific provider as the future utilization is unknown.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Providers of dental service will benefit from having this a covered service.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH

HEALTH CARE FINANCING,

COVERAGE AND REIMBURSEMENT POLICY

CANNON HEALTH BLDG

288 N 1460 W

SALT LAKE CITY, UT 84116-3231

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-49. Dental Services.

R414-49-3. Client Eligibility Requirements.

Dental services are available [~~only~~]to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program. Dental services to non-pregnant adults ages 21 and older are limited to emergency services only as defined in the Utah Medicaid State Plan Attachment 3.1-A, Attachment #10 and Attachment 3.1-B, Attachment #10.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: [~~July 1, 2009~~2012]

Notice of Continuation: November 2, 2009

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-50
Dental, Oral and Maxillofacial Surgeons**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36103

FILED: 04/27/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to comply with mandates set forth in the 2012 General Session of the Utah Legislature reinstating emergency dental to non-pregnant adult Medicaid clients.

SUMMARY OF THE RULE OR CHANGE: This change allows non-pregnant adults 21 years and older to receive limited emergency dental services. It also clarifies that services performed by an oral surgeon are still available to all categorically and medically needy clients.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-5 and Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** Estimates are listed in the companion filing to this proposed rule (Rule R414-49). (DAR NOTE: The proposed amendment to Section R414-39-3 is under DAR No. 36105 in this issue, May 15, 2012, of the Bulletin.)
- ◆ **LOCAL GOVERNMENTS:** Estimates are listed in the companion filing to this proposed rule (Rule R414-49).
- ◆ **SMALL BUSINESSES:** Estimates are listed in the companion filing to this proposed rule (Rule R414-49).
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Estimates are listed in the companion filing to this proposed rule (Rule R414-49).

COMPLIANCE COSTS FOR AFFECTED PERSONS: Dental providers will see an increase in revenues and emergency room providers will see a decrease in revenues resulting from this amendment. It is difficult to quantify the specific compliance costs for any specific provider as the future utilization is unknown.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Providers of dental service will benefit from having this a covered service.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-50. Dental, Oral and Maxillofacial Surgeons.

R414-50-3. Client Eligibility Requirements.

(1) Oral and maxillofacial surgery services are available only to clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program. Nevertheless, physician, medical and surgical services performed by an oral surgeon are available to all categorically and medically needy clients.

(2) Dental services to non-pregnant adults ages 21 and older are limited to emergency services only as defined in the Utah Medicaid State Plan Attachment 3.1-A, Attachment #10 and Attachment 3.1-B, Attachment #10.

R414-50-5. Service Coverage.

Emergency services outlined in this section are covered services for clients who are pregnant women or who are individuals eligible under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Program. Services for non-pregnant adults ages 21 and older are noted in the Utah Medicaid State Plan Attachment 3.1-A, Attachment #10 and Attachment 3.1-B, Attachment #10.

(1) [~~Emergency services are covered services.~~] Emergency services provided by a dentist in areas where an oral and maxillofacial surgeon is unavailable are covered services.

(2) Appropriate general anesthesia necessary for optimal management of the emergency is a covered service.

(3) Hospitalization of patients for dental surgery may be a covered service if a patient's physician, at the time of the proposed hospitalization, verifies that the patient's general health status dictates that hospitalization is necessary for the health and welfare of the patient.

(4) Treatment of temporomandibular joint fractures is a covered service. All other temporomandibular joint treatments are not covered services.

(5) For procedures requiring prior approval, Medicaid shall deny payment if the services are rendered before prior approval is obtained. Exceptions may be made for emergency services, or for recipients who obtain retroactive eligibility. The provider must apply for approval as soon as is practicable after the service is provided.

(6) Extraction of primary teeth at or near the time of exfoliation, as evidenced by mobility or loosening of the teeth, is not a covered service.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment:
~~November 1, 2010~~ 2012

Notice of Continuation: October 21, 2009

Authorizing, and Implemented or Interpreted Law: 26-1-4.1; 26-1-5; 26-18-3

**Health, Health Care Financing,
 Coverage and Reimbursement Policy
 R414-401-3
 Assessment**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36108

FILED: 04/27/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The 2012 Utah Legislature increased appropriations for this program through an increase to the assessment on Medicaid beds in nursing facilities. This change implements that assessment increase.

SUMMARY OF THE RULE OR CHANGE: In Subsection R414-401-3(2), intermediate care facilities for people with intellectual disabilities are assessed at the uniform rate of \$14.50 per patient day, which is an increase from the previous \$12.75 per patient day assessment. This increase in assessment allows for the appropriated increase in reimbursement rates and for the change in assessment for hospice stays in nursing homes that are paid at the higher, assessment increased, reimbursement rates. In Subsection R414-401-3(2), intermediate care facilities for people with intellectual disabilities (ICF/ID) are assessed at the uniform rate of \$6.80 per patient day, which is a decrease from the previous \$6.94 per patient day assessment, based upon projected days. These updates are based on estimates of patient days for state fiscal year 2013 and the appropriation amounts.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This is anticipated to result in collection of an additional \$1,993,800 restricted funds from nursing and swing bed facilities resulting in an additional \$4,643,400 of federal funds. This will result in an additional \$6,637,200 in reimbursement to nursing home and swing bed facilities. The update to the ICF/ID assessment rate is anticipated to be budget neutral as it updates the collection rate based on projected days in state fiscal year 2013 and the appropriation amount.

◆ **LOCAL GOVERNMENTS:** Local hospitals with swing beds may realize increased revenue, as a result of the increased reimbursement monies available. Funding will be applied to swing bed reimbursement rates beginning in calendar year 2013. Inasmuch as swing beds are variable, it is not possible to determine the additional funding that will be made available to these facilities.

◆ **SMALL BUSINESSES:** Small nursing facility providers will realize a net enhanced revenue as a result of increased federal matching funds. In addition, there would be an increase in cost to non-Medicaid certified facilities as those facilities would be assessed the higher amount and would not realize any payments from Medicaid. ICF/ID facilities will realize a decreased cost based upon the decrease in the assessment rate. Inasmuch as patient days are variable, it is not possible to determine the decreased cost that will be realized by these facilities.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Medicaid nursing facility providers will realize a portion of the net enhanced revenue as a result of increased federal matching funds. In addition, there would be an increase in cost to non-Medicaid certified facilities as those facilities would be assessed the higher amount and would not realize any payments from Medicaid. ICF/ID facilities will realize a decreased cost based upon the decrease in the assessment rate. Inasmuch as patient days are variable, it is not possible to determine the decreased cost that will be realized by these facilities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs include an increased collection of \$1.75 per non-Medicare patient day from each nursing facility and a decrease of \$0.14 per qualifying patient day for the ICF/ID providers. The assessment monies are used to draw down federal matching funds that result in higher reimbursement rates than would be possible without the assessment monies. All Medicaid certified nursing and swing bed facilities have benefitted from this process. The amount of overall gain depends on the number of Medicaid patients in the facility. In addition, there would be an increase in cost to non-Medicaid certified facilities as those facilities would be assessed the higher amount and would not realize any payments from Medicaid.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Consistent with Legislative appropriations, this rule updates the nursing facility assessment. For Medicaid certified facilities, the fiscal impact will be positive.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-401. Nursing Care Facility Assessment.

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 \$~~[12.75]~~14.50 per non-Medicare patient day provided by the facility, except that intermediate care facilities for ~~[the mentally retarded]~~people with intellectual disabilities shall be assessed at the uniform rate of \$6.~~[94]~~80 per patient day. Swing bed facilities shall be assessed the uniform rate for nursing facilities effective January 1, 2006. The Utah State Veteran's Home is exempted from this assessment and this rule.

(3) Each nursing care facility must pay its assessment monthly on or before the last day of the next succeeding month.

(4) The Department shall extend the time for paying the assessment to the next month succeeding the federal approval of a Medicaid State Plan Amendment allowing for the assessment, and consequent reimbursement rate adjustments.

KEY: Medicaid, nursing facility

Date of Enactment or Last Substantive Amendment: [February 21], 2012

Notice of Continuation: June 25, 2009

Authorizing, and Implemented or Interpreted Law: 26-1-30; 26-35a; 26-18-3

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-506
Hospital Provider Assessments**

**NOTICE OF PROPOSED RULE
(Amendment)**

DAR FILE NO.: 36101
FILED: 04/27/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to implement the Hospital Provider Assessment Act in accordance with S.B. 179 of the 2012 General Session of the Utah Legislature and to update the rule to allow new providers.

SUMMARY OF THE RULE OR CHANGE: This rule change removes the wording that limits which facilities are subject to the assessment or payments as of a specific date. It also corrects a citation in the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** The Department does not anticipate any impact to the General Fund because this change only implements a hospital provider assessment that will provide necessary matching funds.

◆ **LOCAL GOVERNMENTS:** There is no impact to local governments because they do not fund or provide hospital assessments for the Medicaid program.

◆ **SMALL BUSINESSES:** The impact of this change is unknown as the assessment amounts collected from providers is limited to the annual upper payment limit gap of which changes each year and will also change based on new hospitals entering the program. The change in payments made to providers as a result of this assessment will change also. The impact of that change is unknown until such time as new providers are added to the upper payment limit gap calculation and the assessment then determined.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The impact of this change is unknown as the assessment amounts collected from providers is limited to the annual upper payment limit gap of which changes each year and will also change based on new hospitals entering the program. The change in payments made to providers as a result of this assessment will change also. The impact of that change is unknown until such time as new providers are added to the upper payment limit gap calculation and the assessment then determined.

COMPLIANCE COSTS FOR AFFECTED PERSONS:
Hospitals that are new to this program will realize assessment costs, but will likely also see revenues generated from the payments made as a result of the overall provider assessment. The impact of that change is unknown until such time as new providers are added to the upper payment limit gap calculation and the assessment then determined.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES:
These changes reflect appropriation actions of the Utah Legislature for funding of the Medicaid program and will permit continued reimbursement levels to providers subject to the assessment at agreed upon levels.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.

R414-506. Hospital Provider Assessments.

R414-506-4. Change in Hospital Status.

(1) If a hospital's status changes during any given year and it no longer falls under the definition of a hospital that is subject to the assessment outlined in Section 26-36a-20[4] or is no longer entitled to Medicaid hospital access payments under Section 26-36a-205, the hospital must submit in writing to the Division of Medicaid and Health Financing (DMHF) a notice of the status change and the effective date of that change. The notice must be mailed to the correct address, as follows, and is only effective upon receipt by the Reimbursement Unit:

Via United States Postal Service:
Utah Department of Health
DMHF, BCRP
Attn: Reimbursement Unit
P.O. Box 143102
Salt Lake City, UT 84114-3102
Via United Parcel Service, Federal Express, and similar:

Utah Department of Health
DMHF, BCRP
Attn: Reimbursement Unit
288 North 1460 West
Salt Lake City, UT 84116-3231

(2) For any period where a hospital is no longer subject to the assessment and notice has been given under Subsection R414-506-4 (1):

(a) the Department shall require payment of the assessment from that hospital for the full quarter in which the status change occurred and the hospital will receive full payment for the applicable quarter; and

(b) the hospital is exempt from future assessment and not eligible for payment under this rule.

(3) ~~[Facilities not subject to the assessment or payments outlined in this rule as of January 1, 2010, are not eligible to receive Medicaid hospital inpatient access payments.]~~ For State Fiscal Year 2013 and subsequent years, prior to the beginning of each state fiscal year, the Department shall determine if new providers are eligible to receive Medicaid hospital inpatient access payments. The new providers will also be subject to the assessment beginning that same state fiscal year as they become eligible to receive the Medicaid hospital inpatient access payments. New providers identified will be added prospectively beginning with that new state fiscal year (e.g., a May 2012 evaluation identifying new providers will result in those new providers being added July 2012).

~~]~~

~~(1) The Hospital Policy Review Board is established under Subsection 26-36a-209(3). It shall serve as an advisory board to DMHF.~~

~~(2) The Division Director shall act on behalf of the Executive Director of the Utah Department of Health regarding all Hospital Policy Review Board issues.~~

~~(3) DMHF shall appoint a non-voting board member who will manage the Hospital Policy Review Board.~~

~~(4) Other individuals of DMHF, as appointed by the Division Director, are non-voting ex-officio advisory members of the Hospital Policy Review Board.~~

~~(5) The board shall:~~

~~(a) review State Plan Amendments or waivers affecting hospital reimbursement between the date of enactment of this chapter and the end of State Fiscal Year 2013; and~~

~~(b) review adjustments to the payment rates for State Fiscal Years 2012 and 2013.~~

~~(6) If a board member is unable to serve, DMHF shall fill the vacancy using the same method that it originally used to appoint the board position.~~

~~]~~

The Department shall repeal this rule in conjunction with the repeal of the Hospital Provider Assessment Act outlined in Section 26-36a-208.

~~R414-506-[8]7. Retrospective Operation.~~

This rule has retrospective operation for taxable years beginning on or after January 1, 2010, as authorized under Section 26-36a-209 of the Hospital Provider Assessment Act.

KEY: Medicaid

Date of Enactment or Last Substantive Amendment: ~~October 13, 2010~~ **2012**

Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-36a

Health, Center for Health Data, Health
Care Statistics
R428-12
Health Data Authority Survey of
Enrollees in Health Maintenance
Organizations

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36110

FILED: 04/30/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendment changes the title of rule to reflect health plans, not just health maintenance organizations; changes references from "carrier" to "health plan" throughout document; updated "Definitions" section to be uniform with definitions in Rule R428-13; updates the volume year (2009 to 2012) where applicable for HEDIS Specifications book; changes the name of Office of Health Data Analysis to Office of Health Care Statistics; and renumbers sections as necessary. (DAR NOTE: The proposed amendment to Rule R428-13 is under DAR No. 36111 in this issue, May 15, 2012, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: The rule is updated to reflect current policy that mandates reporting from Preferred Provider Organizations. Also technical edits are made including correct office name, year of publication, and appropriate definitions.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 33a

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This rule amendment does not change the process currently in place by rule, it only clarifies the reporting requirement of Preferred Provider Organizations as well as makes technical changes for consistency; therefore, the Utah Department of Health (UDOH) determines that these amendments will not create any cost or savings impact to the state budget or UDOH's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ **LOCAL GOVERNMENTS:** This filing does not create any direct cost or savings impact to local governments since they are not directly affected by the rule; nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ **SMALL BUSINESSES:** Minor technical changes to Rule R428-12 will not result in costs or savings to small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** Minor technical changes to Rule R428-12 will not result in costs or savings to persons other than small businesses, businesses, or local government entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The changes clarify definitions and update publication dates which do not result in compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Regulated entities should all be aware of this proposed rule amendment. Fiscal impact should be minimal as this reporting is already required in most instances. Public comment will be carefully evaluated.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
CENTER FOR HEALTH DATA,
HEALTH CARE STATISTICS
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Keely Cofrin Allen by phone at 801-538-6551, by FAX at 801-538-9916, or by Internet E-mail at kcofrinallen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

**R428. Health, Center for Health Data, Health Care Statistics.
R428-12. Health Data Authority Survey of Enrollees in Health
[Maintenance Organizations]Plans.
R428-12-1. Legal Authority.**

This rule is promulgated under authority granted by Title 26, Chapter 33a (Utah Code Annotated) and in accordance with the Utah Health Plan Performance Measurement Plan.

R428-12-2. Purpose.

This rule establishes the process for the collection of Health ~~[Insurance Carrier]Plan~~ enrollee satisfaction data from Utah licensed health ~~[insurance carriers]plans~~. The data are needed to promote informed consumer choice in health plan selection and measure the quality of care provided by Utah licensed health maintenance organizations.

R428-12-3. Definitions.

These definitions apply to rule R428-12:

(1) "Office" as defined in R428-2-3A.

(2) "[Carrier]Health plan" means:

(a) "~~[Health Maintenance Organization](HMO) means any person licensed under Title 31A, Chapter 8]any insurer under a contract with the Utah Department of Health to serve clients under Title XIX or Title XXI of the Social Security Act[-];~~

(b) a ~~[governmental plan as defined in Section 414 (d), Internal Revenue Code]"Health Maintenance Organization (HMO) defined as any person or entity operating in Utah which is licensed under Title 31A, Chapter 8, Utah Code[-];~~

(c) a non-electing church plan as described in Section 410 (d), Internal Revenue Code[-];and

(d) a "Preferred Provider Organization (PPO)" [~~means]is defined as all commercial insurance companies engaged in the business of health care insurance in the state of Utah (as defined in 31A-1-301(75)(a) and (b)), and offers an insurance product where an insured member has the choice of using either an in network provider at a discounted rate, also called preferred providers, or any out of network provider at a higher rate, also called non-preferred provider. Payments to preferred and non-preferred providers are paid according the preferred provider contract provisions as described in 31A-22-617(2)(a)(b).~~

(3) "NCQA" means the National Committee for Quality Assurance, a not-for-profit organization committed to evaluating and reporting on the quality of managed care plans.

~~(3)4~~ "Enrollee" means any individual who has entered into a contract with a health maintenance organization for health care or on whose behalf such an arrangement has been made.

~~(4)5~~ "Eligible Enrollee" means an enrollee who meets the criteria outlined by HEDIS 20[09]12, Volume 3, Specifications for Survey Measures published by NCQA.

~~(5)6~~ "Sampling Frame" means the [carrier]health plan enrollment file as described criteria outlined by HEDIS 20[09]12, Volume 3, Specifications for Survey Measures published by NCQA. The sampling frame includes only records that meet the eligibility criteria in R428-12-3(4).

~~(6)7~~ "Sample file" means the data file containing records of selected eligible enrollees drawn by the survey agency from the [carrier]health plan's sampling frame.

~~(7) "Aggregate statistics" means the total number of enrollees with the particular carrier by age and sex.~~

(8) "Survey agency" means an independent contractor on contract with the Office of Health ~~[Data Analysis]Care Statistics.~~

R428-12-4. Creating the Sampling Frame.

(1) The sources for enrollment data are health plan carriers licensed in Utah. Each [carrier]health plan shall include in the sampling frame all eligible enrollees. The [carrier]health plan

may not exclude any record except those that do not meet eligibility criteria as specified in R428-12-3(4).

(2) Each [carrier]health plan shall create the sampling frame according to the criteria outlined by HEDIS 20[09]12, Volume 3, Specifications for Survey Measures published by NCQA.

(3) The sampling frame and procedures used by the reporting [carrier]health plan are subject to audit by the Office of Health [Data Analysis]Care Statistics against aggregate statistics for the submitting [carrier]health plan.

R428-12-5. Sampling Frame Submission.

(1) The [carrier]health plan shall create the sampling frame according to the eligibility criteria in R428-12-3(4). The [carrier]health plan shall copy the sampling frame (formatted as described by HEDIS 20[09]12, Volume 3, Specifications for Survey Measures published by NCQA) using an electronic medium acceptable to the survey agency and then send to the survey agency.

(2) The [carrier]health plan shall fill out the "Sample Description" sheet to be provided by the survey agency and send it with the electronic sample file. Each [carrier]health plan shall submit to the survey agency the sampling frame for each of its [carrier]health plan products no later than four weeks after the receipt of the sampling memo from the survey agency.

R428-12-6. Penalties.

Pursuant to Section 26-23-6, any person that violates any provision of this rule may be assessed an administrative civil money penalty not to exceed \$3,000 upon an administrative finding of a first violation and up to \$5,000 for a subsequent similar violation within two years. A person may also be subject to penalties imposed by a civil or criminal court, which may not exceed \$5,000 or a class B misdemeanor for the first violation and a class A misdemeanor for any subsequent similar violation within two years.

R428-12-7. Administration of Survey.

Each year, the Utah Department of Health, in consultation with health plans, will determine the target survey population and the scope of the survey.

KEY: health maintenance organization, performance measurement, health care quality, preferred provider organization

Date of Enactment or Last Substantive Amendment: ~~[August 6, 2009]2012~~

Notice of Continuation: November 30, 2011

Authorizing, and Implemented or Interpreted Law: 26-33a-104; 26-33a-108

Health, Center for Health Data, Health
Care Statistics
R428-13
Health Data Authority: Audit and
Reporting of HMO Performance
Measures

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36111

FILED: 04/30/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendment changes the title of rule to reflect health plans, not just health maintenance organizations; strikes references to HMO(s) throughout document where applicable; updates "Definitions" section to be uniform with definitions in Rule R428-12; renumbers sections as necessary; deletes unnecessary language "incorporated by reference". (DAR NOTE: The proposed amendment to Rule R428-12 is under DAR No. 36110 in this issue, May 15, 2012, of the Bulletin.)

SUMMARY OF THE RULE OR CHANGE: The title of the rule is updated to reflect inclusion of health plans, not just HMOs. Also, minor technical edits are made.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 33a

ANTICIPATED COST OR SAVINGS TO:

◆ THE STATE BUDGET: This rule amendment does not change the process currently in place by rule, it only clarifies that health plans (not just HMOs) are affected by the rule as well as makes technical changes for consistency; therefore, the Utah Department of Health (UDOH) determines that these amendments will not create any cost or savings impact to the state budget or UDOH's budget, since the changes will not increase workload and can be carried out with existing budget.

◆ LOCAL GOVERNMENTS: This filing does not create any direct cost or savings impact to local governments since they are not directly affected by the rule; nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

◆ SMALL BUSINESSES: None--Small businesses are not impacted by this rule change, with all potentially impacted having more than 50 employees. As a result, the rule will have no effect on small business budgets for costs or savings.

◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: Cost to the health plan industry, specifically to Preferred Provider Organizations now required to report HEDIS data to the state, will total approximately \$500,000 (4 PPOs x \$125,000). See more information under "Compliance costs for affected persons".

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule amendment included the addition of PPOs to the HEDIS data collection process. PPOs that are not currently collecting this data will have to implement changes to both personnel and data systems. This will increase the PPOs budget and workload, depending on how the PPOs are going to collect the data. It is estimated to cost approximately

\$125,000 to collect HEDIS data per health plan, which does not include any necessary staff.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Regulated entities should all be aware of this proposed rule amendment. Fiscal impact should be minimal as this reporting is already required in most instances. Public comment will be carefully evaluated.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
 CENTER FOR HEALTH DATA,
 HEALTH CARE STATISTICS
 CANNON HEALTH BLDG
 288 N 1460 W
 SALT LAKE CITY, UT 84116-3231
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ Keely Cofrin Allen by phone at 801-538-6551, by FAX at 801-538-9916, or by Internet E-mail at kcofrinallen@utah.gov
- ◆ Mike Martin by phone at 801-538-9205, by FAX at 801-538-9916, or by Internet E-mail at mikemartin@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2012

AUTHORIZED BY: David Patton, PhD, Executive Director

**R428. Health, Center for Health Data, Health Care Statistics.
 R428-13. Health Data Authority. Audit and Reporting of Health Plan[MØ] Performance Measures.**

R428-13-1. Legal Authority.

This rule is promulgated under authority granted by Title 26, Chapter 33a, Utah Code, and in accordance with the Utah Health Care Performance Measurement Plan.

R428-13-2. Purpose.

This rule establishes a performance measurement data collection and reporting system for health ~~[maintenance organizations (HMOs)]~~plans licensed in the State of Utah and certain health plans. The data are needed to promote informed consumer choice in health plan selection and measure the quality of care provided by Utah health plans.

R428-13-3. Definitions.

These definitions apply to rule R428-13:

(1) "Office" as defined in R428-2-3A.

(2) "Health plan" means:

(a) any insurer under a contract with the Utah Department of Health to serve clients under Title XIX or title XXI of the Social Security Act;

(b) a "Health Maintenance Organization (HMO)" [means] is defined as any person or entity operating in Utah which is licensed under Title 31A, Chapter 8, Utah Code;

(c) a governmental plan as defined in Section 414(d), Internal Revenue Code;

(d) a non-electing church plan as described in Section 410 (d), Internal Revenue Code; and

(e) a "Preferred Provider Organization (PPO)" is defined as all commercial insurance companies engaged in the business of health care insurance in the state of Utah (as defined in 31A-1-301(75)(a) and (b)), and offers an insurance product where an insured member has the choice of using either an in network provider at a discounted rate, also called preferred providers, or any out of network provider at a higher rate, also called non-preferred provider. Payments to preferred and non-preferred providers are paid according the preferred provider contract provisions as described in 31A-22-617(2)(a)(b).

~~(3) "Health plan" means any insurer under a contract with the Utah Department of Health to serve clients under Title XIX or Title XXI of the Social Security Act.~~

(4) "Utah Health Care Performance Measurement Plan" means the plan for data collection and public reporting of health-related measures, adopted by the Utah Health Data Committee to establish a statewide health performance reporting system.

(5) "NCQA" means the National Committee for Quality Assurance, a not-for-profit organization committed to evaluating and reporting on the quality of managed care plans.

(6) "Performance Measure" means the quantitative, numerical measure of an aspect of the [HMO or] health plan, or its membership in part or in its entirety, or qualitative, descriptive information on the [HMO] health plan in its entirety as described in HEDIS.

(7) "HEDIS" means the Healthcare [Plan—Employer] Effectiveness Data and Information Set, a set of standardized performance measures developed by the NCQA.

(8) "HEDIS data" means the complete set of HEDIS measures calculated by [HMOs and] the health plans according to NCQA specifications, including a set of required measures and voluntary measures defined by the department, in consultation with [HMOs or] the health plans.

(9) "Audited HEDIS data" means HEDIS data verified by an NCQA certified audit agency.

(10) "Committee" means Utah Health Data Committee established under the Utah Health Data Authority Act, Title 26, Chapter 33a, Utah Code.

(11) "Covered period" means the calendar year on which the data used for calculation of HEDIS measures is based.

(12) "Submission year" means the year immediately following the covered period.

R428-13-4. Submission of Performance Measures.

(1) Each [HMO and] health plan shall compile and submit HEDIS data to the Office according to this rule.

(2) By July 1 of each year, all [HMOs and] health plans shall submit to the Office audited HEDIS data for the preceding calendar year.

(3) Each [HMO and] health plan shall contract with an independent audit agency certified by the NCQA to verify the

HEDIS data prior to the [HMO's or] health plan's submitting it to the Office.

~~(4)~~

(5) Each [HMO and] health plan may employ the rotation strategy for HEDIS measures developed and updated by NCQA.

(6) If a[n] [HMO or] health plan presents "Not Reported (NR)" for required measures, it must document why it did not report the required measure.

(7) The auditor shall follow the guidelines and procedures contained in 20[08]12: Volume 5: HEDIS Compliance Audit: Standards, Policies, and Procedures published by NCQA[; which is incorporated by reference].

(8) Each [HMO and] health plan shall cause its contracted audit agency to submit a copy of the audit agency's report by July 1 of the submission year to the Office.

(9) Each [HMO and] health plan shall cause its contracted audit agency to submit a copy of the audit agency's final report by August 15 of the submission year to the Office. The final report shall incorporate the [HMO's or] health plan's comments.

R428-13-5. Release of Performance Measures.

(1) The Health Data Committee shall follow NCQA's "HEDIS Compliance Audit: Standards, Policies, and Procedures" to determine the HEDIS Data Set that the Office may include in reports for public release for public use.

(2) The Office shall give [HMOs and] health plans 35 days to review any report which identifies it by name. The identified [HMO or] health plan may submit comments and alternative interpretations to the Office.

R428-13-6. Exemptions.

(1) A[n] HMO or health plan that cannot meet the reporting requirements of this rule may request an exemption by January 1 of each submission year by submitting to the Office a written request for an exemption, accompanied by all documentation necessary to establish the [HMO's or] health plan's inability to report.~~—The exemption request shall be signed by the chief executive officer of the HMO or health plan who shall certify that all information contained in the request is true and correct.~~ A[n] HMO or health plan may request an exemption if the HMO or health plan did not operate in Utah for the reporting year, if the number of covered lives is too low for HEDIS standards, or for other similarly prohibitive circumstances beyond the [HMO's or] health plan's control.

(2) The Office may request additional information from the HMO and health plan relevant to the exemption or extension request. If the committee denies the exemption, the [HMO or] health plan may resubmit the request to the Office if it has additional information or analysis bearing on the request.

R428-13-7. Penalties.

Pursuant to Section 26-23-6, any person that violates any provision of this rule may be assessed an administrative civil money penalty not to exceed \$3,000 upon an administrative finding of a first violation and up to \$5,000 for a subsequent similar violation within two years. A person may also be subject to penalties imposed by a civil or criminal court, which may not exceed \$5,000

or a class B misdemeanor for the first violation and a class A misdemeanor for any subsequent similar violation within two years.

KEY: health, health planning, health policy

Date of Enactment or Last Substantive Amendment: [~~May 16, 2008~~2012]

Notice of Continuation: April 21, 2008

Authorizing, and Implemented or Interpreted Law: 26-33a

Human Resource Management, Administration **R477-1** Definitions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36118

FILED: 04/30/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify for rule readers, a new definition, "Dual State Employment," which is added and some language is simplified.

SUMMARY OF THE RULE OR CHANGE: "Dual State Employment" is added as Subsection R477-1-1(39) and the remainder of subsections are renumbered. The word "including" replaces "for example" in Subsection R477-1-1(24).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.
- ◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.
- ◆ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource

Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION

ROOM 2120 STATE OFFICE BLDG

450 N MAIN ST

SALT LAKE CITY, UT 84114-1201

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ J.J. Acker by phone at 801-538-4297, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

- ◆ 05/24/2012 09:00 AM, Senate Bldg, Beehive Room, 420 N State Street, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2012

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.

R477-1. Definitions.

R477-1-1. Definitions.

The following definitions apply throughout these rules unless otherwise indicated within the text of each rule.

(1) **Abandonment of Position:** An act of resignation resulting when an employee is absent from work for three consecutive working days without approval.

(2) **Actual FTE:** The total number of full time equivalents based on actual hours paid in the state payroll system.

(3) **Actual Hours Worked:** Time spent performing duties and responsibilities associated with the employee's job assignments.

(4) **Actual Wage:** The employee's assigned salary rate in the central personnel record maintained by the Department of Human Resource Management.

(5) **Administrative Leave:** Leave with pay granted to an employee at management discretion that is not charged against the employee's leave accounts.

(6) **Administrative Adjustment:** A DHRM approved change of a position from one job to another job or a salary range

change for administrative purposes that is not based on a change of duties and responsibilities.

(7) Administrative Salary Decrease: A decrease in the current actual wage based on non-disciplinary administrative reasons determined by an agency head or commissioner.

(8) Administrative Salary Increase: An increase in the current actual wage based on special circumstances determined by an agency head or commissioner.

(9) Agency: An entity of state government that is:

(a) directed by an executive director, elected official or commissioner defined in Title 67, Chapter 22 or in other sections of the code;

(b) authorized to employ personnel; and

(c) subject to 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 time limited 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, ~~for example~~ including:

(i) unit number;

(ii) cost centers;

(iii) geographic locations;

(iv) agency programs.

(b) positions identified by a set of essential functions, ~~for example~~ 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) 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.

(37) Disciplinary Action: Action taken by management under Rule R477-11.

(38) Dismissal: A separation from state employment for cause under Section R477-11-2.

(39) 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.

(40) 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.

(41) 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.

(42) 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.

(43) "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.

(44) 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.

(45) 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.

(46) FLSA Exempt: Employees who are exempt from the overtime and minimum wage provisions of the Fair Labor Standards Act.

(47) FLSA Nonexempt: Employees who are not exempt from the overtime and minimum wage provisions of the Fair Labor Standards Act.

(48) 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.

(49) Furlough: A temporary leave of absence from duty without pay for budgetary reasons or lack of work.

(50) 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.

(51) Grievance Procedures: The statutory process of grievances and appeals as set forth in Sections 67-19a-101 through 67-19a-40[8]6 and the rules promulgated by the Career Service Review Office.

(52) Gross Compensation: Employee's total earnings, taxable and nontaxable, as shown on the employee's pay statement.

(53) 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

(54) 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.

(55) HRE: Human Resource Enterprise; the state human resource management information system.

(56) Incompetence: Inadequacy or unsuitability in performance of assigned duties and responsibilities.

(57) Inefficiency: Wastefulness of government resources including time, energy, money, or staff resources or failure to maintain the required level of performance.

(58) 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.

(59) 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.

(60) 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.

(61) Job Description: A document containing the duties, distinguishing characteristics, knowledge, skills, and other requirements for a job.

(62) Job Requirements: Skill requirements defined at the job level.

(63) 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.

(~~63~~64) Legislative Salary Adjustment: A legislatively approved salary increase for a specific category of employees based on criteria determined by the Legislature.

(~~64~~65) Malfeasance: Intentional wrongdoing, deliberate violation of law or standard, or mismanagement of responsibilities.

(~~65~~66) Market Based Bonus: One time lump sum monies given to a new hire or a current employee to encourage employment with the state.

(~~66~~67) Market Comparability Adjustment: Legislatively approved change to a salary range for a job based on a compensation survey conducted by DHRM.

(~~67~~68) Merit Increase: A legislatively approved and funded salary increase for employees to recognize and reward successful performance.

(~~68~~69) Misconduct: Wrongful, improper, unacceptable, or unlawful conduct or behavior that is inconsistent with prevailing agency practices or the best interest of the agency.

(~~69~~70) Misfeasance: The improper or unlawful performance of an act that is lawful or proper.

(~~70~~71) Nonfeasance: Failure to perform either an official duty or legal requirement.

(~~71~~72) Performance Evaluation: A formal, periodic evaluation of an employee's work performance.

(~~72~~73) Performance Improvement Plan: A documented administrative action to address substandard performance of an employee under Section R477-10-2.

(~~73~~74) 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.

(~~74~~75) 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.

(~~75~~76) 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.

(~~76~~77) Personnel Adjudicatory Proceedings: The informal appeals procedure contained in Section 63G-4-2 for all human resource policies and practices not covered by the state employees grievance procedure promulgated by the Career Service Review Office, or the classification appeals procedure.

(~~77~~78) Position: A unique set of duties and responsibilities identified by DHRM authorized job and position management numbers.

(~~78~~79) Position Description: A document that describes the detailed tasks performed, as well as the knowledge, skills, abilities, and other requirements of a specific position.

(~~79~~80) Position Identification Number: A unique number assigned to a position for FTE management.

(~~80~~81) 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.

(~~81~~82) Preemployment Drug Test: A drug test conducted on:

(a) final candidates for a highly sensitive position;

(b) employees who are final candidates for transfer or promotion from a non-highly sensitive position to a highly sensitive position; or

(c) employees who transfer or are promoted from one highly sensitive position to another highly sensitive position.

(~~82~~83) Probationary Employee: An employee hired into a career service position who has not completed the required probationary period for that position.

(~~83~~84) 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.

(~~84~~85) Proficiency: An employee's overall quality of work, productivity, skills demonstrated through work performance and other factors that relate to employee performance or conduct.

(~~85~~86) Promotion: An action moving an employee from a position in one job to a position in another job having a higher salary range maximum.

(~~86~~87) 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.

(~~87~~88) 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.

(~~88~~89) Reappointment: Return to work of an individual from the reappointment register after separation from employment.

(~~89~~90) 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.

(~~90~~91) 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.

(~~91~~92) 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.

([92]93) **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.

([93]94) **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.

([94]95) **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.

([95]96) **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.

([96]97) **Salary Range:** An established minimum salary rate and maximum salary rate assigned to a job.

([97]98) **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).

([98]99) **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.

([99]100) **Tangible Employment Action:** A significant change in employment status, such as firing, demotion, failure to promote, work reassignment, or a decision which changes benefits.

([100]101) **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.

([101]102) **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.

([102]103) **Unlawful Discrimination:** An action against an employee or applicant based on race, religion, national origin, color, sex, age, disability, protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation, or any other factor, as prohibited by law.

([103]104) **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.

([104]105) **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.

([105]106) **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.

KEY: personnel management, rules and procedures, definitions
Date of Enactment or Last Substantive Amendment: ~~[July 1, 2011]~~2012

Notice of Continuation: February 2, 2012

Authorizing, and Implemented or Interpreted Law: 67-19-6

Human Resource Management, Administration **R477-2** Administration

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36119

FILED: 04/30/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Unnecessary language is removed and one word is changed.

SUMMARY OF THE RULE OR CHANGE: Unnecessary language is removed from Subsections R477-2-2(1) and R477-2-5(2). The word impinges is changed to "infringes."

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 52-3-1 and Section 63G-5-201 and Section 67-19-18 and Section 67-19-6 and Title 63G, Chapter 2 and Title 63G, Chapter 7

ANTICIPATED COST OR SAVINGS TO:

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COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

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 HUMAN RESOURCE MANAGEMENT
 ADMINISTRATION
 ROOM 2120 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY, UT 84114-1201
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ J.J. Acker by phone at 801-538-4297, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

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INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
 ♦ 05/24/2012 09:00 AM, Senate Bldg, Beehive Room, 420 N State Street, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2012

AUTHORIZED BY: Jeff Herring, Executive Director

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 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 Office of Education;

(5) employees of the Office of the Attorney General;

(6) elected members of the executive branch;

(7) employees of 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 ~~one or more of the following criteria are satisfied~~:

(a) ~~[A]~~applying the rule prevents the achievement of legitimate government objectives; ~~or~~

(b) ~~[A]~~applying the rule ~~[imp]~~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.

(3) In cases of noncompliance with Title 67, Chapter 19, and these rules, the Executive Director, DHRM, may find the responsible agency official to be subject to the penalties under Subsection 67-19-18(1) pertaining to misfeasance, malfeasance or nonfeasance in office.

R477-2-3. Fair Employment Practice.

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, gender, age, disability, protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation or any other non-job related factor.

(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 Anti-Discrimination 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 Planning 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~~[containing electronic or hard copy records]~~.

(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.

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. Disclosure by Public Officers Supervising a Relative.

It is unlawful for a public officer to appoint, directly supervise, or to make salary or performance recommendations for relatives except as prescribed under Section 52-3-1.

(1) A public officer supervising a relative shall make a complete written disclosure of the relationship to the agency head in accordance with Section 52-3-1.

R477-2-9. Employee Liability.

An employee who becomes aware of any occurrence which may give rise to a law suit, who receives notice of claim, or is sued because of an incident related to 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
Date of Enactment or Last Substantive Amendment: ~~[July 1, 2011]~~ 2012

Notice of Continuation: February 2, 2012

Authorizing, and Implemented or Interpreted Law: 52-3-1; 63G-2[-3]; 63G-5-201; 63G-7[-9]; 67-19-6; 67-19-18

Human Resource Management, Administration **R477-3** Classification

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36120

FILED: 04/30/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Unnecessary language is removed or simplified and a reference is added for understanding.

SUMMARY OF THE RULE OR CHANGE: An unnecessary phrase is removed in Subsection R477-3-1(1)(f) and one word is added. A reference is added to Subsection R477-3-5(1).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-12 and Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.
- ◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.
- ◆ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel

Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HUMAN RESOURCE MANAGEMENT
 ADMINISTRATION
 ROOM 2120 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY, UT 84114-1201
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ J.J. Acker by phone at 801-538-4297, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 05/24/2012 09:00 AM, Senate Bldg, Beehive Room, 420 N State Street, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2012

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.

R477-3. Classification.

R477-3-1. Job Classification Applicability.

(1) The Executive Director, DHRM, shall prescribe the procedures and methods for classifying all positions except for those exempted in 67-19-12 (2), which include:

- (a) employees already exempted from DHRM rules in R477-2-1;
- (b) all employees in:
 - (i) the office and residence of the governor;
 - (ii) the Utah Science Technology and Research Initiative (USTAR);
 - (iii) the Public Lands Policy Coordinating Council;
 - (iv) the Office of the Utah State Auditor; and
 - (v) the Utah State Treasurer's Office;
- (c) employees of the State Board of Education, who are licensed by the State Board of Education;
- (d) employees in any position that is determined by statute to be exempt from classified service;
- (e) employees whose agency has authority to make rules regarding performance, compensation, and bonuses for its employees;

(f) ~~[department heads listed in 67-19-22 and]~~other persons appointed by the governor ~~[pursuant to]~~under statute;

(g) temporary employees in Schedule TL or IN who work part time indefinite or work on a time limited basis; and

(h) educational interpreters and educators as defined by Section 53A-25b-102 who are employed by the Utah Schools for the Deaf and the Blind.

(2) The Executive Director, DHRM, may designate specific job titles, job and position identification numbers, schedule codes, and other administrative information for all employees exempted in R477-2-1 and R477-3-1 for identification and reporting purposes only. These employees are not to be considered classified employees.

R477-3-2. Job Description.

DHRM shall maintain job descriptions, as appropriate.

(1) Job descriptions shall contain:

(a) job title;

(b) distinguishing characteristics;

(c) a description of tasks commonly associated with most positions in the job;

(d) statements of required knowledge, skills, and other requirements;

(e) FLSA status and other administrative information as approved by DHRM.

R477-3-3. Assignment of Duties.

(1) Management may assign, modify, or remove any position task or responsibility in order to accomplish reorganization, improve business practices or processes, or for any other reason deemed appropriate by agency management.

(2) Significant changes in the assigned duties may require a position classification review as described in R477-3-4.

R477-3-4. Position Classification Review.

(1) A formal classification review may be conducted under the following circumstances:

(a) as part of a classification study;

(b) at the request of an agency, with the approval of the Executive Director, DHRM or designee; or

(c) as part of a classification grievance review

(2) DHRM shall determine if there have been sufficient significant changes in the duties of a position to warrant a formal review.

(3) When an agency is reorganized or positions are redesigned, no classification reviews shall be conducted until an appropriate settling period has occurred.

(4) The Executive Director, DHRM, or designee shall make final classification decisions unless overturned by a hearing officer or court.

R477-3-5. Position Classification Grievances.

(1) Under 67-19-31, a~~[A]~~n agency or a career service employee may grieve formal classification decisions regarding the classification of a position.

(a) This rule refers to grievances concerning the assignment of individual positions to appropriate jobs based on duties and responsibilities. The assignment of salary ranges is not included in this rule.

(b) An employee may only grieve a formal classification decision regarding the employee's own position.

(2) Formal service for classification grievance communication to employees shall be made by:

(a) certified mail to the employee's address of record, and

(b) email to the employee's state email account.

R477-3-6. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).

KEY: administrative procedures, grievances, job descriptions, position classifications

Date of Enactment or Last Substantive Amendment: ~~[July 12, 2010]~~2012

Notice of Continuation: February 2, 2012

Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-12

**Human Resource Management,
Administration
R477-4
Filling Positions**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36121

FILED: 04/30/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments are made to modify existing practices to comply with federal healthcare reform provisions, establish an annual temporary status notification, and better distinguish transfers from reassignments.

SUMMARY OF THE RULE OR CHANGE: Amendments in Subsection R477-4-2(4)(a) modify Schedule IN to a position working less than 30 hours and require Schedule IN and TL employees to be notified annually of their temporary status. Clarifying language is added to Subsection R477-4-5(1) distinguishing transfers from reassignments relative to decreases in wage.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6 and Section 67-20-8

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.

♦ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.

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COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

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♦ 05/24/2012 09:00 AM, Senate Bldg, Beehive Room, 420 N State Street, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2012

AUTHORIZED BY: Jeff Herring, Executive Director

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:

(i) is hired to work part time indefinitely;

(ii) ~~may not work more~~ shall work less than 30 hours per week; and

(iii) shall ~~have a temporary agreement signed by both the hiring official and the employee on an annual basis~~ be notified annually of the temporary status of the position; or

(b) be Schedule TL, in which the employee:

(i) is hired to work on a time limited basis; and

(ii) shall ~~have a temporary agreement signed by both the hiring official and the employee at least every three years~~ be notified annually of the temporary status of the position.

(c) may, at the discretion of management, be offered benefits if working a minimum of 20 hours per week.

(d) if the required work hours of the position meet or exceed ~~the~~ 30 hours per week ~~maximum~~ 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) Only Schedule A, IN or TL appointments made from a hiring list under Subsection R477-4-8 may be considered for conversion to career service.

(6) Disclosure statements shall be obtained and reference and background checks shall be conducted for all Schedule AB, AC, AD and AR new hire appointees.

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;

(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. Recruitment 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 seven calendar days.

(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 career service employee assimilated from another career service jurisdiction shall accrue leave at the same rate as a career service employee with the same seniority.

(d) A transfer may include a decrease in actual wage.

(e) A reassignment may not include a decrease in actual wage except as provided in federal or state law.

(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.

(a) The annual leave accrual rate for an employee who is rehired to a position which receives leave benefits shall be based on all eligible employment in which the employee accrued leave.

(b) An employee rehired into a benefited position within one year of separation shall have forfeited sick leave reinstated as Program II sick leave.

(c) 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 and Program II as accrued prior to the reduction in force.

(d) A rehired employee may be offered any salary within the salary range for the position.

R477-4-7. Examinations.

(1) Examinations shall be designed to measure and predict applicant job performance.

(2) Examinations shall include the following:

- (a) a detailed position record (DPR) based upon a current job or position analysis;
- (b) an initial, impartial screening of the individual's qualifications;
- (c) impartial evaluation and results; and
- (d) reasonable accommodation 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 the 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 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.

Employees and agencies are encouraged to promote 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, tenure 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 R477-6-4(11).

(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 career service system shall receive career service status after completing a probationary period if originally selected through a competitive examination process judged by the Executive Director, DHRM, to be equivalent to the process used in the state career service.

(a) Assimilation agreements shall specify whether there are employees eligible for reemployment under USERRA in positions affected by the agreement.

R477-4-15. 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
Date of Enactment or Last Substantive Amendment:
~~November 7, 2011~~ 2012

Notice of Continuation: February 2, 2012

Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-20-8

**Human Resource Management,
Administration
R477-6
Compensation**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36122

FILED: 04/30/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: A section on medical plans is greatly edited as a result of 2012 General Session legislation (H.B. 437). A qualification is added to the term "employee".

SUMMARY OF THE RULE OR CHANGE: A phrase is added in Subsection R477-6-4(2)(a) to clarify "employee." A phrase is removed from Subsection R477-6-4(2)(c). Schedule AH is added to Subsection R477-6-4(4)(e). Section R477-6-6 is edited to add language regarding enrollment in health plans.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63F-1-106 and Section 67-19-12 and Section 67-19-12.5 and Section 67-19-6 and Subsection 67-19-15.1(4)

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: These changes are administrative and do not directly impact state budgets.
- ◆ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local government.
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COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

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INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

- ◆ 05/24/2012 09:00 AM, Senate Bldg, Beehive Room, 420 N State Street, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2012

AUTHORIZED BY: Jeff Herring, Executive Director

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 and adopt pay plans for each position in classified service. Positions exempt from classified service are identified in Subsection R477-3-1(1).

(a) Each job description shall include salary ranges with established minimum and maximum rates.

(b) A salary range includes ~~every~~all pay rates from minimum to maximum.

(c) Pay rate increases within salary ranges shall be:

(i) at least 1/2%, or

(ii) to the maximum rate within the salary range, if the difference between the current salary rate and the range maximum rate is less than 1/2%.

(iii) This subsection does not apply to legislatively approved salary adjustments and longevity.

(d) Pay rate decreases within salary ranges shall be:

(i) at least 1/2%, or

(ii) to the minimum rate within the salary range, if the difference between the current salary rate and the range minimum rate is less than 1/2%.

(iii) This subsection does not apply to legislatively approved salary adjustments.

R477-6-2. Allocation to the Pay Plans.

(1) Each job in classified service shall be assigned to a salary range.

(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 ranges in the market; or

(b) a comparison of the state's benchmark job salary ranges to salary ranges for similar positions in the market through an annual compensation survey conducted by DHRM.

(i) Market comparability salary range adjustment recommendations shall be included in the annual compensation plan and shall be submitted to the Governor no later than October 31 of each year.

(ii) Market comparability salary range adjustments shall be legislatively approved.

(iii) If market comparability adjustments are 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) Each job exempted from classified service shall have a salary range with a beginning and ending salary of any amount determined appropriate by the affected agency.

R477-6-3. Appointments.

(1) All appointments shall be placed on the DHRM approved salary range for the job.

(2) Reemployed veterans under USERRA shall be placed in their previous position or a similar position at their previous salary range. Reemployment shall include the same seniority status, salary, including any cost of living adjustments, reclassification of the veteran's preservice position, or market comparability adjustments that would have affected the veteran's preservice position during the time spent by the affected veteran in the uniformed services. Performance related salary increases are not included.

R477-6-4. Salary.

(1) Merit increases. The following conditions apply if merit pay increases are authorized and funded by the legislature:

(a) Employees, classified in position schedule B, shall be eligible for the merit increase if the following conditions are met:

(i) Employee may not be in longevity.

(ii) Employee may not be paid at the maximum of their salary range.

(iii) Employee has received a minimum rating of successful on their most recent performance evaluation, which shall have been within the previous twelve months.

(iv) Employee has been in a paid status by the state for at least six months at the beginning of the new fiscal year.

(b) Employees designated as schedule AA, AQ and AU are not eligible for merit increases.

(c) All other position schedules will be reviewed by DHRM in consultation with the Governor's Office to determine if they are eligible for merit increases.

(2) Promotions.

(a) An employee, except for those designated schedule IN or TL, promoted to a position with a salary range maximum exceeding the employee's current salary range maximum shall receive a salary increase of at least 5%.

(b) An employee may not be placed higher than the maximum or lower than the minimum in the new salary range. Placement of an employee in longevity shall be consistent with Subsection R477-6-4(4).

(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. ~~[unless the promotion is to a career service exempt position.]~~

(3) Reclassifications.

(a) At agency management's discretion, an employee reclassified to a position with a salary range maximum exceeding the employee's current salary range maximum may receive a pay rate increase of at least 1/2% or the salary range maximum rate.

(b) An employee may not be placed higher than the maximum or lower than the minimum in the new salary range. Placement of an employee in longevity shall be consistent with Subsection R477-6-4(4).

(c) An employee whose position is reclassified to a position with a lower salary range shall retain the current salary. The employee shall be placed in longevity at the employee's current salary if the salary exceeds the maximum of the new salary range.

(4) Longevity.

(a) An employee shall receive a longevity 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; and

(ii) the employee has been at the maximum of the current salary range for at least one year and received a performance appraisal rating of successful or higher within the 12-month period preceding the longevity increase.

(b) An employee in longevity shall be eligible for the same across the board pay plan adjustments authorized for all other employee pay plans.

(c) An employee in longevity shall only be eligible for an additional 2.75% increase every three years. To be eligible, an employee shall receive a performance appraisal rating of successful or higher within the 12-month period preceding the longevity increase.

(d) An employee in longevity who is reclassified to a position with a lower salary range shall retain the current actual wage.

(e) An employee in longevity who is promoted or reclassified to a position with a higher salary range shall only receive a salary increase if the current actual wage is less than the salary range maximum of the new position. The salary increase shall be at least 1/2% or the range maximum rate of the new position.

(f) Employees in Schedules AB, IN, AH, or TL are not eligible for the longevity program.

(5) 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.

(b) Implementation of new job descriptions as an administrative adjustment shall not result in an increase in the current actual wage unless the employee is below the minimum of the new range.

(c) An employee whose position is changed by administrative adjustment to a position with a lower salary range shall retain the current salary. The employee shall be placed in longevity at the employee's current salary if the salary exceeds the maximum of the new salary range.

(6) Reassignment.

An employee's current actual wage may not be lowered except when provided in federal or state law. Wage rate decreases shall be at least 1/2% or the minimum rate in the salary range.

(7) Transfer.

Management may decrease the current actual wage of an employee who transfers to another position. Wage rate decreases shall be at least 1/2% or the minimum rate in the salary range.

(8) 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 the minimum rate of the new position's salary range as determined by the agency head or designee. The agency head or designee may move an employee to a position with a lower salary range concurrent with the reduction in the current actual wage.

(9) 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 the maximum rate of the salary range.

(b) Administrative salary increases shall only be granted when the agency has sufficient funding within their annualized base budgets for the fiscal year in which the adjustment is given.

(c) Justifications for Administrative Salary Increases shall be:

- (i) in writing;
- (ii) approved by the agency head 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 rate increases shall be at least 1/2% or the maximum rate of the salary range. These increases alone do not constitute successful completion of probation or the granting of career service status.

(f) An employee at the salary range maximum or in longevity may not be granted administrative salary increases.

(10) Administrative Salary Decrease.

The agency head authorizes and approves administrative salary decreases for nondisciplinary reasons according to the following:

(a) The final salary may not be less than the minimum of the salary range.

(b) Wage rate decreases shall be at least 1/2% or the minimum rate of the salary range.

(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.

(11) Career Mobility.

(a) Agencies may offer an employee on a career mobility assignment a salary increase or salary decrease by any amount within the new salary range.

(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 and shall receive, at a minimum, the same salary rate and the same or higher salary range that the employee would have received without the career mobility assignment.

(12) Exceptions.

The Executive Director, DHRM, may authorize exceptions for wage rate increases or decreases.

R477-6-5. Incentive Awards.

(1) Only agencies with written and published incentive award and bonus policies may reward employees with incentive awards or bonuses. Incentive awards and bonuses are discretionary,

not an entitlement, and are subject to the availability of funds in the agency.

(a) Policies shall be approved annually by DHRM and be consistent with standards established in these rules and the Department of Administrative Services, Division of Finance, rules and procedures.

(b) Individual awards 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) 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 incentive awards shall be approved by DHRM.

(i) When requesting market based awards an agency shall submit documentation specifying how the agency will benefit by granting the incentive award 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.

R477-6-6. 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 60 days from the hire date to enroll in or decline a medical insurance plan.

(a) Within the first 30 days of the hire date, the employee will have all medical plan options to choose from.

(b) After 30 days and up to 60 days from the hire date, the employee will only be able to choose one of the High Deductible Health Plan options.

(i) If the employee enrolls between day 31 and day 60, and is ineligible for a Health Savings Account, the employee shall be enrolled in the High Deductible Health Plan of the employee's choice, but it will not come with a Health Savings Account and the state's contributions into this account shall be forfeited.

(c) After 60 days the employee may not enroll in any of the medical or dental plan options until the next open enrollment period for all state employees occurs. [will be automatically enrolled in the state's high deductible health plan with single coverage.]

([b]d) An employee shall only be permitted to change medical plans during the annual open enrollment period for all state employees.

([e]e) An employee with previous medical coverage shall provide a certificate of credible coverage to the state's health care provider which states dates of eligibility for the employee, and the employee's dependents in order to have a preexisting waiting period reduced or waived.

(i) An eligible employee or dependent under the age of 19 may not be required to meet any preexisting waiting period.

(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 30 days 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.

R477-6-7. 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 the maximum rate of the current salary range. An employee at the maximum of the current salary range or in longevity 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 R477-6-5(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:

(i) Salaries less than \$50,000 shall receive \$125,000 of term life insurance;

(ii) Salaries between \$50,000 and \$60,000 shall receive \$150,000 of term life insurance;

(iii) Salaries more than \$60,000 shall receive \$200,000 of term life insurance.

(2) An employee electing to convert to career service exempt after the 60 day election period may not be eligible for the salary increase, but shall be entitled to apply for the insurance coverage through the Group Insurance Office.

(3) An employee electing not to convert to career service exemption shall retain career service status even though the position shall be designated as schedule 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 he had previously earned career service. However, the employee may not be eligible for the severance package or the life insurance. In this situation, the agency and employee shall make arrangements through the Group Insurance Office to discontinue the coverage.

(5) A career service exempt employee without prior career service status shall remain exempt. When the employee leaves the position, subsequent appointments shall be consistent with R477-4.

(6) Agencies shall communicate to all impacted and future eligible employees the conditions and limitations of this incentive program.

R477-6-8. State Paid Life Insurance.

(1) A benefits eligible career service exempt employee on schedule AA, AB, AD, AR and AT shall be provided the following benefits if the employee is approved through underwriting:

(a) State paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program Public Employees Health Plan:

(i) Salaries less than \$50,000 shall receive \$125,000 of term life insurance;

(ii) Salaries between \$50,000 and \$60,000 shall receive \$150,000 of term life insurance;

(iii) Salaries more than \$60,000 shall receive \$200,000 of term life insurance.

(2) An employee on schedule AC or AS may be provided these benefits at the discretion of the appointing authority.

R477-6-9. Severance Benefit.

(1) A benefits eligible career service exempt employee on schedule AB, AD, AR or AT who is separated from state service through an action initiated by management, to include resignation in lieu of termination, shall receive at the time of severance a benefit equal to:

(a) one week of salary, up to a maximum of 12 weeks, for each year of consecutive exempt service in the executive branch; and

(b) if eligible for COBRA, one month of health insurance coverage, up to a maximum of six months, for each year of consecutive exempt service, at the level of coverage the employee has at the time of severance, to be paid in a lump sum payment to the state's health care provider.

(2) A severance benefit may not be paid to an employee:

(a) whose statutory term has expired without reappointment;

(b) who is retiring from state service; or

(c) who is dismissed for cause.

(3) A benefits eligible career service exempt employee on schedule AB, AD, AR or AT who accepts reassignment to a position with a lower salary range, without a break in service, shall receive a severance benefit equal to the difference between the current actual wage and the new actual wage multiplied by the number of accrued annual leave, converted sick leave, and excess hours on the date of reassignment.

(4) An employee on schedule AC or AS may be provided these same severance benefits at the discretion of the appointing authority.

R477-6-10. Human Resource Transactions.

The Executive Director, DHRM, shall publicize procedures for processing payroll and human resource transactions and documents.

KEY: salaries, employee benefit plans, insurance, personnel management

Date of Enactment or Last Substantive Amendment: ~~July 1, 2011~~ 2012

Notice of Continuation: February 2, 2012

Authorizing, and Implemented or Interpreted Law: 63F-1-106; 67-19-6; 67-19-12; 67-19-12.5; 67-19-15.1(4)

Human Resource Management, Administration **R477-7** Leave

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36123

FILED: 04/30/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments clarify separation due to six months of absence. A reference is added and other references are corrected. More detailed instruction is given concerning employees retiring from long-term disability (LTD). Clarifying language is added concerning the disposition of unused sick leave and several terms and phrases are added for clarification. A new Section R477-7-18 "Disabled Law Enforcement Officer Amendments" is added in response to provisions added in Section 67-19-27 resulting from H.B. 121 in the 2012 Legislative General Session.

SUMMARY OF THE RULE OR CHANGE: In Subsection R477-7-1(8), language indicates that separation occurs after six months of cumulative absence from the regular position. A new Subsection R477-7-5(5) addresses use of converted sick leave in the converted sick leave retirement program. In Subsections R477-7-6(5)(a) and R477-7-6(6)(a), the phrase "and converted sick leave" is inserted. A new Subsection R477-7-6(5)(b) addresses employees disposition of sick leave balances for employees retiring from LTD. A new Section R477-7-18 "Disabled Law Enforcement Officer Amendments" is added. Several references are corrected or added throughout the rule.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 34-43-103 and Section 63G-1-301 and Section 67-19-12.9 and Section 67-19-14 and Section 67-19-14.2 and Section 67-19-14.4 and Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

- ◆ THE STATE BUDGET: These changes are administrative and do not directly impact state budgets.
- ◆ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local government.
- ◆ SMALL BUSINESSES: This rule only affects the executive branch of state government and will have no impact on small businesses.
- ◆ PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES: This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

- ◆ J.J. Acker by phone at 801-538-4297, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

- ◆ 05/24/2012 09:00 PM, Senate Bldg, Beehive Room, 420 N State Street, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2012

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.**R477-7. Leave.****R477-7-1. Conditions of Leave.**

- (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 at least 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, converted sick, compensatory, excess or holiday leave before accrued.
- (5) An employee may not use compensatory, annual, converted sick leave used as annual, or excess leave without advance approval by management.
- (6) An employee transferring from one agency to another is entitled to transfer all accrued annual, sick, and converted sick leave to the new agency.
- (7) An employee 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.

(8) After six months cumulative from the first day of absence from or inability to perform the regular position, the employee shall be separated from employment regardless of paid leave status unless prohibited by state or federal law. Exceptions may be granted by the agency head in consultation with DHRM.

(9) Contributions to benefits may not be paid on cashed out leave, other than FICA tax, except as it applies to converted sick leave in Section R477-7-5(2) and the Retirement Benefit in Section R477-7-6.

R477-7-2. Holiday Leave.

- (1) The following dates are paid holidays for eligible employees:
 - (a) New Years Day -- January 1
 - (b) Dr. Martin Luther King Jr. Day -- third Monday of January

(c) Washington and Lincoln Day -- third Monday of February

(d) Memorial Day -- last Monday of May

(e) Independence Day -- July 4

(f) Pioneer Day -- July 24

(g) Labor Day -- first Monday of September

(h) Columbus Day -- second Monday of October

(i) Veterans' Day -- November 11

(j) Thanksgiving Day -- fourth Thursday of November

(k) Christmas Day -- December 25

(l) Any other day designated as a 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 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 under the following conditions:

(a) an employee in schedule AB, and agency deputy directors and division directors appointed to career service exempt positions.

(b) an employee who is schedule A, FLSA exempt and who has a direct reporting relationship to an elected official, executive director, deputy director, commissioner or board.

(c) The maximum accrual rate shall be effective from the day the employee is appointed through the duration of the appointment. Employees in these positions on July 1, 2003, shall have the leave accrual rate adjusted prospectively.

(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, subject to Subsection R477-7-1(5).

(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 and Program II 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 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 and Program II 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 II sick leave.

(c) An employee who retires from state service and is rehired may not reinstate forfeited sick leave.

R477-7-5. Converted Sick Leave.

An employee may convert sick leave hours to converted sick leave after the end of the last pay period of the calendar year in which the employee is eligible.

(1)(a) Converted sick leave hours accrued prior to January 1, 2006 shall be Program I converted sick leave hours.

(b) Converted sick leave hours accrued after January 1, 2006 shall be Program II converted sick leave hours.

(2) To be eligible, an employee shall have accrued a total of 144 hours or more of sick leave in Program I and Program II combined at the beginning of the first pay period of the calendar year.

(a) At the end of the last pay period of a calendar year in which an employee is eligible, all unused sick leave hours accrued that year in excess of 64 shall be converted to Program II converted sick leave.

(b) The maximum hours of converted sick leave an employee may accrue in Program I and Program II combined is 320.

(c) If the employee has the maximum accrued in converted sick leave, these hours will be added to the annual leave account balance.

(d) In order to prevent or reverse the conversion, an employee shall:

(i) notify agency management no later than the last day of the last pay period of the calendar year in order to prevent the conversion; or

(ii) notify agency management no later than the end of February in order to reverse the conversion.

(e) Upon separation, an eligible employee may convert any unused sick leave hours accrued in the current calendar leave year in excess of 64 to converted sick leave hours in Program II.

(3) An employee may use converted sick leave as annual leave or as regular sick leave.

(4) When management approves the use of converted sick leave, an employee may use any combination of Program I and Program II converted sick leave.

(5) 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.

(6) 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)([e]a) if the converted sick leave was accrued in Program I ; or

(ii) a contribution into the employees PEHP health reimbursement account under Subsection R477-7-6([4]6)(b) if the converted sick leave was accrued in Program II.

([6]7) 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.

([7]8) Retired employees who reemploy with the state in a benefitted position will have a new benefit calculated on any new Program II converted sick leave hours accrued, upon subsequent retirement, for the new period of employment.

R477-7-6. Sick Leave Retirement Benefit.

Upon retirement from active employment, an employee 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 after January 1, 2006 shall be Program II sick leave hours.

(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 employees 401(k) account as an employer contribution.

(i) Sick leave hours from Program II shall be placed in the 401(k) account before hours from Program I.

(ii) After the 401(k) contribution is made, 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 health and dental insurance 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.

(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) Retired employees who reemploy with the state in a benefited position will have a new benefit calculated on any new Program II sick leave hours accrued, upon subsequent retirement, for the new period of employment.

R477-7-7. Administrative Leave.

(1) Administrative leave may be granted consistent with agency policy for the following reasons:

(a) administrative;

(i) governor approved holiday leave;

(ii) during management decisions that benefit the organization;

(iii) when no work is available due to unavoidable conditions or influences; or

(iv) other reasons consistent with agency policy.

(b) protected;

(i) suspension with pay pending hearing results;

(ii) personal decision making prior to discipline;

(iii) removal from adverse or hostile work environment situations;

(iv) fitness for duty or employee assistance; or

(v) other reasons consistent with agency policy.

(c) reward in lieu of cash;

(i) the agency head or designee may grant paid administrative leave up to 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) student educational assistance.

(e) An employee who satisfies the criteria in this subsection shall be granted up to two hours of administrative leave to vote in an official election.

(i) The employee shall:

(A) have fewer than three total hours off the job between the time the polls open and close, and;

(B) apply for the time in the previous 24 hours.

(ii) Management may specify the hours when the employee may be absent.

(f) Administrative leave shall be given for non-performance based purposes to employees who are on Family and Medical Leave or a military leave of absence if the leave would have been given had the employee been in a working status.

(2) With the exception of administrative leave used as a reward, under Subsection R477-7-7(1)(c), the agency head or designee may grant paid administrative leave.

(3) Administrative leave taken shall be documented in the employee's leave record.

R477-7-8. 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 who is absent in order to litigate in matters unrelated to state employment shall use eligible accrued leave or leave without pay.

(3) An employee choosing to use ~~paid~~ accrued leave while on jury duty shall be entitled to keep juror's fees; otherwise, juror's fees received shall be returned to agency payroll clerks for deposit with the State Treasurer. The fees shall be deposited as a refund of expenditure in the unit where the salary is recorded.

R477-7-9. Bereavement Leave.

An employee may receive a maximum of three 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.

An 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 Section 39-3-2.

(1) An employee may not claim salary for nonworking 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 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 for approval of a leave of absence without pay.

(a) Leave without pay may be granted only when there is an expectation that the employee will return to work.

(b) The employee shall be entitled to previously accrued annual and sick leave.

(c) If unable to return to work within the time period granted, the employee shall be separated from state employment unless prohibited by state or federal law.

(2) Nonmedical Reasons

(a) Approval may be granted for continuous leave for up to six months from the last day worked in the employee's regular position. Exceptions may be granted by the agency head.

(b) Agency management may approve leave without pay for an employee even though annual or sick leave balances exist.

(c) An employee who receives no compensation for a complete pay period shall be responsible for payment of the full premium of state provided benefits.

(d) An employee who returns to work on or before the expiration of leave without pay shall be placed in a position with comparable pay and seniority to the previously held position.

(3) Medical Reasons

(a) An employee who does not qualify for FMLA, Workers Compensation, or Long Term Disability may be granted leave without pay for medical reasons not to exceed six months cumulative from the first day of absence or inability to perform the employee's regular position.

(i) 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.

(b) After six months cumulative from the first day of absence or inability to perform the regular position, the employee shall be separated from employment unless prohibited by state or federal law. Exceptions may be granted by the agency head in consultation with DHRM.

(c) Except as otherwise provided under the Family Medical Leave Act, an employee who receives no compensation for a complete pay period shall be responsible for payment of the full premium of state provided benefits.

(d) 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 work weeks of family and medical leave each calendar year for any of the following reasons:

(a) birth of a child;

(b) adoption of a child;

(c) placement of a foster child;

(d) a serious health condition of the employee; or

(e) care of a spouse, dependent child, or parent with a serious medical condition.

(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 work weeks 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 one year;

(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 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.

(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 for purposes of childbirth, adoption, placement 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[~~(7)~~].

R477-7-16. Workers Compensation Leave.

(1) An employee may use accrued leave benefits to supplement the workers compensation benefit.

(a) The combination of leave benefit, 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 licensed medical authority;

(ii) workers compensation fund terminates the benefit;
 (iii) employee has been absent from work for six months;
 (iv) employee refuses to accept appropriate employment offered by the state; or

(v) employee ~~[receives]~~ 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.

~~[(a)4]~~ If an employee has applied for LTD and is ~~[determined eligible]~~ approved, and the employee elects to continue health insurance coverage, the employee shall be responsible to pay health insurance pursuant to R477-7-17(1)(b)(i).

~~[(4)5]~~ If the employee is unable 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.

~~[(5)6]~~ If the employee is unable to return to work in the regular position after six months ~~[of]~~ cumulative from the first day of absence or inability to perform 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 shall be separated from state employment unless prohibited by state or federal law. Exceptions may be granted by the agency head in consultation with DHRM.

~~[(6)7]~~ An employee who files a fraudulent workers compensation claim shall be disciplined under Rule R477-11.

~~[(7)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) An employee who is determined eligible for the Long Term Disability Program (LTD) may be granted up to six months of leave cumulative from the first day of absence or inability to perform the regular position as the result of health conditions, unless 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. Exceptions to the six months may be granted by the agency head.

(a) For LTD qualifying purposes, the medical leave begins on the day after the last day the employee worked in the

employee's regular position. LTD requires a waiting period before benefit payments begin.

(b) An employee determined eligible for Long Term Disability benefits shall be eligible for health insurance benefits the day after the last day worked or the last day of FMLA leave.

(i) If the employee elects to continue health insurance coverage, the health insurance premiums shall be equal to 102% of the regular active premium beginning on the day after the last day worked. The employee is responsible for 10% of the health insurance premium during the first year of disability, 20% during the second year of disability, and 30% thereafter until the employee is no longer covered by the long term disability program. If the employee has a lapse of creditable coverage for more than 62 days, pre-existing condition exclusions shall apply.

(c) Upon approval of the LTD claim:

(i) Biweekly salary payments that the employee may be receiving shall cease. If the employee received any salary payments after the three month waiting period, the LTD benefit shall be offset by the amount received.

(ii) 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.

(iii) An employee with a converted sick leave balance at the time of LTD eligibility shall have the option to receive a lump sum payout of all or part of the balance or to keep the balance intact to pay for health and life insurance upon retirement. The payout shall be at the rate at the time of LTD eligibility.

(iv) An employee who retires from state government directly from LTD may be eligible for health and life insurance under Subsection 67-19-14~~[(2)(b)(ii)]~~.

(v) Unused sick leave balance shall remain intact until the employee retires. At retirement, the employee shall be eligible for the 401(k) contribution and the purchase of health and life insurance under Subsection 67-19-14~~2[(2)(e)(i)]~~.

(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, the agency shall place the employee in the previously held position or similar position in a comparable salary range provided the employee is able to perform the essential functions of the job with or without a reasonable accommodation.

(b) After six months of cumulative absence from or inability to perform the regular position, the employee shall be separated from state employment unless prohibited by state or federal law. Exceptions may be granted by the agency head.

(4) An employee who files a fraudulent long term disability claim shall be disciplined under Rule R477-11.

(5) 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.

R477-7-1[8]9. Leave Bank.

With the approval of the agency head, agencies may establish a leave bank program as follows:

(1) Only annual leave, excess hours, compensatory time earned by an FLSA nonexempt employee, and converted sick leave hours may be donated to a leave bank.

(2) Only employees of agencies with approved leave bank programs may donate leave hours to another agency with a leave bank program, if mutually agreed on by both agencies.

(3) An employee may not receive donated leave until all individually accrued leave is used.

(4) Leave shall be accrued if an employee is on sick leave donated from an approved leave bank program.

(5) Employees using donated leave may not work a second job without written consent of the agency head.

R477-7-[19]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

Date of Enactment or Last Substantive Amendment:
[September 3, 2011]2012

Notice of Continuation: February 2, 2012

Authorizing, and Implemented or Interpreted Law: 34-43-103; 63G-1-301; 67-19-6; 67-19-12.9; 67-19-14; 67-19-14.2; 67-19-14.4

Human Resource Management, Administration **R477-8** Working Conditions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36124

FILED: 04/30/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments reorganize and reformat the rule for ease and convenience of reference by creating new sections with subsections.

SUMMARY OF THE RULE OR CHANGE: Section R477-8-4 on Overtime is broken into numerous other sections now found as Sections R477-8-5 through R477-8-13. Some subsections are moved from one section to another.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 20A-3-103 and Section 67-19-6 and Section 67-19-6.7

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.
- ◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.
- ◆ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to

write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ J.J. Acker by phone at 801-538-4297, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

♦ 05/24/2012 09:00 AM, Senate Bldg, Beehive Rm

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2012

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.

R477-8. Working Conditions.

R477-8-1. Work Period.

(1) The state's standard work week begins Saturday and ends the following Friday. Agencies may implement alternative work schedules from among those approved by the Executive Director, DHRM.

(2) State offices are typically open Monday through Friday from 8 a.m. to 5 p.m. Agencies may adopt extended business hours to enhance service to the public.

(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 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 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 shall include a minimum of 30 minutes noncompensated lunch period, unless otherwise authorized by 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) Reasonable daily noncompensated break periods, as requested by the employee, shall be granted for the first year following the birth of a child so that the employee may express breast milk for her child. A private location, other than a restroom, shall be provided.

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 [~~standards~~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.

~~(a)~~1) An FLSA nonexempt employee shall sign a prior overtime agreement authorizing management to compensate the employee for overtime worked by actual payment or ~~time-off~~ accrual of compensatory time at time and one half.

~~(b)~~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 in the same pay period that the employee is:

- (i) transferred from one agency to a different agency.
- (ii) promoted;
- (iii) reclassified;
- (iv) reassigned; or
- (v) transferred to an FLSA exempt position.

(c) The pay down for unused compensatory time balances shall be based on the employee's hourly rate of pay in the old position.

R477-8-6. Compensatory Time for FLSA Exempt Employees.

~~(4)~~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) Any compensatory time earned by an FLSA exempt employee is not an entitlement, a benefit, nor a vested right.

(c) Any compensatory time earned by an FLSA exempt employee shall lapse upon occurrence of any one of the following events:

- (i) at the end of the employee's established overtime year;
- (ii) upon assignment to another agency; or
- (iii) when an employee terminates, retires, or otherwise does not return to work before the end of the overtime year.

(d) If an FLSA exempt employee's status changes to nonexempt, that employee's compensatory time earned while in exempt status shall lapse if not used by the end of the current overtime year.

(e) The agency head may approve overtime for career service exempt deputy and division directors, but overtime may not be compensated with actual payment. Schedule AB employees may not be compensated for compensatory time except with time off.

R477-8-7. Nonexempt Public Safety Personnel.

~~(5) Law enforcement, correctional and fire protection employees~~

~~(a)~~1) To be considered for overtime compensation under this rule, a law enforcement or correctional officer shall meet the following criteria:

- ~~(i)~~a) be a uniformed or plain clothes sworn officer;
- ~~(i)~~b) be empowered by statute or local ordinance to enforce laws designed to maintain public peace and order, to protect life and property from accident or willful injury, and to prevent and detect crimes;
- ~~(i)~~c) have the power to arrest;
- ~~(i)~~d) be POST certified or scheduled for POST training;

and

- ~~(i)~~e) perform over 80% law enforcement duties.
- ~~(b)~~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.

~~(i)~~a) 171 hours in a work period of 28 consecutive days;

or

- ~~(i)~~b) 86 hours in a work period of 14 consecutive days.
- ~~(e)~~3) Agencies shall select one of the following maximum work hour thresholds to determine when overtime compensation is granted to fire protection employees.

~~(i)~~a) 212 hours in a work period of 28 consecutive days;

or

- ~~(i)~~b) 106 hours in a work period of 14 consecutive days.
- ~~(d)~~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:

- ~~(i)~~a) the Fair Labor Standards Act, Section 207(k);
- ~~(i)~~b) 29 CFR 553.230;
- ~~(i)~~c) the state's payroll period;
- ~~(i)~~d) the approval of the Executive Director, DHRM.

~~(6) Compensatory Time~~

~~_____ (a) Agency management shall arrange for an employee's use of compensatory time as soon as possible without unduly disrupting agency operations or endangering public health, safety or property.~~

~~_____ (b) Compensatory time balances for an FLSA nonexempt employee shall be paid down to zero in the same pay period that the employee is transferred from one agency to a different agency, promoted, reclassified, reassigned, or transferred to an FLSA exempt position. The pay down for unused compensatory time balances shall be based on the employee's hourly rate of pay in the old position.~~

R477-8-8. Time Reporting.

~~[(7) Time Reporting~~

~~_____ (a)(1) Employees shall complete and submit a state approved biweekly time record that accurately reflects the hours actually worked, including:~~

~~[(i)a] approved and unapproved overtime;~~

~~[(i)b] on-call time;~~

~~[(i)c] stand-by time;~~

~~[(i)d] meal periods of public safety and correctional officers who are on duty more than 24 consecutive hours; and~~

~~[(i)e] approved leave time.~~

~~[(b)2] An employee who fails to accurately record time may be disciplined.~~

~~[(e)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.~~

~~[(d)4] A Supervisor who directs an employee to submit an inaccurate time record or knowingly approves an inaccurate time record may be disciplined.~~

~~[(e)5] A Non-exempt employee who believes FLSA rights have been violated may submit a complaint directly to the Executive Director, or designee, of the Department of Human Resource Management.~~

R477-8-9. Hours Worked.

~~[(8)1] [~~Hours Worked~~] 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.

~~[(e)1] [~~On-call time~~] An FLSA nonexempt 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.~~

~~[(i)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.~~

~~[(i)b] Agencies who enter into on-call agreements with employees shall have an agency policy consistent with this rule and finance policy.~~

~~[(i)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.~~

~~[(i)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.~~

~~[(i)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.~~

~~[(i)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.

~~[(d)1] [~~Stand-by time~~] 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.~~

~~[(e)2] The meal periods of guards, 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.

~~[(9) Commuting and Travel Time:~~

~~_____ [(a)1] Normal commuting time from home to work and back may not count towards hours worked.~~

~~[(b)2] Time an employee spends traveling from one job site to another during the normal work schedule shall count towards hours worked.~~

~~[(e)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.~~

~~(d)~~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.

~~(e)~~5 Travel as a passenger counts toward hours worked if it is time spent during regular working hours. This applies to nonworking days, as well as regular working days. However, regular meal period time is not counted.

R477-8-13. Excess Hours.

~~(1)(b)~~ ~~[Excess Hours:—]~~An employee may use excess hours the same way as annual leave.

(a) Agency management shall approve excess hours before the work is performed.

(b) Agency management may deny the use of any leave time, other than holiday leave, that results in an employee accruing excess hours.

(c) An employee may not accumulate more than 80 excess hours.

(d) Agency management 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[under one of the following]:~~

~~(i) [paid off]automatically in the same pay period accrued;~~

~~(ii) [paid off]at any time during the year as determined appropriate by a state agency or division; or~~

~~(iii) [all hours accrued above the limit set by DHRM;~~

~~(iv)]upon request of the employee and approval by the agency head[; or~~

~~(v) upon assignment from one agency to another].~~

R477-8-~~5~~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-~~6~~15. Reasonable Accommodation.

Reasonable accommodation for qualified individuals with disabilities may be a factor in any employment action. Before notifying an employee of denial of reasonable accommodation, the agency shall consult with the Division of Risk Management.

R477-8-~~7~~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-~~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.

(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-~~9~~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-[10]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-[11]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-[12]21. 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

Date of Enactment or Last Substantive Amendment:
[November 7, 2011]2012

Notice of Continuation: February 2, 2012

Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-6.7; 20A-3-103

Human Resource Management, Administration

R477-9

Employee Conduct

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36125

FILED: 04/30/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendment expands the description of influence of controlled substances.

SUMMARY OF THE RULE OR CHANGE: New language expands controlled substances by adding "other intoxicants," "illicit drugs," and "misuse of volatile substances" in Subsection R477-9-1(3).

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-7-2 and Section 67-19-19 and Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.

◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.

◆ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION

ROOM 2120 STATE OFFICE BLDG

450 N MAIN ST

SALT LAKE CITY, UT 84114-1201

or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ J.J. Acker by phone at 801-538-4297, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 05/24/2012 09:00 AM, Senate Bldg, Beehive Room, 420 N State Street, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2012

AUTHORIZED BY: Jeff Herring, Executive Director

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, [—or] nonprescribed controlled substances, and misuse of volatile substances, shall be subject to corrective action or discipline in accordance with Section R477-10-2, Rule R477-11 and R477-14.

(a) The agency may decline to defend and indemnify an employee found violating this rule, in accordance with Section 63G-7-2 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 corrective action or discipline 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) 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.

(d) An employee shall notify agency management in writing if the outside employment has the potential or appears to conflict with Title 67, Chapter 16, Employee Ethics Act.

(e) Agency management may deny an employee permission to engage in outside employment, or to receive payment, if the outside activity is determined to cause a real or potential conflict of interest.

(f) Failure to notify the employer and to gain approval for outside employment is grounds for disciplinary action if the secondary employment is found to be a conflict of interest.

R477-9-3. Conflict of Interest.

(1) An employee may receive honoraria or paid expenses for activities outside of state employment under the following conditions:

(a) Outside activities 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) The federal Hatch Act restricts the political activity of state government employees who work in connection with federally funded programs.

(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.

(c) 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.

(i) The agency head shall consult with DHRM.

(ii) DHRM shall determine whether the employee's intent to become a candidate is covered under the Hatch Act.

(iii) Employees in violation of section R477-9-4(1)(c) may be disciplined up to termination of their employment.

(d) 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.

(i) 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.

(2) Any state 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. An employee may not use annual leave while serving in a political office.

(3) 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.

(4) Decisions regarding employment, promotion, demotion or dismissal or any other human resource actions may not be based on partisan political activity.

R477-9-5. Employee Indebtedness to the State.

(1) An employee indebted to the state because of an action or performance in official duties may have a portion of salary that exceeds the minimum federal wage withheld. Overtime salary shall not be withheld.

(a) The following three conditions 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.

R477-9-6. Acceptable Use of Information Technology Resources.

Information technology resources are provided to a state employee to assist in the performance of assigned tasks and in the efficient day to day operations of state government.

(1) An employee shall use assigned information technology resources in compliance with Rule R895-7, Acceptable Use of Information Technology Resources.

(2) An employee who violates the Acceptable Use of Information Technology Resources policy may be disciplined according to Rule R477-11.

R477-9-7. 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.

R477-9-8. 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

Date of Enactment or Last Substantive Amendment: [July 1, 2011]2012

Notice of Continuation: February 2, 2012

Authorizing, and Implemented or Interpreted Law: 63G-7-2; 67-19-6; 67-19-19

**Human Resource Management,
Administration
R477-11
Discipline**

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 36126
FILED: 04/30/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Language and references are added for clarification and one unnecessary phrase is removed.

SUMMARY OF THE RULE OR CHANGE: An amendment to Subsection R477-11-1(3)(a) adds wording that is already in practice, but creates clarity by being stated here. A reference is added to Subsection R477-11-1(4)(c) for convenience. In Subsection R477-11-1(4)(d), a phrase and reference is removed.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63G-2-3 and Section 67-19-18 and Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

- ◆ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.
- ◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.
- ◆ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.
- ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated

with these changes will be absorbed by agency budgets and will have no effect on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
ROOM 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY, UT 84114-1201
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ J.J. Acker by phone at 801-538-4297, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
◆ 05/24/2012 09:00 AM, Senate Bldg, Beehive Room, 420 N State Street, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2012

AUTHORIZED BY: Jeff Herring, Executive Director

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

(a) DHRM shall consult with the Office of the Attorney General, if necessary, prior to agency management imposing discipline on an employee that is grievable to the Career Service Review Office.

(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, ~~and~~ the underlying 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 ~~respond~~ reply or does not reply within the time frame established by the agency representative or within five days, whichever is longer, discipline may be imposed in accordance with these rules.

(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:

(a) written reprimand;

(b) suspension without pay up to 30 calendar days per incident requiring discipline;

(c) demotion of any employee, in accordance with Section R477-11-2, through one of the following actions:

(i) An employee may be moved from a position in one job to a position in another job having a lower maximum salary range and shall receive a reduction in the current actual wage.

(ii) An employee's current actual wage may be lowered within the current salary range, as determined by the agency head or designee.

(d) dismissal[-

~~An agency head shall dismiss or demote a career service employee only] in accordance with [Subsection 67-19-18(5) and] 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) Disciplinary actions are subject to the grievance and appeals procedure by law for career service employees only. The employee and the agency representative may agree in writing to waive or extend any grievance step, or the time limits specified for any grievance step.

R477-11-2. Dismissal or Demotion.

An employee may be dismissed or demoted for cause under Subsection R477-10-2(3)(e) and Section R477-11-1, and through the process outlined in this rule.

(1) An agency head or appointing officer may dismiss or demote a probationary employee or career service exempt employee without right of appeal. Such dismissal or demotion may be for any reason or for no reason.

(2) No career service employee shall be dismissed or demoted from a career service position unless the agency head or designee has observed the Grievance Procedure Rules and law cited in Section R137-1-13 and Title 67, Chapter 19a, and the following procedures:

(a) The agency head or designee shall notify the employee in writing of the specific reasons for the proposed dismissal or demotion.

(b) The employee shall have up to five working days to reply. The employee 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. The hearing before the agency head or designee shall be strictly limited to the specific reasons raised in the notice of intent to demote or dismiss.

(i) At the hearing the employee may present, either in person, in writing, or with a representative, comments or reasons as to why the proposed disciplinary action should not be taken. The agency head or designee is not required to receive or allow other witnesses on behalf of the employee.

(ii) The employee may present documents, affidavits or other written materials at the hearing. However, the employee is not entitled to present or discover documents within the possession or control of the department or agency that are private, protected or controlled under Section 63G-2-3.

(d) Following the hearing, the employee may be dismissed or demoted if the agency head finds adequate cause or reason.

(e) The employee shall be notified in writing of the agency head's decision. Specific reasons shall be provided if the decision is a demotion or dismissal.

(3) Agency management may place an employee on paid administrative leave pending the administrative appeal to the agency head.

R477-11-3. Discretionary Factors.

(1) When deciding the specific type and severity of discipline, the agency head or representative may consider the following factors:

(a) consistent application of rules and standards;

(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 effect on agency operations;
- (i) the potential of the violations for causing damage to persons or property.

KEY: discipline of employees, dismissal of employees, grievances, government hearings
Date of Enactment or Last Substantive Amendment: ~~July 12, 2010~~ 2012
Notice of Continuation: February 3, 2012
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-18; 63G-2-3

**Human Resource Management,
 Administration
 R477-13
 Volunteer Programs**

**NOTICE OF PROPOSED RULE
 (Amendment)
 DAR FILE NO.: 36127
 FILED: 04/30/2012**

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: A phrase is added to align this rule with the Utah Code.

SUMMARY OF THE RULE OR CHANGE: A phrase is added to Subsection R477-13-1(3) to qualify that those operating equipment or vehicles must be authorized to do so.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6 and Section 67-20-8

- ANTICIPATED COST OR SAVINGS TO:**
- ◆ **THE STATE BUDGET:** These changes are administrative and do not directly impact state budgets.
 - ◆ **LOCAL GOVERNMENTS:** This rule only affects the executive branch of state government and will have no impact on local government.
 - ◆ **SMALL BUSINESSES:** This rule only affects the executive branch of state government and will have no impact on small businesses.
 - ◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:**

This rule only affects the executive branch of state government and will have no impact on other persons. This rule has no financial impact on state employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no direct compliance cost for these amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HUMAN RESOURCE MANAGEMENT
 ADMINISTRATION
 ROOM 2120 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY, UT 84114-1201
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ◆ J.J. Acker by phone at 801-538-4297, by FAX at 801-538-3081, or by Internet E-mail at jacker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:
 ◆ 05/24/2012 09:00 AM, Senate Bldg, Beehive Room, 420 N State Street, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2012

AUTHORIZED BY: Jeff Herring, Executive Director

- R477. Human Resource Management, Administration.
 R477-13. Volunteer Programs.
 R477-13-1. Volunteer Programs.**
- (1) Agency management may establish a volunteer program.
 - (a) A volunteer program shall include:
 - (i) documented agreement of the type of work and duration for which the volunteer services will be provided;
 - (ii) orientation to the conditions of state service and the volunteer's specific assignments;

- (iii) adequate supervision of the volunteer; and
- (iv) documented hours worked by a volunteer.

(2) Agency management shall approve all work programs for volunteers before volunteers serve the state or any agency or subdivisions of the state.

(3) A volunteer is considered a government employee for purposes of workers' compensation, operation of motor vehicles or equipment, if properly licensed and authorized to do so, and liability protection and indemnification.

(4) The Executive Director, DHRM, may authorize exceptions to this rule consistent with Subsection R477-2-2(1).

KEY: personnel management, administrative rules, rules and procedures, volunteers

Date of Enactment or Last Substantive Amendment: ~~[July 1, 2011]~~ **2012**

Notice of Continuation: February 3, 2012

Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-20-3; 67-20-8

Natural Resources, Water Resources

R653-2-4

Project Funding Process

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36087

FILED: 04/20/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In 2010, the Utah State Legislature passed H.B. 60 (General Session) requiring canal companies and canal operators to complete and have accepted a Water Conveyance Facilities Management Plan, and H.B. 298 requiring them to provide stated information to the county. The Board of Water Resources now requires compliance to these two laws before funds for water projects will be disbursed. Accordingly, an amendment to Subsection R653-2-4(2)(b)(iii) needs to be filed.

SUMMARY OF THE RULE OR CHANGE: In addition to other stated requirements for funding, Subsection R653-2-4(2)(b)(iii) needs to now include: 1) Submittal of a letter noting completion and acceptance of a Water Conveyance Facilities Management Plan as described in and within the time frame required by Section 73-10-33 (H.B. 60); and 2) compliance with Section 17-27a-211 (H.B. 298) which requires a canal company or canal operator to provide stated information to the county.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 73-10-33 and Title 73, Chapter 10

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** There is no cost associated with this rule because no action needs to be taken by the state.

♦ **LOCAL GOVERNMENTS:** There is no cost associated with this rule because no action needs to be taken by local governments.

♦ **SMALL BUSINESSES:** There is no cost associated with this rule because no action needs to be taken by any business.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** The cost associated with this rule is the time it takes to write a letter stating compliance.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The cost associated with this rule is the time it takes to write a letter stating compliance.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on business because of this rule amendment.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
WATER RESOURCES
ROOM 310
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Barbara Allen by phone at 801-538-7232, by FAX at 801-538-7279, or by Internet E-mail at barbaraallen@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2012

AUTHORIZED BY: Michael Styler, Executive Director

R653. Natural Resources, Water Resources.

R653-2. Financial Assistance from the Board of Water Resources.

R653-2-4. Project Funding Process.

(1) After the application for assistance has been completed by the sponsor/applicant, signed by the Board member, and forwarded to the Division, a three-step process will be followed to determine those projects which will be funded by the Board.

(2) The three steps of the funding process are:

(a) Approval for Staff Investigation

(i) The Board member considers the proposed project to fall within the Board's general statutory authority.

(ii) Division staff will prepare a feasibility report covering the general scope of the proposed project but focusing on technical, financial, legal, and environmental aspects, water needs and rights, and water users' support.

(b) Authorization

(i) The feasibility report will be presented to the Board, which will consider the project for authorization on the basis of its merits and overall feasibility and the contribution the project will make to the general economy of the area and the state.

(ii) As part of its decision-making process, the Board considers it important to discuss the merits of the project with the sponsor. Therefore, representatives of the project sponsor must attend the Board meeting when the project is considered for authorization.

(iii) If the project is AUTHORIZED by the Board, a letter outlining the engineering and legal requirements for the project, and other conditions of the financial assistance will be sent to the sponsor. For example, some of the more common conditions of these projects are:

(A) Preparation of a Water Management and Conservation Plan for the sponsor's service area.

(B) Adoption of an ordinance prohibiting municipal irrigation of landscapes between the hours of 10:00 a.m. and 6:00 p.m.; the Division has prepared a Model Ordinance which is available for the sponsors of municipal projects.

(C) Adoption of a progressive water rate schedule (municipal projects). Division staff will assist sponsors in establishing such schedules to fit local conditions and circumstances.

(D) Submittal of a letter noting completion and acceptance of a Water Conveyance Facilities Management Plan as described in and within the time frame required by Utah Code 73-10-33 (2010 First Substitute House Bill 60); and

(E) Compliance with Utah Code 17-27a-211 (2010 House Bill 298) which requires a canal company or canal operator to provide stated information to the county.

(c) Committal of Funds

(i) After the sponsor has complied with the Board requirements and conditions, the project will be presented for final review. If the Board finds the project to be in order and ready for construction, and IF FUNDS ARE AVAILABLE, the Board will commit funds and direct its officers to enter into the necessary agreements to secure project financing.

(ii) The project sponsor will not normally be required to attend the Board meeting at which funds are to be committed for the project. If the project scope or cost estimate has changed substantially, the sponsor may be asked to attend the meeting to discuss the changes with the Board.

KEY: water funding

Date of Enactment or Last Substantive Amendment: [February 25, 2008]2012

Authorizing, and Implemented or Interpreted Law: 73-10

Workforce Services, Employment Development **R986-200-221** Drug Testing Requirements

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 36133
FILED: 05/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to implement statutory changes.

SUMMARY OF THE RULE OR CHANGE: The Utah Legislature passed H.B. 155 in the 2012 General Session. The new law requires drug testing for applicants for financial assistance. This rule explains how that drug testing will be done and the consequences for failing a drug test.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Section 35A-3-301 et seq. and Subsection 35A-1-104(4)

ANTICIPATED COST OR SAVINGS TO:

♦ **THE STATE BUDGET:** This applies to federally-funded programs so there are no costs or savings to the state budget. There are no costs anticipated by this rule that were not contemplated in the passing of H.B. 155.

♦ **LOCAL GOVERNMENTS:** This is a federally-funded program so there are no costs or savings to the local government.

♦ **SMALL BUSINESSES:** There will be no costs to small businesses to comply with these changes because this is a federally-funded program.

♦ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There will be no costs persons other than small businesses, businesses, or local governmental entities to comply with these changes because this is a federally-funded program.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no costs to persons to comply with these changes because there are no costs or fees associated with these proposed changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with these changes for any affected persons because this is a federally-funded program and there are no fees or costs associated

with these proposed changes. There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY, UT 84111-2333
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2012

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE:

◆ 05/29/2012 05:30 PM, 1385 S State Street, Room 157, Salt Lake City, UT

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2012

AUTHORIZED BY: Kristen Cox, Executive Director

R986. Workforce Services, Employment Development.

R986-200. Family Employment Program.

R986-200-221. Drug Testing Requirements.

(1) A parent client or specified relative who is counted in the household assistance unit under R986-200-205 must complete a substance abuse questionnaire. A substance abuse questionnaire is defined as a written screening questionnaire designed to accurately determine the reasonable likelihood of the client having a substance use disorder involving the misuse of a controlled substance. Individuals in the household who have been disqualified from the receipt of assistance because of an IPV are also required to complete a substance abuse questionnaire and otherwise comply with this section.

(2) If the results of the substance abuse questionnaire indicate a reasonable likelihood of a substance use disorder involving the misuse of a controlled substance, a drug test is required within a period of time as specified by the Department. The test will be performed in accordance with the requirements of Utah Code Ann. Section 34-38-6. Before taking the drug test, the client may advise the person administering the test of any prescription or any over the counter medication the client is taking.

(3) If the client tests positive for the unlawful use of a controlled substance on the drug test required under subsection (2), benefits may continue but only if the client agrees to receive treatment from a Department approved provider. The treatment will be for a minimum of 60 days and the client must also submit to drug tests during, and at the conclusion of, treatment. Each test must be

negative. The length of treatment, if over 60 days, will be determined by the treatment provider and the Department. The client cannot change treatment providers unless the treatment provider and the Department agree to the change.

(4) The entire household unit will be denied financial assistance for a period of three months for the first occurrence and 12 months for any subsequent occurrence within a 12 month period if a client identified in subsection (1):

(a) refuses to take a drug test as required in subsection (2) or (3) of this section.

(b) fails to enter and successfully complete treatment as required in subsection (3) of this section, or

(c) tests positive for the unlawful use of a controlled substance, on any subsequent drug test required by the Department, while in treatment or at the completion of treatment.

(5) A client can be excused from complying with the requirements of this section if the necessary resources are not available through no fault of the client.

(6) A client can be excused from complying with the requirements of this section in a timely manner if the client can show reasonable cause. Reasonable cause under this section means the client was prevented from complying in a timely manner through no fault of his or her own or failed to comply in a timely manner for reasons that are reasonable and compelling.

(7) If a client disagrees with the results of a drug test performed under subsections (2) or (3) of this section, the client can provide the Department with the results of a second drug test. This second drug test will be performed:

(i) at the client's expense.

(ii) at a testing facility approved by the Department.

(iii) in accordance with requirements of Utah Code Ann. Section 34-38-6, and

(iv) within seven days of the Department sending notice of the results of the original drug test.

(c) If the results of the second drug test are negative, the Department will reimburse the client the actual and reasonable verified costs incurred in obtaining the second test.

KEY: family employment program

Date of Enactment or Last Substantive Amendment: ~~February 1, 2012~~

Notice of Continuation: September 8, 2010

Authorizing, and Implemented or Interpreted Law: 35A-3-301 et seq.

Workforce Services, Unemployment
Insurance
R994-405-104
Quit to Accompany, Follow or Join a
Spouse

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 36134

FILED: 05/01/2012

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to comply with recent legislative changes.

SUMMARY OF THE RULE OR CHANGE: The Utah Legislature passed H.B. 263 in the 2012 General Session. That law allows benefits to a claimant who quits his or her job to accompany his or her spouse to a new location because of the spouse's military assignment. The rule is necessary to provide a start date for this change and define terms.

STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Section 35A-4-307 and Section 35A-4-405 and Subsection 35A-1-104(4) and Subsection 35A-4-502(1)(b)

ANTICIPATED COST OR SAVINGS TO:

◆ **THE STATE BUDGET:** This is a federally-funded program so there are no costs or savings to the state budget. There will very few claimants who will receive benefits who might not have before but any costs associated with that change are in the statute and not in this rule.

◆ **LOCAL GOVERNMENTS:** This is a federally funded program so there are no costs of savings to local government. Any costs were contemplated by the statute. This proposed rule will not affect local government.

◆ **SMALL BUSINESSES:** There are no costs or savings to any small businesses as there are no fees associated with this program and it is federally funded. Any costs that might be incurred were contemplated by the statute and this proposed rule amendment does not affect any small business. Employers have been relieved of costs but the costs will be added to social costs by the legislation.

◆ **PERSONS OTHER THAN SMALL BUSINESSES, BUSINESSES, OR LOCAL GOVERNMENTAL ENTITIES:** There are no costs or savings to any other persons or small businesses as there are no fees associated with this program and it is federally funded. Any costs that might be incurred were contemplated by the statute and this proposed rule amendment does not affect any persons other than small businesses, businesses, or local governmental entities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs or savings to any affected persons as there are no fees associated with this program and it is federally funded. These rule changes will not impact any employers contribution rate beyond what was contemplated by the statute for social costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. These changes will have no impact on any employers contribution tax rate.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

WORKFORCE SERVICES
 UNEMPLOYMENT INSURANCE
 140 E 300 S
 SALT LAKE CITY, UT 84111-2333
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS NO LATER THAN AT 5:00 PM ON 06/14/2012

THIS RULE MAY BECOME EFFECTIVE ON: 06/21/2012

AUTHORIZED BY: Kristen Cox, Executive Director

R994. Workforce Services, Unemployment Insurance.

R994-405. Ineligibility for Benefits.

R994-405-104. Quit to Accompany, Follow or Join a Spouse.

(1) Except as provided in subsection (3) [F]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) ~~[For the purposes of this section, spouse is considered to include a significant other.~~

~~(3) —]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.

Notice of Continuation: June 26, 2007
Authorizing, and Implemented or Interpreted Law: 35A-4-502(1)(b); 35A-1-104(4); 35A-4-405

KEY: unemployment compensation, employment, employee's rights, employee termination

Date of Enactment or Last Substantive Amendment:
~~December 3, 2008~~2012

End of the Notices of Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the agency is required to review the rule. This review is intended to remove obsolete rules from the Utah Administrative Code. Upon reviewing a rule, an agency may: repeal the rule by filing a **PROPOSED RULE**; continue the rule as it is by filing a **NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE)**; or amend the rule by filing a **PROPOSED RULE** and by filing a **NOTICE**. By filing a Notice, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. **NOTICES** are effective upon filing.

NOTICES are governed by Section 63G-3-305.

Commerce, Occupational and Professional Licensing

R156-47b

Massage Therapy Practice Act Rule

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 36132

FILED: 05/01/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 47b, provides for the licensure of massage therapists and massage apprentices. Subsection 58-1-106(1)(a) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-47b-201(3) provides that the Board of Massage Therapy's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1)(a) provides that one of the duties of each board is to recommend appropriate rules to the Division Director. This rule was enacted to clarify the provisions of Title 58, Chapter 47b, with respect to massage therapists and massage apprentices.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in December 2010, it has been amended two times. The Division received the following written comments with respect to proposed amendments which had been filed in DAR No. 35498: 01/12/2012 email from Allison Mitchell in which she supported proposed amendments; 01/15/2012 email from Sylvia Noon in which she commented on the proposed

amendments; 01/16/2012 email from Cheri Johnson in which she commented on the proposed amendments; 01/17/2012 email from Dawn Littleworth commenting on the proposed amendments; 01/17/2012 email from Erica Basden commenting on the proposed amendments; 01/17/2012 email from Ron Findlay, representing the American Massage Therapy Association-Utah Chapter, supporting the proposed amendments; 01/17/2012 letter from Jeff Stucki in which he opposed the proposed amendments in which the term "manipulation" was further defined and clarified; Mr. Stucki suggested that the proposed amendment be handled through the legislative process rather than as a proposed rule amendment filing; and a 01/17/2012 letter from Tanja Tuttle opposing the proposed amendments. The Division also received a 01/17/2012 letter from William McCullough in which he inquired about a rule hearing date with respect to the proposed amendments filed under DAR No. 35498. The Division sent a reply email to Mr. McCullough on 01/17/2012 in which he was informed that a 01/09/2012 rule hearing had been conducted with respect to the proposed amendments and that notification of the rule hearing was published in the Utah State Bulletin. The Division also received a 01/17/2012 form letter requesting a rule hearing with respect to proposed amendments to this rule from the following individuals: Carly Cannavo, Whitney Justensen, Jillian Disraeli, Robin Craghead, Paul Gordon and Jacelyn Cash. Each of these individuals were also notified by the Division that a 01/09/2012 rule hearing had been conducted with respect to the proposed amendments and that notification of the rule hearing was published in the Utah State Bulletin. The Division also received a 02/02/2012 email from David Nelson in which Mr. Nelson opposes wording in Subsection R156-47b-302d(1)(a) with respect to Title 78, Chapter 5, Part 4.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued as it provides a mechanism to inform potential licensees of the requirements for licensure as allowed under statutory authority provided in Title 58, Chapter 47b, with respect to massage therapists and

massage apprentices. The rule should also be continued as it provides information to ensure applicants for licensure are adequately trained and meet minimum licensure requirements and provides licensees with information concerning unprofessional conduct, definitions, and ethical standards relating to the profession. In response to Mr. Nelson's written comments about his opposition to wording in Subsection R156-47b-302d(1)(a), the Division does not disagree with the facts of Mr. Nelson's comments. The Division disagrees with Mr. Nelson's requested solution to amend the rule due to a Supreme Court ruling that might invalidate a Utah statute referred to in this rule. The Division has spoken with Mr. Nelson multiple times regarding various Division rules and does not intend to follow his requested solution. The Board of Massage Therapy, during a scheduled Board meeting on 01/17/2012, discussed public comments which had been made during the 01/09/2012 rule hearing. Given the fact that the majority of the written comments were received after the Board's 01/17/2012 meeting, the written comments were actually reviewed during the Board's next scheduled meeting which was held on 03/20/2012. Regarding the Tuttle and Stucki written comments received in which they both expressed opposition to the Division's proposed amendments filed under DAR No. 35498, it should be noted that some of the opposed language was amended into the governing massage therapy statute, Title 58, Chapter 47b, during the recently completed 2012 General Session of the Utah Legislature in H.B. 114. Legislative hearings were also held with respect to the statutory proposed amendments. Aside from the legislative changes, the Board and Division reviewed the Tuttle and Stucki comments but disagreed with their positions. After extensive review of the written comments received and consideration of comments made during the 01/09/2012 rule hearing, the Division, in consultation with the Board of Massage Therapy Board, determined that the proposed amendments filed under DAR No. 35498 should be become effective with no additional changes. The Division thus filed a "Notice of Effective Date" with the Division of Administrative Rules on 01/26/2012.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

COMMERCE
OCCUPATIONAL AND PROFESSIONAL
LICENSING
HEBER M WELLS BLDG
160 E 300 S
SALT LAKE CITY, UT 84111-2316
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

◆ Sally Stewart by phone at 801-530-6179, by FAX at 801-530-6511, or by Internet E-mail at [sstewart@utah.gov](mailto:ss Stewart@utah.gov)

AUTHORIZED BY: Mark Steinagel, Director

EFFECTIVE: 05/01/2012

Health, Administration **R380-1** Petitions for Department Declaratory Orders

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 36096

FILED: 04/26/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: As required by Section 63G-4-503, and as authorized by Subsection 26-1-5(3) and Section 26-1-17, this rule provides the procedures for the submission, review, and disposition of petitions for agency declaratory orders on the applicability of statutes administered by the Department, rules promulgated by the Department or any of its committees having statutory authority to make rules, and orders issued by the Department. Rule R380-5 governs petitions for declaratory orders concerning orders issued by committees having statutory authority to issue orders.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments in support or opposition were received in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule provides the procedures for the submission, review, and disposition of petitions for agency declaratory orders on the applicability of statutes administered by the Department, rules promulgated by the Department or any of its committees having statutory authority to make rules, and orders issued by the Department. Rule R380-5 governs petitions for declaratory orders concerning orders issued by committees having statutory authority to issue orders and is in the public interest. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
ADMINISTRATION
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Doug Springmeyer by phone at 801-538-6971, by FAX at 801-538-6306, or by Internet E-mail at dspringm@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 04/26/2012

Health, Administration
R380-5

Petitions for Declaratory Orders on
Orders Issued by Committees

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 36097
FILED: 04/26/2012

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: As required by Section 63G-4-503, and as authorized by Subsection 26-1-5(3) and Section 26-1-17, this rule provides the procedures for the submission, review, and disposition of petitions for agency declaratory orders concerning orders issued by committees having statutory authority to issue orders. Rule R380-1 governs petitions for declaratory orders concerning the applicability of statutes administered by the Department, rules promulgated by the Department or any of its committees having statutory authority to make rules, and orders issued by the Department.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments in support or opposing the rule received in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule provides the procedures for the submission, review, and disposition of petitions for agency declaratory orders concerning orders issued by committees having statutory authority to issue orders. Rule R380-1 governs petitions for declaratory orders concerning the applicability of statutes administered by the Department, rules promulgated by the Department or any of its committees having statutory authority to make rules, and orders issued by the Department and is in the public interest. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
ADMINISTRATION
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Doug Springmeyer by phone at 801-538-6971, by FAX at 801-538-6306, or by Internet E-mail at dspringm@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 04/26/2012

Health, Administration
R380-10

Informal Adjudicative Proceedings

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 36098
FILED: 04/26/2012

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 26-1-5, 26-1-7, 26-1-17, and 26-1-24, and Title 63G, Chapter 4, authorize the Department to adopt procedures.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments in support or opposition received in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule sets forth informal adjudicative procedures for the Department of Health and committees created within the Department and is in the public interest. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
ADMINISTRATION
CANNON HEALTH BLDG
288 N 1460 W

SALT LAKE CITY, UT 84116-3231
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Doug Springmeyer by phone at 801-538-6971, by FAX at 801-538-6306, or by Internet E-mail at dspringm@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 04/26/2012

Health, Administration
R380-100
Americans with Disabilities Act
Grievance Procedures

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 36099
 FILED: 04/26/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is made under authority of Section 26-1-17 and Subsection 63G-3-201(3). As required by 28 CFR 35.107, the Utah Department of Health, as a public entity that employs more than 50 persons, adopts and publishes the grievance procedures within this rule for the prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act, as amended.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No comments in support or opposition received in the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The purpose of this rule is to implement the provisions of 28 CFR 35 which in turn implements Title II of the Americans with Disabilities Act, which provides that no individual shall be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by the department because of a disability. This rule is in the public interest. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
 HEALTH
 ADMINISTRATION
 CANNON HEALTH BLDG
 288 N 1460 W
 SALT LAKE CITY, UT 84116-3231
 or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 ♦ Doug Springmeyer by phone at 801-538-6971, by FAX at 801-538-6306, or by Internet E-mail at dspringm@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 04/26/2012

Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-1A
Medicaid Policy for Experimental,
Investigational or Unproven Medical
Practices

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
 DAR FILE NO.: 36128
 FILED: 04/30/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-18-3 requires the Department to implement Medicaid policy through administrative rules, which allow the Department to administer the Medicaid program. In addition, Section 26-1-5 allows the Department to adopt rules to carry out services and procedures that are proven to be medically effective.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department did not receive any written or oral comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary because it implements the policy to cover only services and procedures that are

proven to be effective. This rule, therefore, ensures that Medicaid recipients receive quality and cost effective services. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 04/30/2012

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-60
Medicaid Policy for Pharmacy Program**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 36129
FILED: 04/30/2012

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-18-3 requires the Department to implement Medicaid policy through administrative rules, which allow the Department to administer the Medicaid program. In addition, Section 26-1-5 authorizes the Department to adopt rules that provide services for Medicaid recipients. Further, Subsection 58-17b-606(4) spells out the reimbursement requirement and exception for generic and non-generic drugs.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department did not receive any written or oral comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary because it establishes requirements and limitations for eligibility, program access, and Medicaid drug coverage. It is also necessary because it implements the copayment policy for prescription drugs and directs pharmacy providers to the methodology used for reimbursement. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 04/30/2012

**Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-307
Eligibility for Home and Community-
Based Services Waivers**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 36085
FILED: 04/17/2012

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-18-3 requires the Department to implement Medicaid policy through administrative rules, which allow the Department to administer the Medicaid program. In addition, this rule is authorized by 42 CFR 435.217, which specifies who may qualify for services under a Medicaid home and community-

based services waiver. Further, Section 1924 of the Social Security Act sets forth the provisions on how to apply income and resources for institutionalized spouses.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department did not receive any written or oral comments regarding this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary because it establishes general eligibility requirements for home and community-based services waivers, establishes eligibility requirements for institutionalized individuals, establishes eligibility requirements for medically needy waiver groups, establishes eligibility criteria for the New Choices Waiver, and sets forth other waiver provisions. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY, UT 84116-3231
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Craig Devashrayee by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 04/17/2012

Health, Family Health and
Preparedness, Emergency Medical
Services
R426-5
Statewide Trauma System Standards

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 36100
FILED: 04/26/2012

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-8a-250 requires that the Department establishes rules for the designation of a statewide trauma system.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No formal written comments were received in opposition to the current rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule was recently revised to reflect current needs. The rule was extensively reviewed by the Utah Trauma System Advisory Committee this past year to incorporate best practices in the system for patient care. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

HEALTH
FAMILY HEALTH AND PREPAREDNESS,
EMERGENCY MEDICAL SERVICES
3760 S HIGHLAND DR
SALT LAKE CITY, UT 84106
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Guy Dansie by phone at 801-273-6671, by FAX at 801-273-4165, or by Internet E-mail at gdansie@utah.gov

AUTHORIZED BY: David Patton, PhD, Executive Director

EFFECTIVE: 04/26/2012

Human Services, Juvenile Justice
Services
R547-1
Residential and Non-Residential,
Nonsecure Community Program
Standards

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 36136
FILED: 05/01/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 62A-7-701 and 62A-7-106-5: The division shall adopt minimum standards for the organization and operation of community-based corrections programs for youth offenders.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There have been no written comments received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: After the five-year review, along with discussion with the Department of Human Services, Office of Licensing, it will be the recommendation of the division to repeal this rule. The rule is continued for now until the repeal can be put through the process.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
JUVENILE JUSTICE SERVICES
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Judy Hammer by phone at 801-538-4098, by FAX at 801-538-4334, or by Internet E-mail at judyhammer@utah.gov
♦ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjones@utah.gov

AUTHORIZED BY: Susan Burke, Director

EFFECTIVE: 05/01/2012

**Human Services, Juvenile Justice Services
R547-3
Juvenile Jail Standards**

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 36137
FILED: 05/01/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 62A-7-201(3): The division is responsible for approving short term juvenile holding facilities in adult jail facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The division continues to be responsible for monitoring juvenile hold rooms in adult jail facilities. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
JUVENILE JUSTICE SERVICES
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Judy Hammer by phone at 801-538-4098, by FAX at 801-538-4334, or by Internet E-mail at judyhammer@utah.gov
♦ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjones@utah.gov

AUTHORIZED BY: Susan Burke, Director

EFFECTIVE: 05/01/2012

**Human Services, Juvenile Justice Services
R547-7
Juvenile Holding Room Standards**

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 36140
FILED: 05/01/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 62A-7-201(4): The division is responsible for approving short term juvenile holding facilities in local law enforcement agency facilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The division continues to be responsible for monitoring juvenile holding rooms in local law enforcement agency facilities. Therefore, the rule should be continued. Nonsubstantive changes may be forthcoming.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
JUVENILE JUSTICE SERVICES
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjones@utah.gov

AUTHORIZED BY: Susan Burke, Director

EFFECTIVE: 05/01/2012

Human Services, Juvenile Justice
Services
R547-12

Division of Juvenile Justice Services
Classification of Records

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 36138
FILED: 05/01/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS

ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Sections 62A-7-101 et seq. and 63G-2-101 et seq.: The division is required to comply with the Government Records Access and Management Act (GRAMA).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments were received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: During the five-year review, it was determined that the division will continue to comply with GRAMA regulations. Therefore, this rule should be continued. Nonsubstantive changes will be made in the near future.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
JUVENILE JUSTICE SERVICES
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Judy Hammer by phone at 801-538-4098, by FAX at 801-538-4334, or by Internet E-mail at judyhammer@utah.gov
♦ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjones@utah.gov

AUTHORIZED BY: Susan Burke, Director

EFFECTIVE: 05/01/2012

Human Services, Juvenile Justice
Services
R547-13

Guidelines for Admission to Secure
Youth Detention Facilities

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 36139
FILED: 05/01/2012

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS

ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 62A-7-104(3)(a) and Section 62A-7-202: The division is responsible to establish and administer statewide guidelines for admission to secure and home detention.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: There are no written comments received.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The division continues to use these guidelines as required to admit youth into secure detention facilities. Therefore, this rule should be continued. Nonsubstantive changes are forthcoming.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
JUVENILE JUSTICE SERVICES
195 N 1950 W
SALT LAKE CITY, UT 84116
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Judy Hammer by phone at 801-538-4098, by FAX at 801-538-4334, or by Internet E-mail at judyhammer@utah.gov
♦ Julene Jones by phone at 801-538-4521, by FAX at 801-538-3942, or by Internet E-mail at jhjones@utah.gov

AUTHORIZED BY: Susan Burke, Director

EFFECTIVE: 05/01/2012

Natural Resources, Wildlife Resources
R657-29
Government Records Access
Management Act

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 36131
FILED: 05/01/2012

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 63G-2-204(2) authorizes the division to make rules in accordance with Title

63G, Chapter 3, Utah Administrative Rulemaking Act, specifying where and to whom requests for records access shall be directed.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Division of Wildlife Resources and the Wildlife Board have not received written comments, either in support or opposition to Rule R657-29 since the last five-year review on 05/03/2007.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of Rule R657-29 is necessary to provide an effective and efficient process prescribing where and to whom requests for information shall be directed and provide procedures for access to division records as allowed under Subsection 63G-2-204(2).

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY, UT 84116-3154
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Staci Coons by phone at 801-538-4718, by FAX at 801-538-4709, or by Internet E-mail at stacicoons@utah.gov

AUTHORIZED BY: James Karpowitz, Director

EFFECTIVE: 05/01/2012

School and Institutional Trust Lands,
Administration
R850-11
Procurement

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 36088
FILED: 04/24/2012

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53C-1-201(3)(e) permits the agency to be exempted from the Utah Procurement Code upon board approval and adoption of

alternative procurement procedures. Rule R850-11 provides the alternative procedures for the agency to follow when procuring goods and services related to the administration of the agency or management, development, leasing, or sale of trust lands.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received by the agency for this rule.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is necessary for the agency to be exempt from the provisions under Title 63, Chapter 56, Utah Procurement Code so that the procurement process for the agency can be streamlined, enabling the agency to respond to marketing opportunities in a more timely manner. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

SCHOOL AND INSTITUTIONAL TRUST LANDS
ADMINISTRATION
ROOM 500
675 E 500 S
SALT LAKE CITY, UT 84102-2818
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Ron Carlson by phone at 801-538-5131, by FAX at 801-538-5118, or by Internet E-mail at rcarlson@utah.gov

AUTHORIZED BY: Kevin Carter, Director

EFFECTIVE: 04/24/2012

OR REQUIRE THE RULE: Section 35A-1-104 authorizes the Department of Workforce Services to adopt rules. Subsection 35A-1-104(4) authorizes the Department to establish eligibility standards for its programs. Subsection 35A-4-502(1)(b) authorizes the Department to make rules necessary for the administration of the Employment Security Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has not received any comments during the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule explains the stimulative nature of unemployment benefits in accordance with federal law and guidance. The rule is necessary to explain some limits to the receipt of benefits and accurately reflects Utah statutes and case law. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE
140 E 300 S
SALT LAKE CITY, UT 84111-2333
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

AUTHORIZED BY: Kristen Cox, Executive Director

EFFECTIVE: 04/25/2012

**Workforce Services, Unemployment
Insurance
R994-102
Employment Security Act, Public Policy
and Authority**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 36091
FILED: 04/25/2012

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE

**Workforce Services, Unemployment
Insurance
R994-106
Combined Wage Claims**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**
DAR FILE NO.: 36092
FILED: 04/25/2012

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 35A-1-104 authorizes the Department of Workforce Services to adopt rules. Subsection

35A-1-104(4) authorizes the Department to establish eligibility standards for its programs. Subsection 35A-4-502(1)(b) authorizes the Department to make rules necessary for the administration of the Employment Security Act. Section 35A-4-106 requires the division to combine wages when a claimant has wages in more than one state.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has not received any comments during the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary to explain the mechanics of combined wage claims (CWC) including in accordance of interstate agreements authorized by Section 35A-4-106. The rule defines which state is the paying state, how wages are transferred to another state, restrictions on CWCs, how to appeal a determination, and the non-monetary decisions are made by the paying state. Most of the rule is governed by interstate agreements and the rule is necessary to explain and govern the process. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE
140 E 300 S
SALT LAKE CITY, UT 84111-2333
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

AUTHORIZED BY: Kristen Cox, Executive Director

EFFECTIVE: 04/25/2012

**Workforce Services, Unemployment
Insurance
R994-303
Contribution Rates**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION
DAR FILE NO.: 36093
FILED: 04/25/2012**

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 35A-1-104 authorizes the Department of Workforce Services to adopt rules. Subsection 35A-1-104(4) authorizes the Department to establish eligibility standards for its programs. Subsection 35A-4-502(1)(b) authorizes the Department to make rules necessary for the administration of the Employment Security Act. Section 35A-4-303 describes how an employer's contribution rate is determined including how to calculate social costs and reserves.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has not received any comments during the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary to explain how contribution rates are assigned and calculated for each employer including how the division calculates experience ratings using the reserve factor and benefit ratio. The rule also describes when successorship is determined and how it effects the contribution rate to avoid "SUTA dumping" (a process or changing ownership to avoid a high experience rating in an effort to lower state unemployment taxes). SUTA dumping rules are a required agreement with our federal partners. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE
140 E 300 S
SALT LAKE CITY, UT 84111-2333
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
♦ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

AUTHORIZED BY: Kristen Cox, Executive Director

EFFECTIVE: 04/25/2012

**Workforce Services, Unemployment
Insurance
R994-401
Payment of Benefits**

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 36094
FILED: 04/25/2012

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 35A-1-104 authorizes the Department of Workforce Services to adopt rules. Subsection 35A-1-104(4) authorizes the Department to establish eligibility standards for its programs. Subsection 35A-4-502(1)(b) authorizes the Department to make rules necessary for the administration of the Employment Security Act. Section 35A-4-401 provides for how to calculate benefit amount and monetary eligibility.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has not received any comments during the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is necessary to determine monetary eligibility for benefits, the weekly benefit amount and the maximum benefit amount for each claim. The rule also explains what wages are used for determining eligibility and how retirement is counted when determining the weekly benefit amount. The rule is also necessary for determining concurrent liability when there is no separation from a part-time reimbursable employer. Finally, the rule explains a claimant's obligations for reporting income while receiving unemployment benefits. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE
140 E 300 S
SALT LAKE CITY, UT 84111-2333
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

AUTHORIZED BY: Kristen Cox, Executive Director

EFFECTIVE: 04/25/2012

Workforce Services, Unemployment
Insurance
R994-402
Extended Benefits (EB)

**FIVE-YEAR NOTICE OF REVIEW AND STATEMENT
OF CONTINUATION**

DAR FILE NO.: 36095
FILED: 04/25/2012

**NOTICE OF REVIEW AND STATEMENT OF
CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 35A-1-104 authorizes the Department of Workforce Services to adopt rules. Subsection 35A-1-104(4) authorizes the Department to establish eligibility standards for its programs. Subsection 35A-4-502(1)(b) authorizes the Department to make rules necessary for the administration of the Employment Security Act. Section 35A-4-402 describes the eligibility criteria for extended benefits.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Department has not received any comments during the last five years.

REASONED JUSTIFICATION FOR THE CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Extended benefits are benefits payable when there is a state "on" indicator which basically means when the state's unemployment rate has "equaled or exceeded 120%" of the last year's average. Utah has not paid extended benefits since 1983. The rules are necessary to describe the eligibility criteria for extended benefits which are different from regular benefits and proscribed by federal law. For instance, federal law has different job search requirements for extended benefits and this rule explains those differences. Therefore, this rule should be continued.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

WORKFORCE SERVICES
UNEMPLOYMENT INSURANCE
140 E 300 S
SALT LAKE CITY, UT 84111-2333
or at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

♦ Suzan Pixton by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

AUTHORIZED BY: Kristen Cox, Executive Director

EFFECTIVE: 04/25/2012

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

State law provides for agencies to make their rules effective and enforceable after publication in the Utah State Bulletin. In the case of Proposed Rules or Changes in Proposed Rules with a designated comment period, the law permits an agency to file a notice of effective date any time after the close of comment plus seven days. In the case of Changes in Proposed Rules with no designated comment period, the law permits an agency to file a notice of effective date on any date including or after the thirtieth day after the rule's publication date. If an agency fails to file a Notice of Effective Date within 120 days from the publication of a Proposed Rule or a related Change in Proposed Rule the rule lapses and the agency must start the rulemaking process over.

Notices of Effective Date are governed by Subsection 63G-3-301(12), 63G-3-303, and Sections R15-4-5a and 5b.

Abbreviations

AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal & Reenact
REP = Repeal

Administrative Services

Risk Management
No. 35844 (AMD): R37-4. Adjusted Utah Governmental Immunity Act Limitations on Judgments
Published: 03/01/2012
Effective: 05/31/2012

Agriculture and Food

Animal Industry
No. 35866 (AMD): R58-11. Slaughter of Livestock
Published: 03/01/2012
Effective: 05/15/2012

Attorney General

Administration
No. 35904 (NEW): R105-1. Attorney General's Selection of Outside Counsel, Expert Witnesses and Other Litigation Support Services
Published: 03/15/2012
Effective: 04/24/2012

Environmental Quality

Solid and Hazardous Waste
No. 35867 (AMD): R315-16. Standards for Universal Waste Management
Published: 03/01/2012
Effective: 04/17/2012

Governor

Planning and Budget, Inspector General of Medicaid Services (Office of)
No. 35879 (NEW): R367-1. Office of Inspector General of Medicaid Services
Published: 03/01/2012
Effective: 04/23/2012

Health

Health Care Financing
No. 35901 (AMD): R410-14. Administrative Hearing Procedures
Published: 03/15/2012
Effective: 04/27/2012

Health Care Financing, Coverage and Reimbursement Policy
No. 35902 (AMD): R414-1-2. Definitions
Published: 03/15/2012
Effective: 04/27/2012

Center for Health Data, Health Care Statistics
No. 35868 (AMD): R428-2. Health Data Authority Standards for Health Data
Published: 03/01/2012
Effective: 04/26/2012

Family Health and Preparedness, Child Care Licensing
No. 35581 (NEW): R430-1. General Licensing, Certificate, and Enforcement Provisions, Child Care Facilities
Published: 01/15/2012
Effective: 05/01/2012

No. 35579 (REP): R430-2. General Licensing Provisions, Child Care Facilities
Published: 01/15/2012
Effective: 05/01/2012

No. 35580 (REP): R430-3. General Child Care Facility Rules Inspection and Enforcement
Published: 01/15/2012
Effective: 05/01/2012

No. 35653 (REP): R430-4. General Certificate Provisions
Published: 02/01/2012
Effective: 05/01/2012

No. 35573 (AMD): R430-6. Background Screening
Published: 01/15/2012
Effective: 05/01/2012

No. 35654 (REP): R430-30. Adjudicative Procedure
Published: 02/01/2012
Effective: 05/01/2012

NOTICES OF RULE EFFECTIVE DATES

No. 35574 (AMD): R430-50. Residential Certificate Child Care
Published: 01/15/2012
Effective: 05/01/2012

No. 35575 (R&R): R430-60. Hourly Child Care Center
Published: 01/15/2012
Effective: 05/01/2012

No. 35576 (AMD): R430-70. Out of School Time Child Care Programs
Published: 01/15/2012
Effective: 05/01/2012

No. 35577 (AMD): R430-90. Licensed Family Child Care
Published: 01/15/2012
Effective: 05/01/2012

No. 35578 (AMD): R430-100. Child Care Centers
Published: 01/15/2012
Effective: 05/01/2012

Public Lands Policy Coordinating Office
Administration

No. 35874 (NEW): R694-1. Archeological Permits
Published: 03/01/2012
Effective: 04/30/2012

End of the Notices of Rule Effective Dates Section

**RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)**

The Rules Index is a cumulative index that reflects all effective changes to Utah's administrative rules. The current Index lists changes made effective from January 2, 2012 through May 01, 2012. The Rules Index is published in the Utah State Bulletin and in the annual Utah Administrative Rules Index of Changes. Nonsubstantive changes, while not published in the Bulletin, do become part of the Utah Administrative Code (Code) and are included in this Index, as well as 120-Day (Emergency) rules that do not become part of the Code. The rules are indexed by Agency (Code Number) and Keyword (Subject).

Questions regarding the index and the information it contains should be addressed to Nancy Lancaster (801-538-3218), Mike Broschinsky (801-538-3003), or Kenneth A. Hansen (801-538-3777).

A copy of the Rules Index is available for public inspection at the Division of Administrative Rules (5110 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (<http://www.rules.utah.gov/>).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
ADMINISTRATIVE SERVICES					
<u>Archives</u>					
R17-9	Electronic Participation at Meetings	35304	NEW	01/30/2012	2011-20/6
<u>Child Welfare Parental Defense (Office of)</u>					
R19-1-6	Child Welfare Parental Defense Oversight Committee	35205	AMD	01/12/2012	2011-18/6
R19-1-7	Electronic Meetings	35206	AMD	01/12/2012	2011-18/7
<u>Finance</u>					
R25-14	Payment of Attorneys Fees in Death Penalty Cases	35663	5YR	01/12/2012	2012-3/105
<u>Fleet Operations</u>					
R27-4	Vehicle Replacement and Expansion of State Fleet	35622	5YR	01/05/2012	2012-3/105
R27-5	Fleet Tracking	35617	5YR	01/05/2012	2012-3/106
R27-5	Fleet Tracking	35623	NSC	01/31/2012	Not Printed
R27-6	Fuel Dispensing Program	35620	5YR	01/05/2012	2012-3/106
R27-8	State Vehicle Maintenance Program	35621	5YR	01/05/2012	2012-3/107
R27-9	Dispensing Compressed Natural Gas to the Public	35727	NEW	03/26/2012	2012-4/6
<u>Purchasing and General Services</u>					
R33-1	Utah State Procurement Rules Definitions	35664	AMD	03/30/2012	2012-3/4
R33-3	Source Selection and Contract Formation	35613	AMD	03/30/2012	2012-2/6
R33-3-7	Types of Contracts	35667	AMD	03/30/2012	2012-3/6
R33-4	Specifications	35665	AMD	03/30/2012	2012-3/10
R33-6-101	Revisions to Contract Clauses	35666	AMD	03/30/2012	2012-3/12
AGRICULTURE AND FOOD					
<u>Administration</u>					
R51-2	Administrative Procedures for Informal Proceedings Before the Utah Department of Agriculture and Food	35614	5YR	01/04/2012	2012-3/107
<u>Animal Industry</u>					
R58-1	Admission and Inspection of Livestock, Poultry, and Other Animals	35691	5YR	01/18/2012	2012-4/59
R58-6	Poultry	35692	5YR	01/18/2012	2012-4/59
R58-18	Elk Farming	35695	5YR	01/18/2012	2012-4/60
R58-19	Compliance Procedures	35696	5YR	01/18/2012	2012-4/60
R58-22	Equine Infectious Anemia (EIA)	35694	5YR	01/18/2012	2012-4/61
R58-23	Equine Viral Arteritis (EVA)	35693	5YR	01/18/2012	2012-4/61
<u>Plant Industry</u>					
R68-19	Compliance Procedures	35697	5YR	01/18/2012	2012-4/62

R68-21	Standard of Identity for Honey	35566	REP	03/07/2012	2012-2/16
<u>Regulatory Services</u>					
R70-201	Compliance Procedures	35660	5YR	01/12/2012	2012-3/108
R70-320	Minimum Standards for Milk for Manufacturing Purposes, its Production and Processing	35661	5YR	01/12/2012	2012-3/109
R70-350	Ice Cream and Frozen Dairy Food Standards	35658	5YR	01/12/2012	2012-3/109
R70-360	Procedure for Obtaining a License to Test Milk for Payment	35657	5YR	01/12/2012	2012-3/110
R70-530	Food Protection	35920	5YR	03/07/2012	2012-7/63
R70-550	Utah Inland Shellfish Safety Program	35659	5YR	01/12/2012	2012-3/110
R70-560	Inspection and Regulation of Cottage Food Production Operations	35662	5YR	01/12/2012	2012-3/111
ALCOHOLIC BEVERAGE CONTROL					
<u>Administration</u>					
R81-1-6	Violation Schedule	35588	AMD	03/01/2012	2012-2/20
ATTORNEY GENERAL					
<u>Administration</u>					
R105-1	Attorney General's Selection of Outside Counsel, Expert Witnesses and Other Litigation Support Services	35904	NEW	04/24/2012	2012-6/6
CAPITOL PRESERVATION BOARD (STATE)					
<u>Administration</u>					
R131-3	Use of Magnetometers on Capitol Grounds	35899	EXT	02/29/2012	2012-6/43
R131-9	State Capitol Preservation Board Art Program and Policy	35686	R&R	03/09/2012	2012-3/13
R131-10	Commercial Solicitations	35687	5YR	01/17/2012	2012-3/111
R131-11	Preservation of Free Speech Activities	35688	5YR	01/17/2012	2012-3/112
R131-13	Health Reform - Health Insurance Coverage in State Contracts - Implementation	35611	EMR	01/03/2012	2012-2/105
R131-13	Health Reform - Health Insurance Coverage in State Contracts - Implementation	35610	AMD	02/21/2012	2012-2/24
CAREER SERVICE REVIEW OFFICE					
<u>Administration</u>					
R137-1-21	The Evidentiary/Step 4 Adjudicatory Procedures	35559	AMD	02/21/2012	2012-2/26
COMMERCE					
<u>Administration</u>					
R151-3	Americans With Disabilities Act Rule	35897	5YR	02/28/2012	2012-6/35
<u>Consumer Protection</u>					
R152-6	Utah Administrative Procedures Act Rules	35974	5YR	03/26/2012	2012-8/71
R152-15	Business Opportunity Disclosure Act Rules	35965	5YR	03/22/2012	2012-8/71
R152-20	New Motor Vehicle Warranties	35967	5YR	03/22/2012	2012-8/72
R152-22	Charitable Solicitations Act	35970	5YR	03/22/2012	2012-8/72
R152-23	Utah Health Spa Services	35971	5YR	03/22/2012	2012-8/73
R152-42	Uniform Debt-Management Services Act Rules	35972	5YR	03/22/2012	2012-8/73
<u>Occupational and Professional Licensing</u>					
R156-1	General Rule of the Division of Occupational and Professional Licensing	35624	5YR	01/05/2012	2012-3/112
R156-11a	Barber, Cosmetologist/Barber, Esthetician, Electrologist and Nail Technician Licensing Act Rule	35853	5YR	02/06/2012	2012-5/101
R156-16a	Optometry Practice Act Rule	35893	5YR	02/21/2012	2012-6/35
R156-20a	Environmental Health Scientist Act Rule	35430	AMD	01/10/2012	2011-23/10
R156-37	Utah Controlled Substances Act Rule	35892	5YR	02/21/2012	2012-6/36

RULES INDEX

R156-47b	Massage Therapy Practice Act Rule	36132	5YR	05/01/2012	Not Printed
R156-47b-102	Definitions	35498	AMD	01/26/2012	2011-24/6
R156-55d	Burglar Alarm Licensing Rule	35860	5YR	02/07/2012	2012-5/102
R156-56	Building Inspector and Factory Built Housing Licensing Act Rule	35735	5YR	01/31/2012	2012-4/62
R156-64	Deception Detection Examiners Licensing Act Rule	35736	5YR	01/31/2012	2012-4/64
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R909-17	Appeal Process for Utah Commercial Vehicle Safety Alliance Inspections	35428	REP	01/10/2012	2011-23/94
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R909-19	Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation and Certification	35256	CPR	02/07/2012	2012-1/64
R909-75	Safety Regulations for Motor Carriers Transporting Hazardous Materials and/or Hazardous Wastes	35426	AMD	01/10/2012	2011-23/96
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R918-4	Using Volunteer Groups for the Adopt-a-Highway Program	35669	AMD	03/12/2012	2012-3/82

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R930-3	Highway Noise Abatement	35516	AMD	02/07/2012	2012-1/57
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R926-4	Establishing and Defining a Functional Classification of Highways in the State of Utah	35960	NSC	04/11/2012	Not Printed

WORKFORCE SERVICES

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R986-700-713	Amount of CC Payment	35586	AMD	04/01/2012	2012-2/104

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R994-106	Combined Wage Claims	36092	5YR	04/25/2012	Not Printed
R994-207-102	General Requirements for Eligibility	35992	NSC	04/11/2012	Not Printed
R994-303	Contribution Rates	36093	5YR	04/25/2012	Not Printed
R994-401	Payment of Benefits	36094	5YR	04/25/2012	Not Printed
R994-402	Extended Benefits (EB)	36095	5YR	04/25/2012	Not Printed
R994-403-112c	Available	35448	AMD	01/17/2012	2011-23/98
R994-508	Appeal Procedures	35455	AMD	02/01/2012	2011-23/101

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ABBREVIATIONS

AMD = Amendment	NSC = Nonsubstantive rule change
CPR = Change in proposed rule	REP = Repeal
EMR = Emergency rule (120 day)	R&R = Repeal and reenact
NEW = New rule	5YR = Five-Year Review
EXD = Expired	

KEYWORD AGENCY	FILE NUMBER	CODE REFERENCE	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
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	35856	R277-102	NSC	02/29/2012	Not Printed
Environmental Quality, Radiation Control	35416	R313-17	AMD	03/19/2012	2011-23/50
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	36097	R380-5	5YR	04/26/2012	Not Printed
	36098	R380-10	5YR	04/26/2012	Not Printed
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	35835	R477-15	5YR	02/03/2012	2012-5/115
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	36006	R652-3	5YR	04/02/2012	2012-8/83
	36007	R652-4	5YR	04/02/2012	2012-8/83
	36008	R652-5	5YR	04/02/2012	2012-8/84
	36009	R652-20	5YR	04/02/2012	2012-8/85
	36010	R652-30	5YR	04/02/2012	2012-8/85
	36011	R652-40	5YR	04/02/2012	2012-8/86
	36012	R652-50	5YR	04/02/2012	2012-8/86
	36014	R652-70	5YR	04/02/2012	2012-8/87
	36016	R652-100	5YR	04/02/2012	2012-8/88
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	35633	R708-8	5YR	01/09/2012	2012-3/123
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	35655	R850-90	5YR	01/12/2012	2012-3/126
	35656	R850-120	5YR	01/12/2012	2012-3/127
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	36045	R311-201	5YR	04/10/2012	2012-9/82
	36054	R311-210	5YR	04/10/2012	2012-9/89
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Agriculture and Food, Plant Industry	35697	R68-19	5YR	01/18/2012	2012-4/62
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	35774	R307-110	5YR	02/01/2012	2012-4/65
	35775	R307-120	5YR	02/01/2012	2012-4/81
	35716	R307-121	5YR	01/23/2012	2012-4/81
	35718	R307-121-7	NSC	02/09/2012	Not Printed
	35776	R307-130	5YR	02/01/2012	2012-4/82
	35777	R307-135	5YR	02/01/2012	2012-4/82
	35496	R307-210-1	AMD	03/07/2012	2011-24/7
	35531	R307-220-3	AMD	03/07/2012	2012-1/21
	35530	R307-222	AMD	03/07/2012	2012-1/22
	36026	R307-222-1	NSC	04/25/2012	Not Printed

	35779	R307-320	5YR	02/01/2012	2012-4/84
	35780	R307-325	5YR	02/01/2012	2012-4/84
	35781	R307-326	5YR	02/01/2012	2012-4/85
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	35784	R307-335	5YR	02/01/2012	2012-4/87
	35785	R307-340	5YR	02/01/2012	2012-4/87
	35786	R307-341	5YR	02/01/2012	2012-4/88
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	35413	R307-405	AMD	02/02/2012	2011-23/42
	35872	R307-405-3	NSC	02/29/2012	Not Printed
	35529	R307-415-2	AMD	03/07/2012	2012-1/25
	36033	R307-424	5YR	04/05/2012	2012-9/79
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Commerce, Occupational and Professional Licensing	35860	R156-55d	5YR	02/07/2012	2012-5/102
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	35939	R277-503	5YR	03/15/2012	2012-7/63
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<u>art loans</u> Community and Culture, Arts and Museums	35724	R207-2	5YR	01/24/2012	2012-4/65
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<u>Attorney General</u> Attorney General, Administration	35904	R105-1	NEW	04/24/2012	2012-6/6
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Commerce, Occupational and Professional Licensing	35860	R156-55d	5YR	02/07/2012	2012-5/102	
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	35817	R277-480-1	NSC	02/29/2012	Not Printed	

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	35580	R430-3	REP	05/01/2012	2012-2/42
	35653	R430-4	REP	05/01/2012	2012-3/57
	35573	R430-6	AMD	05/01/2012	2012-2/46
	35654	R430-30	REP	05/01/2012	2012-3/61
	35574	R430-50	AMD	05/01/2012	2012-2/47
	35575	R430-60	R&R	05/01/2012	2012-2/55
	35576	R430-70	AMD	05/01/2012	2012-2/70
	35577	R430-90	AMD	05/01/2012	2012-2/77
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	35910	R512-2	5YR	03/05/2012	2012-7/68
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	35813	R406-200	5YR	02/02/2012	2012-5/105
	35814	R406-201	5YR	02/02/2012	2012-5/105
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	36040	R251-306	5YR	04/06/2012	2012-9/77
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	35855	R525-7	NSC	02/29/2012	Not Printed
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	35389	R156-67-503	CPR	03/09/2012	2012-3/86
	35388	R156-68-503	AMD	03/09/2012	2011-22/19
	35388	R156-68-503	CPR	03/09/2012	2012-3/90
	35894	R156-76	5YR	02/21/2012	2012-6/37
	35585	R156-83-502	AMD	02/21/2012	2012-2/28
Environmental Quality, Radiation Control	35418	R313-36	AMD	01/16/2012	2011-23/54
Governor, Economic Development, Pete Suazo Utah Athletic Commission	36002	R359-1	5YR	03/30/2012	2012-8/74
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	36140	R547-7	5YR	05/01/2012	Not Printed
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	35704	R708-25	5YR	01/20/2012	2012-4/119
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	36015	R652-90	5YR	04/02/2012	2012-8/88
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	35498	R156-47b-102	AMD	01/26/2012	2011-24/6

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Commerce, Occupational and Professional Licensing	36132	R156-47b	5YR	05/01/2012	Not Printed	
	35498	R156-47b-102	AMD	01/26/2012	2011-24/6	
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Commerce, Occupational and Professional Licensing	36132	R156-47b	5YR	05/01/2012	Not Printed	
	35498	R156-47b-102	AMD	01/26/2012	2011-24/6	
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	35767	R251-106	EMR	02/01/2012	2012-4/45	
	35805	R251-106	NEW	04/09/2012	2012-5/11	
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	35902	R414-1-2	AMD	04/27/2012	2012-6/21	
	35584	R414-1-5	AMD	02/21/2012	2012-2/33	
	36128	R414-1A	5YR	04/30/2012	Not Printed	
	35390	R414-2A	AMD	01/11/2012	2011-22/30	
	35719	R414-7C	5YR	01/24/2012	2012-4/96	
	35720	R414-10	5YR	01/24/2012	2012-4/97	
	35722	R414-10A	5YR	01/24/2012	2012-4/97	
	35503	R414-14A	AMD	02/01/2012	2011-24/11	
	35908	R414-21	5YR	03/02/2012	2012-7/66	
	35921	R414-38	5YR	03/07/2012	2012-7/67	
	35721	R414-45	5YR	01/24/2012	2012-4/98	
	36129	R414-60	5YR	04/30/2012	Not Printed	
	35504	R414-61-2	AMD	01/24/2012	2011-24/18	
	35437	R414-305	AMD	02/06/2012	2011-23/65	
	35441	R414-308	AMD	02/06/2012	2011-23/70	
	35790	R414-308	AMD	04/01/2012	2012-4/14	
	35583	R414-401-5	AMD	02/21/2012	2012-2/36	
	35639	R414-510	5YR	01/09/2012	2012-3/115	
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	35799	R643-884	5YR	02/01/2012	2012-4/105	
	35800	R643-886	5YR	02/01/2012	2012-4/105	
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