UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
Filed May 2, 2001, 12:00 a.m. through May 15, 2001, 11:59 p.m.

Number 2001-11
June 1, 2001

Kenneth A. Hansen, Director
Nancy L. Lancaster, Editor

The *Utah State Bulletin (Bulletin)* is the 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 63-46a-10, *Utah Code Annotated* 1953.

Inquiries concerning administrative rules or other contents of the *Bulletin* may be addressed to the responsible agency or to: Division of Administrative Rules, PO Box 141007, Salt Lake City, Utah 84114-1007, telephone (801) 538-3218, FAX (801) 538-1773. To view rules information, and on-line versions of the division's publications, visit: http://www.rules.state.ut.us/

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SPECIAL NOTICES

P R O C L A M A T I O N

WHEREAS, since the close of the 2001 General Session of the 54th Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

WHEREAS, Article VII, Section 6 of the Constitution of the State of Utah provides that the Governor may, by proclamation, convene the Legislature in Extraordinary Session;

NOW, THEREFORE, I, MICHAEL O. LEAVITT, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and the Laws of the State of Utah, do by this Proclamation call the Senate only of the 54th Legislature of the State of Utah into a Second Extraordinary Session at the State Capitol in Salt Lake City, Utah, on the 23rd day of May, 2001, at 12:00 noon, for the following purpose:

For the Senate to advise and consent to appointments made by the Governor to positions within state government of the State of Utah since the close of the 2001 General Session of the 54th Legislature of the State of Utah.

IN TESTIMONY WHEREOF, I have here unto set my hand and cause to be affixed the Great Seal of the State of Utah. Done at the State Capitol in Salt Lake City, Utah, this 8th day of May, 2001.

(STATE SEAL)

MICHAEL O. LEAVITT
Governor

OLENE S. WALKER
Lieutenant Governor

DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT
COMMUNITY DEVELOPMENT, LIBRARY

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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 May 2, 2001, 12:00 a.m., and May 15, 2001, 11:59 p.m., are included in this, the June 1, 2001, 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 (• • • • • •) indicates that unaffected text was removed to conserve space. If a PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of rules that are 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 July 2, 2001. The agency may accept comment beyond this date and will list 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 to hold a hearing on a specific PROPOSED RULE. Section 63-46a-5 (1987) requires that a hearing request be received "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 29, 2001, 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 31 days 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 or a CHANGE IN PROPOSED RULE, the PROPOSED RULE filing 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 *Utah Code* Section 63-46a-4 (1996); and *Utah Administrative Code* 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.

Commerce, Occupational and Professional Licensing

R156-44a

Nurse Midwife Practice Act Rules

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23734
FILED: 05/07/2001, 14:24
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division needs to remove the requirement for quality review in accordance with changes made to the Nurse Midwife Practice Act, Title 58, Chapter 44a, as a result of S.B. 197. (**DAR Note:** S.B. 197 can be found at 2001 Utah Laws 268 and was effective on April 30, 2001.)

SUMMARY OF THE RULE OR CHANGE: In Section R156-44a-303, the reference to participation in a quality review program is deleted. Section R156-44a-304 with respect to quality review programs is deleted in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-44a-101; and Subsections 58-1-106(1) and 58-1-202(1)

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: The Division will incur minimal costs, less than $50, to reprint the rule once the proposed changes are made effective. Any costs incurred will be absorbed in the Division's current budget.
❖LOCAL GOVERNMENTS: Proposed rule does not apply to local governments.
❖OTHER PERSONS: Certified nurse midwives will not be mandated to participate in quality review programs in addition to any program in which they may already be participating, thus there will be a savings to licensed certified nurse midwives which could be $500 per year per certified nurse midwife or $46,000 based on 92 licensed certified nurse midwives at $500 each.
COMPLIANCE COSTS FOR AFFECTED PERSONS: Certified nurse midwives will not be mandated to participate in quality review programs in addition to any program in which they may already be participating, thus there will be a savings to licensed certified nurse midwives which could be $500 per year per licensee.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Since certified nurse midwives will not be required to participate in a quality review program apart from any other program in which they may already be involved, it is estimated that there will be a cost saving to licensed certified nurse midwives in the range of $500 a year per licensee. Ted Boyer, Executive Director

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Commerce
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Fourth Floor, Heber M. Wells Building
160 East 300 South
PO Box 146741
Salt Lake City, UT 84114-6741, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Laura Poe at the above address, by phone at (801) 530-6789, by FAX at (801) 530-6511, or by Internet E-mail at brdopl.lpoe@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 07/02/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 07/03/2001

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing.
R156-44a. Nurse Midwife Practice Act Rules.
R156-44a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licensees under Title 58, Chapter 44a is established by rule in Section R156-1-308.

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

(3) Each applicant for licensure renewal shall [~~comply with the following continuing competence requirements:~~

~~(a)~~]hold a valid certification from the American College of Nurse Midwives Certification Council, Inc[~~; and~~

~~(b) actively participate in a quality review program defined in Section R156-44a-304~~].

[~~**R156-44a-304. Quality Review Program.**~~

~~In accordance with Subsection 58-44a-303(2)(c), quality review programs must meet the following criteria for division approval.~~

~~(1) The program shall consist of a program provider (provider), program staff, and CNMs, and shall be under the direction of the quality review provider.~~

~~(2) The provider shall clearly demonstrate that its personnel have the knowledge and expertise in the practice of nurse midwifery and quality review to permit the provider to competently conduct a quality review program.~~

~~(3) The review process shall be conducted on a regular, systematic basis.~~

~~(4) A quality review program shall provide in its agreement between the provider and the licensee that:~~

~~(a) Upon a finding of gross incompetence, gross negligence, or a pattern of incompetence or negligence, the provider shall submit its findings to the division for appropriate action.~~

~~(b) If the licensee fails to substantially comply with a corrective action plan determined appropriate by the provider after a negative review by the provider, said failure shall be reported to the division for appropriate action.~~

~~(c) The provider shall make available to the division the results of a quality review upon the proper issuance of a subpoena by the division.~~]

KEY: licensing, midwifery, certified nurse midwife*
[~~October 22, 1998~~]2001 **58-1-106(1)**
Notice of Continuation July 22, 1999 **58-1-202(1)**
58-44a-101

Commerce, Occupational and Professional Licensing

R156-46a-308

Quality Assurance Program

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23735
FILED: 05/07/2001, 14:24
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division needs to remove the requirement for quality review in accordance with changes made to the Hearing Instrument Specialist Licensing Act, Title 58, Chapter 46a, as a result of S.B. 197.
(**DAR Note:** S.B. 197 can be found at 2001 Utah Laws 268 and was effective on April 30, 2001.)

SUMMARY OF THE RULE OR CHANGE: Section R156-46a-308 with respect to quality review programs is deleted in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-46a-101; and Subsections 58-1-106(1) and 58-1-202(1)

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: The Division will incur minimal costs, less than $50, to reprint the rule once the proposed changes are made effective. Any costs incurred will be absorbed in the Division's current budget.
❖LOCAL GOVERNMENTS: Proposed rule does not apply to local governments.
❖OTHER PERSONS: Hearing instrument specialists will not be mandated to participate in quality review programs in addition to any program in which they may already be participating, thus there will be a savings to licensed hearing instrument specialists which could be $500 per year per hearing instrument specialist or $35,500 based on 71 licensed hearing instrument specialists at $500 each.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Hearing instrument specialists will not be mandated to participate in quality review programs in addition to any program in which they may already be participating, thus there will be a savings to licensed hearing instrument specialists which could be $500 per year per licensee.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Since hearing instrument specialists will not be required to participate in a quality review program apart from any other program in which they may already be involved, it is estimated that there will be a cost saving to licensed hearing instrument specialists in the range of $500 a year per licensee. Ted Boyer, Executive Director

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THIS RULE MAY BECOME EFFECTIVE ON: 07/03/2001

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing.
R156-46a. Hearing Instrument Specialist Licensing Act Rules.
[**~~R156-46a-308. Quality Assurance Program.~~**

~~The approved quality assurance program as set forth in Section 58-46a-308 is defined, clarified, and established as follows.~~

~~(1) The quality assurance program shall consist of a quality assurance provider, quality assurance reviewers, and the subscribing hearing instrument specialists and shall be under the direction of the quality assurance provider.~~

~~(2) The quality assurance provider shall clearly demonstrate that its personnel have such knowledge and expertise in the practice of a hearing instrument specialist and quality assurance to permit the quality assurance provider to competently conduct a hearing instrument specialist quality assurance program.~~

~~(3) The quality assurance provider shall submit a written document to the division for prior approval which shall:~~

~~(a) outline the quality assurance program in detail;~~

~~(b) set forth the standards and audit criteria against which the hearing instrument specialist will be reviewed;~~

~~(c) establish the criteria for selection of those persons who will be accepted to perform quality assurance review;~~
~~(d) document the standards for reporting the results of the quality assurance review; and~~
~~(e) document corrective action procedures.~~
~~(4) The quality assurance provider shall submit evidence satisfactory to the division that it can and will conduct the quality assurance program objectively and that the quality assurance reviewers and any others associated with the quality assurance program are independent of and unbiased with respect to any individual subjected to review.~~
~~(5) The contract between the quality assurance provider and its subscribing hearing instrument specialists shall provide that the quality assurance review process be conducted not less frequently than once in every three years.~~
~~(6) The primary emphasis of the quality assurance program shall be educational.~~
~~(7) A quality assurance provider, to obtain approval from the division, shall provide in its agreement between the provider and subscribing hearing instrument specialist that:~~
~~(a) upon a finding of gross incompetence, the provider shall provide its findings to the division for appropriate action;~~
~~(b) if the subscribing hearing instrument specialist fails to substantially comply with a plan of correction determined appropriate by the provider following quality assurance review by the provider, the subscriber will suspend the subscribing hearing instrument specialist from that provider's quality review program and will report such suspension to the division; and~~
~~(c) the provider will make available to the division the results of a quality review upon the proper issuance of a Subpoena Duces Tecum by the division in accordance with the provisions of Title 58, Chapter 1.~~
~~(8) Any fees charged for participation in the quality assurance program shall be reasonable and necessary and shall be submitted by the quality assurance provider to the division for approval prior to implementation or change.~~]

KEY: licensing, hearing aids
[~~1994~~]2001 **58-1-106(1)**
Notice of Continuation August 26, 1999 **58-1-202(1)**
58-46a-101

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Commerce, Occupational and Professional Licensing

R156-68-305

Quality Review Program

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23736
FILED: 05/07/2001, 14:24
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division needs to remove the requirement for quality review in accordance with changes made to the Osteopathic Medical Practice Act, Title 58, Chapter 68, as a result of S.B. 197. (**DAR Note:** S.B. 197 can found at 2001 Utah Laws 268 and was effective April 30, 2001.)

SUMMARY OF THE RULE OR CHANGE: Section R156-68-305 with respect to quality review programs is deleted in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-68-101; and Subsections 58-1-106(1) and 58-1-202(1)

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: The Division will incur minimal costs, less than $50, to reprint the rule once the proposed changes are made effective. Any costs incurred will be absorbed in the Division's current budget.
❖LOCAL GOVERNMENTS: Proposed rule does not apply to local governments.
❖OTHER PERSONS: Osteopathic physicians will not be mandated to participate in quality review programs in addition to any program in which they may already be participating, thus there will be a savings to licensed osteopathic physicians which could be $500 per year per osteopathic physician or $91,000 based on 182 licensed osteopathic physicians at $500 each.
COMPLIANCE COSTS FOR AFFECTED PERSONS: Osteopathic physicians will not be mandated to participate in quality review programs in addition to any program in which they may already be participating, thus there will be a savings to licensed osteopathic physicians which could be $500 per year per osteopathic physician.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Since osteopathic physicians will not be required to participate in a quality review program apart from any other program in which they may already be involved, it is estimated that there will be a cost saving to licensed osteopathic physicians in the range of $500 a year per osteopathic physician. Ted Boyer, Executive Director

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THIS RULE MAY BECOME EFFECTIVE ON: 07/03/2001

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing.
R156-68. Utah Osteopathic Medical Practice Act Rules.
[~~**R156-68-305. Quality Review Program.**~~

~~In accordance with Subsection 58-68-304(2), a quality review program shall be approved based on the following criteria:~~

~~(a) the quality review program shall consist of a provider, reviewers, and participating physicians;~~

~~(b) program personnel shall have such knowledge and expertise to permit the provider to competently conduct a quality review program;~~

~~(c) the provider shall conduct the program objectively, showing no bias with respect to any individual subjected to review;~~

~~(d) the provider shall provide in its agreement with the subscribing physicians that:~~

~~(i) upon a finding of gross incompetence in the practice of osteopathic medicine, the provider shall report its findings to the division and the board for appropriate action;~~

~~(ii) if the subscribing physician fails to substantially comply with a plan of corrective action determined appropriate by the provider following quality review, the provider shall report such to the division and the board;~~

~~(iii) the provider shall make available to the division and the board the results of a quality review upon the proper issuance of a Subpoena Duces Tecum by the division in accordance with the provisions if Title 58, Chapter 1; and~~

~~(e) any fees charged by the quality review program shall be reasonable and necessary.~~]

KEY: osteopaths, licensing, osteopathic physician*
[~~June 4, 1998~~]2001 **58-1-106(1)**
Notice of Continuation July 23, 1998 **58-1-202(1)**
58-68-101

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Commerce, Occupational and Professional Licensing
R156-69-305
Continuous Quality Improvement Program

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23737
FILED: 05/07/2001, 14:24
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division needs to remove the requirement for quality review in accordance with changes made to the Dentist and Dental Hygienist Practice Act, Title 58, Chapter 69, as a result of S.B. 197.
(**DAR Note:** S.B. 197 can be found at 2001 Utah Laws 268 and was effective on April 30, 2001.)

SUMMARY OF THE RULE OR CHANGE: Section R156-69-305 with respect to quality review programs is deleted in its entirety.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-69-101; and Subsections 58-1-106(1) and 58-1-202(1)

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: The Division will incur minimal costs, less than $50, to reprint the rule once the proposed changes are made effective. Any costs incurred will be absorbed in the Division's current budget.
❖LOCAL GOVERNMENTS: Proposed rule does not apply to local governments.
❖OTHER PERSONS: Dentists and dental hygienists will not be mandated to participate in quality review programs in addition to any program in which they may already be participating, thus there will be a savings to licensed dentists and dental hygienists which could be $500 per year per licensee or $1,589,000 based on 3,178 licensed dentists and dental hygienists at $500 each.
COMPLIANCE COSTS FOR AFFECTED PERSONS: Dentists and dental hygienists will not be mandated to participate in quality review programs in addition to any program in which they may already be participating, thus there will be a savings to licensed dentists and dental hygienists which could be $500 per year per licensee.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Since dentists and dental hygienists will not be required to participate in a quality review program apart from any other program in which they may already be involved, it is estimated that there will be a cost saving to licensed dentists and dental hygienists in the range of $500 a year per licensee. Ted Boyer, Executive Director

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THIS RULE MAY BECOME EFFECTIVE ON: 07/03/2001

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing.
R156-69. Dentist and Dental Hygienist Practice Act Rules.
[~~**R156-69-305. Continuous Quality Improvement Program.**~~

~~In accordance with Subsection 58-69-305(2), the criteria for approval of continuous quality improvement programs are established as follows:~~

~~(1) The continuous quality improvement program shall be educational in nature.~~

~~(2) Program personnel shall have such knowledge and expertise as to permit the competent conduct of a continuous quality improvement program.~~

~~(3) The program needs to address objectivity, reliability, and validity in both design and implementation.~~

~~(4) The program shall have an agreement with the participating dentists or dental hygienists and such agreement shall provide that:~~

~~(a) upon a finding of gross incompetence in the practice of dentistry or dental hygiene, the program shall report its findings to the division for appropriate action;~~

~~(b) if the subscribing licensee fails to substantially comply with a plan of corrective action determined appropriate by the program following quality review, the program shall report such to the division and the board; and~~

~~(c) the program shall make available to the division and the board the results of a quality review upon the proper issuance of a Subpoena Duces Tecum by the division in accordance with the provisions if Title 58, Chapter 1.~~

~~(5) Any fees charged by the quality improvement program shall be reasonable and necessary.~~]

KEY: licensing, dentists, dental hygienists*
[~~February 15,~~]2001 **58-69-101**
58-1-106(1)
58-1-202(1)

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Commerce, Occupational and Professional Licensing
R156-71
Naturopathic Physician Practice Act Rules

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23738
FILED: 05/07/2001, 14:24
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division needs to remove the requirement for quality review in accordance with changes made to the Naturopathic Physician Practice Act, Title 58, Chapter 71, as a result of S.B. 197.
(**DAR Note:** S.B. 197 can be found at 2001 Utah Laws 268 and was effective April 30, 2001.)

SUMMARY OF THE RULE OR CHANGE: Section R156-71-304a with respect to quality review programs is deleted in its entirety. In Section R156-71-502, failure to comply with the recommendations of a quality assurance corrective action plan was deleted as an unprofessional conduct definition.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-71-101, and Subsections 58-1-106(1) and 58-1-202(1)

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: The Division will incur minimal costs, less than $50, to reprint the rule once the proposed changes are made effective. Any costs incurred will be absorbed in the Division's current budget.
❖LOCAL GOVERNMENTS: Proposed rule does not apply to local governments.
❖OTHER PERSONS: Naturopathic physicians will not be mandated to participate in quality review programs in addition to any program in which they may already be participating, thus there will be a savings to licensed naturopathic physicians which could be $500 per year per naturopathic physician or $5,000 based on 10 licensed naturopathic physicians at $500 each.
COMPLIANCE COSTS FOR AFFECTED PERSONS: Naturopathic physicians will not be mandated to participate in quality review programs in addition to any program in which they may already be participating, thus there will be a savings to licensed naturopathic physicians which could be $500 per year per naturopathic physician.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Since naturopathic physicians will not be required to participate in a quality review program apart from any other program in which they may already be involved, it is estimated that there will be a cost saving to licensed naturopathic physicians in the range of $500 a year per licensee. Ted Boyer, Executive Director

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THIS RULE MAY BECOME EFFECTIVE ON: 07/03/2001

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing.
R156-71. Naturopathic Physician Practice Act Rules.
[~~**R156-71-304a. Quality Assurance Program Criteria - Approval.**~~

~~(1) In accordance with Subsection 58-71-304(2)(c), to be approved, a quality assurance program shall:~~

~~(a) demonstrate that reviewers:~~

~~(i) have knowledge and expertise in the practice of naturopathic medicine;~~

~~(ii) are competent to conduct a quality assurance program; and~~

~~(iii) are objective, unbiased and independent with respect to any individual subjected to the review;~~

~~(b) demonstrate that any other persons associated with the program are objective, unbiased and independent;~~

~~(c) have a program agreement or contract that as a minimum contains:~~

~~(i) a statement that the primary emphasis of the program is educational;~~

~~(ii) a provision to conduct a review process not less than once every two years;~~

~~(iii) a reasonable fee schedule;~~

~~(iv) audit criteria against which the licensee will be reviewed;~~

~~(v) standards for reporting the results of the review; and~~

~~(vi) procedures for issuance of and follow up to a corrective action plan that includes:~~

~~(A) reporting to the division a finding of gross incompetence; or~~

~~(B) reporting to the division a licensee who fails to substantially comply with the recommendations of the corrective action plan.~~

~~(2) The provider shall make available to the division the results of the review upon the proper issuance of a Subpoena Duces Tecum by the division in accordance with the provisions of Title 58, Chapter 1.~~]

R156-71-502. Unprofessional Conduct.
"Unprofessional conduct" includes[~~:~~

~~(1) failure to comply with the recommendations of a quality assurance corrective action plan; and~~

~~(2)~~] failure to comply with the approved formulary.

KEY: licensing, naturopaths, naturopathic physician*
[~~June 15, 2000~~]2001 **58-71-101**
58-1-106(1)
58-1-202(1)

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Commerce, Occupational and Professional Licensing
R156-73
Chiropractic Physician Practice Act Rules

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23743
FILED: 05/10/2001, 16:49
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division needed to add a section that was inadvertently left out of the Division's rule filing affecting this rule which was filed in January 2001.
(**DAR Note:** The amendment referred to was originally published in the January 15, 2001, issue of the *Utah State Bulletin* under DAR No. 23390 and was effective February 15, 2001.)

SUMMARY OF THE RULE OR CHANGE: In Section R156-73-102, Definitions: The definition for "clinical acupuncture" was amended to delete the number of classroom hours as the number of hours is clarified in Section R156-73-601 which is being added to the rules. Section R156-73-601 is being added to define the requirements for a chiropractic physician to demonstrate competency and training in order to perform clinical acupuncture. Subsection R156-73-601(1) provides that a chiropractic physician complete a recognized course sponsored by an institution or organization approved to sponsor continuing education, as defined in Section R156-73-303b, consisting of at least 100 classroom hours of instruction and passing a certifying examination. Subsection R156-73-601(2) provides that, beginning January 1, 2002, for chiropractic physicians who have not met the requirements provided in Subsection R156-73-601(1), the following is required to demonstrate competency and training in order to perform clinical acupuncture: completing a recognized course sponsored by an institution or organization approved to sponsor continuing education, as defined in Section R156-73-303b, consisting of at least 200 classroom hours of instruction and passing a certifying examination; or completing a recognized course sponsored by an institution or organization approved to sponsor continuing education, as defined in Section R156-73-303b, consisting of at least 100 classroom hours of instruction, passing a certifying examination, and completing 100 hours of clinical experience under the indirect supervision of a licensed health care

provider who has met the requirements in Subsection R156-73-303b(1) or R156-73-303b(2)(a), and has practiced clinical acupuncture for at least 2 years.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-73-101; and Subsections 58-1-106(1) and 58-1-202(1)

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: The Division will only incur minimal costs, less than $100, to reprint the rule once the proposed changes are made effective. Any costs involved will be absorbed in the Division's current budget.
❖LOCAL GOVERNMENTS: Proposed amendments to the rule do not apply to local governments
❖OTHER PERSONS: The costs to licensed chiropractic physicians and the public consumer were outlined in the Division's prior rule filing affecting this rule. However, for ease in reading, that information is provided again as follows: Licensed chiropractic physicians: Since the practice of clinical acupuncture by chiropractic physicians is voluntary, the costs to obtain the required training and passing the certification examination would only apply to those chiropractic physicians who wanted to provide acupuncture services as a part of their practice. The Division anticipates that the cost of the required training and certification examination would be between $1,700-$3,400 ($17 per hour of instruction with number of classroom hours ranging from 100-200 hours, depending on which training avenue was pursued by the chiropractic physician). It should be noted that the acupuncture training hours would count towards a chiropractic physician's continuing education hours that are required every two years. Public consumer: Additional costs incurred by the chiropractic physician to obtain the required acupuncture training may or may not be passed on to the consumer as higher fees. The consumer would benefit as they will have the option to receive acupuncture treatment from a trained, certified chiropractic physician, thus increasing access to health care.
COMPLIANCE COSTS FOR AFFECTED PERSONS: Licensed chiropractic physicians: Since the practice of clinical acupuncture by chiropractic physicians is voluntary, the costs to obtain the required training and passing the certification examination would only apply to those chiropractic physicians who wanted to provide acupuncture services as a part of their practice. The Division anticipates that the cost of the required training and certification examination would be between $1,700-$3,400 ($17 per hour of instruction with number of classroom hours ranging from 100-200 hours, depending on which training avenue was pursued by the chiropractic physician). It should be noted that the acupuncture training hours would count towards a chiropractic physician's continuing education hours that are required every two years. Public consumer: Additional costs incurred by the chiropractic physician to obtain the required acupuncture training may or may not be passed on to the consumer as higher fees. The consumer would benefit as they will have the option to receive acupuncture treatment from a trained, certified chiropractic physician, thus increasing access to health care.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The cost for acupuncture classes will be borne by the chiropractic physician if the chiropractic physician chooses to complete the training and examination necessary to perform clinical acupuncture in his chiropractic practice. The classes will count as continuing education under the chiropractic rules. The cost will be approximately $15-$17 per hour of instruction. The cost of compliance may be passed on the consumer. The consumer will have the option to receive acupuncture treatment from a trained, certified chiropractic physician, thus increasing access to health care. Ted Boyer, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Commerce
Occupational and Professional Licensing
Fourth Floor, Heber M. Wells Building
160 East 300 South
PO Box 146741
Salt Lake City, UT 84114-6741, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Daniel T. Jones at the above address, by phone at (801) 530-6767, by FAX at (801) 530-6511, or by Internet E-mail at brdopl.dtjones@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 07/02/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 07/03/2001

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing.
R156-73. Chiropractic Physician Practice Act Rules.
R156-73-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 73, as used in Title 58, Chapters 1 and 73, or these rules:

(1) "Clinical acupuncture" means the application of mechanical, thermal, manual, and/or electrical stimulation of acupuncture points and meridians, including the insertion of needles, by a chiropractic physician that has demonstrated competency and training by completing a recognized course that is sponsored by an institution or organization approved to sponsor continuing education, as defined in Section R156-73-303b[~~, that consists of at least 200 postgraduate classroom hours of instruction and passing a certifying examination~~].

(2) "Indirect supervision" means the supervising licensed chiropractic physician shall be available for immediate voice contact by telephone, radio, or other means and shall provide daily face to face consultation and review of cases at the chiropractic facility for the chiropractic intern, temporarily licensed or unlicensed person being supervised.

(3) "Preceptorship" means a supervised training program established by a written contract between a chiropractic college or university whose program or institution is accredited by the Council

on Chiropractic Education, Inc., and a licensee for the purpose of providing chiropractic training to a student enrolled in the chiropractic college or university while under the supervision of a licensee.

(4) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 73, is further defined in accordance with Subsection 58-1-203(5), in Section R156-73-501.

R156-73-601. Scope of Practice.

The requirements to demonstrate competency and training to perform clinical acupuncture include:

(1) completing a recognized course sponsored by an institution or organization approved to sponsor continuing education, as defined in Section R156-73-303b, consisting of at least 100 classroom hours of instruction and passing a certifying examination.

(2) Beginning January 1, 2002, for licensees who have not previously met the requirements listed in Subsection (1), the requirements to demonstrate competency and training to perform clinical acupuncture shall be:

(a) completing a recognized course sponsored by an institution or organization approved to sponsor continuing education, as defined in Section R156-73-303b, consisting of at least 200 classroom hours of instruction and passing a certifying examination; or

(b) completing a recognized course sponsored by an institution or organization approved to sponsor continuing education, as defined in Section R156-73-303b, consisting of at least 100 classroom hours of instruction, passing a certifying examination, and completing 100 hours of clinical experience under the indirect supervision of a licensed health care provider who has met the requirements in Subsection (1) or (2)(a), and has practiced clinical acupuncture for at least two years.

KEY: chiropractors, licensing, chiropractic physician*
[~~February 15,~~]2001 **58-73-101**
58-1-106(1)
58-1-202(1)

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Environmental Quality, Air Quality
R307-101-2
Definitions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23759
FILED: 05/15/2001, 10:26
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To bring definitions into alignment with federal rules (see separate filing for R307-405-1).
(**DAR Note:** The proposed amendment for R307-405-1 is under DAR No. 23760 in this *Bulletin*.)

SUMMARY OF THE RULE OR CHANGE: The current major source permitting rules may require sources of air pollution that make a major modification to install more stringent pollution control equipment. This amendment aligns the Utah rule with a 1992 federal rule revision that adds a new definition for Major Modification and other terms used in the definition of Major Modification. The new definition excludes, so long as there is no emissions increase, pollution control projects at existing electric utility steam generating units. Also excluded are the installation, operation, cessation, or removal of a temporary clean coal demonstration projects. Finally, the new definition requires that determining whether a modification at an electric utility steam generating unit is major or not is done by comparing present actual emissions to future actual emissions.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-2-104
FEDERAL REQUIREMENT FOR THIS RULE: 40 CFR 51.165 and 51.166

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: No change. The state's costs for reviewing and approving permit modifications are covered by fees based on the size and complexity of the modification.
❖LOCAL GOVERNMENTS: Local governments will be affected only if they make major modifications at their electric utility steam generating units, or install a clean coal demonstration project. In such cases, they may not be required to obtain an approval order, saving time and money. Exact savings would vary from project to project.
❖OTHER PERSONS: A source will be affected only if making major modifications at electric utility steam generating units, or installing a clean coal demonstration project. In such cases, the source may not be required to obtain an approval order, saving time and money. Exact savings would vary from project to project.
COMPLIANCE COSTS FOR AFFECTED PERSONS: A source will be affected only if making major modifications at electric utility steam generating units, or installing a clean coal demonstration project. In such cases, the source may not be required to obtain an approval order, saving time and money. Exact savings would vary from project to project.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Amending the rule will allow sources to more easily and cheaply install pollution control projects and clean coal demonstration projects. It also allows more realistic determination of whether a modification at an electric utility steam generating unit fits the definition of Major Modification. Dianne R. Nielson, Ph.D.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Environmental Quality
Air Quality
150 North 1950 West
PO Box 144820
Salt Lake City, UT 84114-4820, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jan Miller at the above address, by phone at (801) 536-4042, by FAX at (801) 536-4099, or by Internet E-mail at jmiller@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 07/02/2001; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 06/21/2001, 3:00 p.m., DEQ Bldg, Room 201, 168 North 1950 West, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 07/12/2001

AUTHORIZED BY: Cheryl Heying, Planning Branch Manager

R307. Environmental Quality, Air Quality.
R307-101. General Requirements.
R307-101-2. Definitions.

Except where specified in individual rules, definitions in R307-101-2 are applicable to all rules adopted by the Air Quality Board.

"Actual Area of Nonattainment" means an area which is shown by monitored data or modeling actually to exceed the National Ambient Air Quality Standards (Boundaries are established in the Utah State Implementation Plan).

"Actual Emissions" means the actual rate of emissions of a pollutant from [~~a source~~]an emissions unit determined as follows:

(1) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the [~~source~~]unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operations. The Executive Secretary shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the [~~source's~~]unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(2) The Executive Secretary may presume that source-specific allowable emissions for the [~~source~~]unit are equivalent to the actual emissions of the [~~source~~]unit.

(3) For any [~~source~~]emission unit, other than an electric utility steam generating unit specified in (4), which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the [~~source~~]unit on that date.

(4) For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the executive secretary, on an annual basis for a period of 5 years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed 10 years, may be required by the executive secretary if the executive secretary determines such a period to be more representative of normal source post-change operations.

"Acute Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, pages 15 - 72 (2000)."

"Air Contaminant" means any particulate matter or any gas, vapor, suspended solid or any combination of them, excluding steam and water vapors (Section 19-2-102(1)).

"Air Contaminant Source" means any and all sources of emission of air contaminants whether privately or publicly owned or operated (Section 19-2-102(2)).

"Air Pollution" means the presence in the ambient air of one or more air contaminants in such quantities and duration and under conditions and circumstances, as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or use of property as determined by the standards, rules and regulations adopted by the Air Quality Board (Section 19-2-104).

"Air Quality Related Values" means, as used in analyses under R307-401-4(1), Public Notice, those special attributes of a Class I area, assigned by a federal Land Manager, that are adversely affected by air quality.

"Allowable Emissions" means the emission rate of a source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits which restrict the operating rate, or hours of operation, or both) and the emission limitation established pursuant to R307-401-6.

"Ambient Air" means the surrounding or outside air (Section 19-2-102(4)).

"Appropriate Authority" means the governing body of any city, town or county.

"Asphalt or Asphalt Cement" means the dark brown to black cementitious material (solid, semisolid, or liquid in consistency) of which the main constituents are bitumens which occur naturally or as a residue of petroleum refining.

"Atmosphere" means the air that envelops or surrounds the earth and includes all space outside of buildings, stacks or exterior ducts.

"Authorized Local Authority" means a city, county, city-county or district health department; a city, county or combination fire department; or other local agency duly designated by appropriate authority, with approval of the state Department of Health; and other lawfully adopted ordinances, codes or regulations not in conflict therewith.

"Baseline Date":

(1) Major source baseline date means:

(a) In the case of particulate matter and sulfur dioxide, January 6, 1975, and

(b) In the case of nitrogen dioxide, February 8, 1988.

(2) Minor source baseline date means the earliest date after the trigger date on which the first complete application under 40 CFR 52.21 or R307-405 is submitted by a major source or major modification subject to the requirements of 40 CFR 52.21 or R307-405. The minor source baseline is the date after which emissions from all new or modified sources consume or expand increment, including emissions from major and minor sources as well as any or all general commercial, residential, industrial, and other growth. The trigger date is:

(a) In the case of particulate matter and sulfur dioxide, August 7, 1977, and

(b) In the case of nitrogen dioxide, February 8, 1988.

"Best Available Control Technology (BACT)" means an emission limitation and/or other controls to include design, equipment, work practice, operation standard or combination thereof, based on the maximum degree or reduction of each pollutant subject to regulation under the Clean Air Act and/or the Utah Air Conservation Act emitted from or which results from any emitting installation, which the Air Quality Board, on a case-by-case basis taking into account energy, environmental and economic impacts and other costs, determines is achievable for such installation through application of production processes and available methods, systems and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall applications of BACT result in emissions of any pollutants which will exceed the emissions allowed by Section 111 or 112 of the Clean Air Act.

"Board" means Air Quality Board. See Section 19-2-102(6)(a).

"Breakdown" means any malfunction or procedural error, to include but not limited to any malfunction or procedural error during start-up and shutdown, which will result in the inoperability or sudden loss of performance of the control equipment or process equipment causing emissions in excess of those allowed by approval order or Title R307.

"BTU" means British Thermal Unit, the quantity of heat necessary to raise the temperature of one pound of water one degree Fahrenheit.

"Calibration Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is the same known upscale value.

"Carbon Adsorption System" means a device containing adsorbent material (e.g., activated carbon, aluminum, silica gel), an inlet and outlet for exhaust gases, and a system for the proper disposal or reuse of all VOC adsorbed.

"Carcinogenic Hazardous Air Pollutant" means any hazardous air pollutant that is classified as a known human carcinogen (A1) or suspected human carcinogen (A2) by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, pages 15 - 72 (2000)."

"Chronic Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - time weighted average (TLV-TWA) having no threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, pages 15 - 72 (2000)."

"Clean Air Act" means federal Clean Air Act as amended in 1990.

"Clean Coal Technology" means any technology, including technologies applied at the precombustion, combustion, or post combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

"Clean Coal Technology Demonstration Project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

"Clearing Index" means an indicator of the predicted rate of clearance of ground level pollutants from a given area. This number is calculated by the National Weather Service from daily measurements of temperature lapse rates and wind speeds from ground level to 10,000 feet. The State has been divided into three separate air quality areas for purposes of the clearing index system:

(1) Area 1 includes those valleys below 6500 feet above sea level and west of the Wasatch Mountain Range and extending south through the Wasatch and Aquarius Plateaus to the Arizona border. Included are the Salt Lake, Utah, Skull and Escalante Valleys and valleys of the Sevier River Drainage.

(2) Area 2 includes those valleys below 6500 feet above sea level and east of the Wasatch Mountain Range. Included are Cache Valley, the Uintah Basin, Castle Valley and valleys of the Green, Colorado, and San Juan Rivers.

(3) Area 3 includes all valleys and areas above 6500 feet above sea level.

"Commence" as applied to construction of a major source or major modification means that the owner or operator has all necessary pre-construction approvals or permits and either has:

(1) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

"Compliance Schedule" means a schedule of events, by date, which will result in compliance with these regulations.

"Construction" means any physical change or change in the method of operation including fabrication, erection, installation, demolition, or modification of a source which would result in a change in actual emissions.

"Control Apparatus" means any device which prevents or controls the emission of any air contaminant directly or indirectly into the outdoor atmosphere.

"Department" means Utah State Department of Environmental Quality. See Section 19-1-103(1).

"Electric Utility Steam Generating Unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emission" means the act of discharge into the atmosphere of an air contaminant or an effluent which contains or may contain an air contaminant; or the effluent so discharged into the atmosphere.

"Emissions Information" means, with reference to any source operation, equipment or control apparatus:

(1) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics related to air quality of any air contaminant which has been emitted by the source operation, equipment, or control apparatus;

(2) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any air contaminant which, under an applicable standard or limitation, the source operation was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source operation), or any combination of the foregoing; and

(3) A general description of the location and/or nature of the source operation to the extent necessary to identify the source operation and to distinguish it from other source operations (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source operation).

"Emission Limitation" means a requirement established by the Board or the Administrator, EPA, which limits the quantity, rate or concentration of emission of air pollutants on a continuous emission reduction including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction (Section 302(k)).

"Emissions Unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Clean Air Act.

"Enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the State Implementation Plan and R307, any permit requirements established pursuant to 40 CFR 52.21 or R307-401.

"EPA" means Environmental Protection Agency.

"Executive Director" means the Executive Director of the Utah Department of Environmental Quality. See Section 19-1-103(2).

"Executive Secretary" means the Executive Secretary of the Board.

"Existing Installation" means an installation, construction of which began prior to the effective date of any regulation having application to it.

"Facility" means machinery, equipment, structures of any part or accessories thereof, installed or acquired for the primary purpose of controlling or disposing of air pollution. It does not include an air conditioner, fan or other similar device for the comfort of personnel.

"Fireplace" means all devices both masonry or factory built units (free standing fireplaces) with a hearth, fire chamber or similarly prepared device connected to a chimney which provides the operator with little control of combustion air, leaving its fire chamber fully or at least partially open to the room. Fireplaces include those devices with circulating systems, heat exchangers, or draft reducing doors with a net thermal efficiency of no greater than twenty percent and are used for aesthetic purposes.

"Fugitive Dust" means particulate, composed of soil and/or industrial particulates such as ash, coal, minerals, etc., which becomes airborne because of wind or mechanical disturbance of surfaces. Natural sources of dust and fugitive emissions are not fugitive dust within the meaning of this definition.

"Fugitive Emissions" means emissions from an installation or facility which are neither passed through an air cleaning device nor vented through a stack or could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Garbage" means all putrescible animal and vegetable matter resulting from the handling, preparation, cooking and consumption of food, including wastes attendant thereto.

"Gasoline" means any petroleum distillate, used as a fuel for internal combustion engines, having a Reid vapor pressure of 4 pounds or greater.

"Hazardous Air Pollutant (HAP)" means any pollutant listed by the EPA as a hazardous air pollutant in conformance with Section 112(b) of the Clean Air Act. A list of these pollutants is available at the Division of Air Quality.

"Heavy Fuel Oil" means a petroleum product or similar material with a boiling range higher than that of diesel fuel.

"Household Waste" means any solid or liquid material normally generated by the family in a residence in the course of ordinary day-to-day living, including but not limited to garbage, paper products, rags, leaves and garden trash.

"Incinerator" means a combustion apparatus designed for high temperature operation in which solid, semisolid, liquid, or gaseous combustible wastes are ignited and burned efficiently and from which the solid and gaseous residues contain little or no combustible material.

"Indirect Source" means a building, structure or installation which attracts or may attract mobile source activity that results in emission of a pollutant for which there is a national standard.

"Installation" means a discrete process with identifiable emissions which may be part of a larger industrial plant. Pollution equipment shall not be considered a separate installation or installations.

"LPG" means liquified petroleum gas such as propane or butane.

"Major Modification" means any physical change in or change in the method of operation of a major source that would result in a significant net emissions increase of any pollutant. A net emissions increase that is significant for volatile organic compounds shall be considered significant for ozone. Within Salt Lake and Davis Counties or any nonattainment area for ozone, a net emissions increase that is significant for nitrogen oxides shall be considered significant for ozone. Within areas of nonattainment for PM10, a significant net emission increase for any PM10 precursor is also a significant net emission increase for PM10. A physical change or change in the method of operation shall not include:

(1) routine maintenance, repair and replacement;

(2) use of an alternative fuel or raw material by reason of an order under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(3) use of an alternative fuel by reason of an order or rule under section 125 of the federal Clean Air Act;

(4) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(5) use of an alternative fuel or raw material by a source:

(a) which the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any enforceable permit condition; or

(b) which the source is otherwise approved to use;

(6) an increase in the hours of operation or in the production rate unless such change would be prohibited under any enforceable permit condition;

(7) any change in ownership at a source

(8) the addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the executive secretary determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

(a) when the executive secretary has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of Title I of the Clean Air Act, if any, and

(b) the executive secretary determines that the increase will cause or contribute to a violation of any national ambient air quality standard or PSD increment, or visibility limitation.

(9) the installation, operation, cessation, or removal of a temporary clean coal demonstration project, provided that the project complies with:

(a) the Utah State Implementation Plan; and

(b) other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

"Major Source" means, to the extent provided by the federal Clean Air Act as applicable to R307:

(1) any stationary source of air pollutants which emits, or has the potential to emit, one hundred tons per year or more of any pollutant subject to regulation under the Clean Air Act; or

(a) any source located in a nonattainment area for carbon monoxide which emits, or has the potential to emit, carbon monoxide in the amounts outlined in Section 187 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 187 of the federal Clean Air Act; or

(b) any source located in Salt Lake or Davis Counties or in a nonattainment area for ozone which emits, or has the potential to emit, VOC or nitrogen oxides in the amounts outlined in Section 182 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 182 of the federal Clean Air Act; or

(c) any source located in a nonattainment area for PM10 which emits, or has the potential to emit, PM10 or any PM10 precursor in the amounts outlined in Section 189 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 189 of the federal Clean Air Act.

(2) any physical change that would occur at a source not qualifying under subpart 1 as a major source, if the change would constitute a major source by itself;

(3) the fugitive emissions and fugitive dust of a stationary source shall not be included in determining for any of the purposes of these R307 rules whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(a) Coal cleaning plants (with thermal dryers);

(b) Kraft pulp mills;

(c) Portland cement plants;

(d) Primary zinc smelters;

(e) Iron and steel mills;

(f) Primary aluminum or reduction plants;

(g) Primary copper smelters;

(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(i) Hydrofluoric, sulfuric, or nitric acid plants;

(j) Petroleum refineries;

(k) Lime plants;

(l) Phosphate rock processing plants;

(m) Coke oven batteries;

(n) Sulfur recovery plants;

(o) Carbon black plants (furnace process);

(p) Primary lead smelters;

(q) Fuel conversion plants;

(r) Sintering plants;

(s) Secondary metal production plants;

(t) Chemical process plants;

(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British Thermal Units per hour heat input;

(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(w) Taconite ore processing plants;

(x) Glass fiber processing plants;

(y) Charcoal production plants;

(z) Fossil fuel-fired steam electric plants of more than 250 million British Thermal Units per hour heat input;

(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the federal Clean Air Act.

"Modification" means any planned change in a source which results in a potential increase of emission.

"National Ambient Air Quality Standards (NAAQS)" means the allowable concentrations of air pollutants in the ambient air specified by the Federal Government (Title 40, Code of Federal Regulations, Part 50).

"Net Emissions Increase" means the amount by which the sum of the following exceeds zero:

(1) any increase in actual emissions from a particular physical change or change in method of operation at a source; and

(2) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable. For purposes of determining a "net emissions increase":

(a) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date five years before construction on the particular change commences; and the date that the increase from the particular change occurs.

(b) An increase or decrease in actual emissions is creditable only if it has not been relied on in issuing a prior approval for the source which approval is in effect when the increase in actual emissions for the particular change occurs.

(c) An increase or decrease in actual emission of sulfur dioxide, nitrogen oxides or particulate matter which occurs before an applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM10 emissions will be used to evaluate this increase or decrease.

(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(e) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) It is enforceable at and after the time that actual construction on the particular change begins; and

(iii) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(iv) It has not been relied on in issuing any permit under R307-401 nor has it been relied on in demonstrating attainment or reasonable further progress.

(f) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

"New Installation" means an installation, construction of which began after the effective date of any regulation having application to it.

"Nonattainment Area" means for any pollutant, "an area which is shown by monitored data or which is calculated by air quality modeling (or other methods determined by the Administrator, EPA to be reliable) to exceed any National Ambient Air Quality Standard for such pollutant" (Section 171, Clean Air Act). Such term includes any area designated as nonattainment under Section 107, Clean Air Act.

"Offset" means an amount of emission reduction, by a source, greater than the emission limitation imposed on such source by these regulations and/or the State Implementation Plan.

"Opacity" means the capacity to obstruct the transmission of light, expressed as percent.

"Open Burning" means any burning of combustible materials resulting in emission of products of combustion into ambient air without passage through a chimney or stack.

"Owner or Operator" means any person who owns, leases, controls, operates or supervises a facility, an emission source, or air pollution control equipment.

"PSD" Area means an area designated as attainment or unclassifiable under section 107(d)(1)(D) or (E) of the federal Clean Air Act.

"PM10 Nonattainment Area" means Salt Lake County, Utah County, or Ogden City.

"PM10 Particulate Matter" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by an EPA reference or equivalent method.

"PM10 Precursor" means any chemical compound or substance which, after it has been emitted into the atmosphere, undergoes chemical or physical changes that convert it into particulate matter, specifically PM10. It includes sulfur dioxide and nitrogen oxides.

"Part 70 Source" means any source subject to the permitting requirements of R307-415.

"Peak Ozone Season" means June 1 through August 31, inclusive.

"Person" means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state. (Subsection 19-2-103(4)).

"Pollution Control Project" means any activity or project at an existing electric utility steam generating unit for purposes of reducing emissions from such unit. Such activities or projects are limited to:

(1) The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;

(2) An activity or project to accommodate switching to a fuel which is less polluting than the fuel used prior to the activity or project, including, but not limited to natural gas or coal reburning, or the cofiring of natural gas and other fuels for the purpose of controlling emissions;

(3) A permanent clean coal technology demonstration project conducted under Title II, sec. 101(d) of the Further Continuing Appropriations Act of 1985 (sec. 5903(d) of title 42 of the United States Code), or subsequent appropriations, up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency; or

(4) A permanent clean coal technology demonstration project that constitutes a repowering project.

"Potential to Emit" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Process Level" means the operation of a source, specific to the kind or type of fuel, input material, or mode of operation.

"Process Rate" means the quantity per unit of time of any raw material or process intermediate consumed, or product generated, through the use of any equipment, source operation, or control apparatus. For a stationary internal combustion unit or any other fuel burning equipment, this term may be expressed as the quantity of fuel burned per unit of time.

"Production Equipment Exhaust System" means a device for collecting and directing out of the work area VOC fugitive emissions from reactor openings, centrifuge openings, and other vessel openings for the purpose of protecting employees from excessive VOC exposure.

"Reactivation of a Very Clean Coal-Fired Electric Utility Steam Generating Unit" means any physical change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(1) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the emission inventory at the time of enactment;

(2) Was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(3) Is equipped with low-NOx burners prior to the time of commencement of operations following reactivation; and

(4) Is otherwise in compliance with the requirements of the Clean Air Act.

"Reactor" means any vat or vessel, which may be jacketed to permit temperature control, designed to contain chemical reactions.

"Reasonable Further Progress" means annual incremental reductions in emission of an air pollutant which are sufficient to provide for attainment of the NAAQS by the date identified in the State Implementation Plan.

"Refuse" means solid wastes, such as garbage and trash.

"Regulated air pollutant" means any of the following:

(a) Nitrogen oxides or any volatile organic compound;

(b) Any pollutant for which a national ambient air quality standard has been promulgated;

(c) Any pollutant that is subject to any standard promulgated under Section 111 of the Act, Standards of Performance for New Stationary Sources;

(d) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act, Stratospheric Ozone Protection;

(e) Any pollutant subject to a standard promulgated under Section 112, Hazardous Air Pollutants, or other requirements established under Section 112 of the Act, including Sections 112(g), (j), and (r) of the Act, including any of the following:

(i) Any pollutant subject to requirements under Section 112(j) of the Act, Equivalent Emission Limitation by Permit. If the Administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the Act;

(ii) Any pollutant for which the requirements of Section 112(g)(2) of the Act (Construction, Reconstruction and Modification) have been met, but only with respect to the individual source subject to Section 112(g)(2) requirement.

"Repowering" means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater water reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(1) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(2) The executive secretary shall give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under section 49 of the Clean Air Act.

"Representative Actual Annual Emissions" means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two-year period after a physical change or change in the method of operation of unit, (or a different consecutive two-year period within 10 years after that change, where the executive secretary determines that such period is more representative of source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the executive secretary shall:

(1) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the State of Federal regulatory authorities, and compliance plans under title IV of the Clean Air Act; and

(2) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

"Residence" means a dwelling in which people live, including all ancillary buildings.

"Residential Solid Fuel Burning" device means any residential burning device except a fireplace connected to a chimney that burns solid fuel and is capable of, and intended for use as a space heater, domestic water heater, or indoor cooking appliance, and has an air-to-fuel ratio less than 35-to-1 as determined by the test procedures prescribed in 40 CFR 60.534. It must also have a useable firebox volume of less than 6.10 cubic meters or 20 cubic feet, a minimum burn rate less than 5 kilograms per hour or 11 pounds per hour as determined by test procedures prescribed in 40 CFR 60.534, and weigh less than 800 kilograms or 362.9 pounds. Appliances that are described as prefabricated fireplaces and are designed to accommodate doors or other accessories that would create the air starved operating conditions of a residential solid fuel burning device shall be considered as such. Fireplaces are not included in this definition for solid fuel burning devices.

"Salvage Operation" means any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, including but not limited to metals, chemicals, shipping containers or drums.

"Secondary Emissions" means emissions which would occur as a result of the construction or operation of a major source or major modification, but do not come from the major source or major modification itself.

Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the source or modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

Fugitive emissions and fugitive dust from the source or modification are not considered secondary emissions.

"Significant" means:

(1) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Carbon monoxide: 100 ton per year (tpy);

Nitrogen oxides: 40 tpy;

Sulfur dioxide: 40 tpy;

PM10 Particulate matter: 15 tpy;

Particulate matter: 25 tpy;

Ozone: 40 tpy of volatile organic compounds;

Lead: 0.6 tpy.

(2) For purposes of R307-405 it shall also additionally mean for:

(a) A rate of emissions that would equal or exceed any of the following rates:

Asbestos: 0.007 tpy;

Beryllium: 0.0004 tpy;

Mercury: 0.1 tpy;

Vinyl Chloride: 1 tpy;

Fluorides: 3 tpy;

Sulfuric acid mist: 7 tpy;

Hydrogen Sulfide: 10 tpy;

Total reduced sulfur (including H2S): 10 tpy;

Reduced sulfur compounds (including H2S): 10 tpy;

Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans): 3.2 grams per year (3.5×10^{-6} tons per year);

Municipal waste combustor metals (measured as particulate matter): 14 megagrams per year (15 tons per year);

Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 36 megagrams per year (40 tons per year);

Municipal solid waste landfill emissions (measured as nonmethane organic compounds): 45 megagrams per year (50 tons per year);

(b) In reference to a net emissions increase or the potential of a source to emit a pollutant subject to regulation under the Clean Air Act not listed in (1) and (2) above, any emission rate.

(c) Notwithstanding the rates listed in (1) and (2) above, any emissions rate or any net emissions increase associated with a major source or major modification, which would construct within 10 kilometers of a Class I area, and have an impact on such area equal to or greater than 1 ug/cubic meter, (24-hour average).

"Solid Fuel" means wood, coal, and other similar organic material or combination of these materials.

"Solvent" means organic materials which are liquid at standard conditions (Standard Temperature and Pressure) and which are used as dissolvers, viscosity reducers, or cleaning agents.

"Source" means any structure, building, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act and which is located on one or more continuous or adjacent properties and which is under the control of the same person or persons under common control. A building, structure, facility, or installation means all of the pollutant-emitting activities which belong to the same industrial grouping. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e. which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (US Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

"Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

"Standards of Performance for New Stationary Sources" means the Federally established requirements for performance and record keeping (Title 40 Code of Federal Regulations, Part 60).

"State" means Utah State.

"Synthesized Pharmaceutical Manufacturing" means the manufacture of pharmaceutical products by chemical synthesis.

"Temporary" means not more than 180 calendar days.

"Temporary Clean Coal Demonstration Project" means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the Utah State Implementation Plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

"Threshold Limit Value - Ceiling (TLV-C)" means the airborne concentration of a substance which may not be exceeded, as adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, pages 15 - 72 (2000)."

"Threshold Limit Value - Time Weighted Average (TLV-TWA)" means the time-weighted airborne concentration of a substance adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, pages 15 - 72 (2000)."

"Total Suspended Particulate (TSP)" means minute separate particles of matter, collected by high volume sampler.

"Toxic Screening Level" means an ambient concentration of an air contaminant equal to a threshold limit value - ceiling (TLV- C) or threshold limit value -time weighted average (TLV-TWA) divided by a safety factor.

"Trash" means solids not considered to be highly flammable or explosive including, but not limited to clothing, rags, leather, plastic, rubber, floor coverings, excelsior, tree leaves, yard trimmings and other similar materials.

"Vertically Restricted Emissions Release" means the release of an air contaminant through a stack or opening whose flow is directed in a downward or horizontal direction due to the alignment of the opening or a physical obstruction placed beyond the opening, or at a height which is less than 1.3 times the height of an adjacent building or structure, as measured from ground level.

"Vertically Unrestricted Emissions Release" means the release of an air contaminant through a stack or opening whose flow is directed upward without any physical obstruction placed beyond the opening, and at a height which is at least 1.3 times the height of an adjacent building or structure, as measured from ground level.

"Volatile Organic Compound (VOC)" as defined in 40 CFR Subsection 51.100(s)(1), as published on July 1, 1998, is hereby adopted and incorporated by reference.

"Waste" means all solid, liquid or gaseous material, including, but not limited to, garbage, trash, household refuse, construction or

demolition debris, or other refuse including that resulting from the prosecution of any business, trade or industry.

"Zero Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is zero.

KEY: air pollution, definitions*
[~~October 5, 2000~~]2001 **19-2-104**

Environmental Quality, Air Quality
R307-110-31
Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23756
FILED: 05/15/2001, 10:21
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To incorporate a federal rule change.

SUMMARY OF THE RULE OR CHANGE: In the rule, change the date of incorporation by reference from October 7, 1998, to August 1, 2001. The rule incorporates by reference the State Implementation Plan (SIP) for the general requirements of the Vehicle Emissions Inspection and Maintenance (I/M) Programs. The I/M programs are in place to reduce vehicle emissions so that federal health standards for ozone and carbon monoxide are not exceeded. On April 5, 2001, EPA published a final rule postponing implementation of On-Board Diagnostics inspections until January 1, 2002; the only substantive change in the SIP text is to amend the date from 2001 to 2002. Other changes in the SIP remove appendices that are out of date, and move others to the Technical Support Documentation that is submitted to EPA with the change in the SIP text.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(1)(a)
FEDERAL REQUIREMENT FOR THIS RULE: 40 CFR Part 51, Subpart S; 40 CFR 85.2207, 2222, and 2223

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: No change. I/M programs are operated by the counties. The state completed technical assistance to the counties in anticipation of implementation by January 1, 2001. The state's cost for overseeing the I/M components of the State Implementation Plan do not depend on the specific elements of the program.
❖LOCAL GOVERNMENTS: Very little savings. Davis, Utah, and Weber Counties already are implementing the program. Salt Lake County will be ready to implement shortly.
❖OTHER PERSONS: On-Board Diagnostics (OBD) testing identifies malfunctioning parts in vehicles, saving time for repair personnel and saving money for vehicle owners. Most repair personnel already have the OBD scan tools to diagnose necessary repairs.
COMPLIANCE COSTS FOR AFFECTED PERSONS: On-Board Diagnostics testing identifies malfunctioning parts in vehicles, saving time for repair personnel and saving money for vehicle owners. Davis, Utah, and Weber Counties already are implementing the program. In Salt Lake County, most testing and repair personnel already have the OBD scan tools to diagnose necessary repairs. Thus, postponing the required program is unlikely to add to repair costs for vehicle owners.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The fiscal impact of this rule is small, because implementation is postponed only until January 1, 2002, and three counties already are implementing the program. Dianne R. Nielson, Ph.D.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Environmental Quality
Air Quality
150 North 1950 West
PO Box 144820
Salt Lake City, UT 84114-4820, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jan Miller at the above address, by phone at (801) 536-4042, by FAX at (801) 536-4099, or by Internet E-mail at jmiller@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 07/02/2001; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 06/21/2001, 1:30 p.m., DEQ Bldg, Room 201, 168 North 1950 West, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 07/12/2001

AUTHORIZED BY: Cheryl Heying, Planning Branch Manager

R307. Environmental Quality, Air Quality.
R307-110. General Requirements: State Implementation Plan.
R307-110-31. Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements and Applicability, as most recently amended by the Utah Air Quality Board on [~~October 7, 1998~~]August 1, 2001, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

KEY: air pollution,small business assistance program*, particulate matter*, ozone
[~~February 10, 2000~~]2001 19-2-104(3)(e)
Notice of Continuation June 2, 1997

Environmental Quality, Air Quality
R307-110-33
Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23757
FILED: 05/15/2001, 10:21
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To incorporate new elements in the Salt Lake County program.

SUMMARY OF THE RULE OR CHANGE: In the rule, change the date of adoption from February 5, 1997, to August 1, 2001. The rule incorporates by reference the State Implementation Plan (SIP) for the Vehicle Emissions Inspection and Maintenance Program for Salt Lake County. The I/M program is in place to reduce vehicle emissions so that federal health standards for carbon monoxide and ozone are not exceeded. Changes in the SIP text update the County's program improvements, including an updated analyzer and daily downloading of data from each analyzer. Other changes in the SIP include replacing out of date county ordinances in the appendices, and moving other appendices to the Technical Support Documentation that is submitted to EPA. The Technical Support Documentation also includes the demonstration that Salt Lake County's test and repair network is as effective as a test-only network would be. This will enable the County to claim full credit instead of 50% credit in emissions reduction.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(1)(a); and Sections 41-6-163.6, 41-6-163.7, 41-6-164.5, and 41-6-165
FEDERAL REQUIREMENT FOR THIS RULE: 40 CFR Part 51, Subpart S

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: No change in costs. I/M programs are operated by the counties. The state provides ongoing technical assistance to the counties. The state's cost for overseeing the I/M components of the State Implementation Plan does not depend on the specific elements of the program.
❖LOCAL GOVERNMENTS: No change in costs. The purpose of this rule amendment is to include the County program in the State Implementation Plan; inclusion in the Plan does not change the cost for the County.
❖OTHER PERSONS: No change in costs. The purpose of this rule amendment is to include the County program in the State Implementation Plan; inclusion in the Plan does not change the cost for affected persons.
COMPLIANCE COSTS FOR AFFECTED PERSONS: No change in costs. The purpose of this rule amendment is to include the County program in the State Implementation Plan; inclusion in the Plan does not change the cost for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Salt Lake County has made improvements in its emissions analysis and its protections against fraud and data loss at no increased cost to business or the consumer. Dianne R. Nielson, Ph.D.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Environmental Quality
Air Quality
150 North 1950 West
PO Box 144820
Salt Lake City, UT 84114-4820, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jan Miller at the above address, by phone at (801) 536-4042, by FAX at (801) 536-4099, or by Internet E-mail at jmiller@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 07/02/2001; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 06/21/2001, 1:30 p.m., DEQ Bldg, Room 201, 168 North 1950 West, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 07/12/2001

AUTHORIZED BY: Cheryl Heying, Planning Branch Manager

R307. Environmental Quality, Air Quality.
R307-110. General Requirements: State Implementation Plan.
R307-110-33. Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part C, Salt Lake County, as most recently amended by the Utah Air Quality Board on [~~February 5, 1997~~]August 1, 2001, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

KEY: air pollution,small business assistance program*, particulate matter*, ozone
[~~February 10, 2000~~]2001 19-2-104(3)(e)
Notice of Continuation June 2, 1997

Environmental Quality, Air Quality
R307-110-34
Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23758
FILED: 05/15/2001, 10:21
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To incorporate new elements in the Utah County program.

SUMMARY OF THE RULE OR CHANGE: In the rule, change the date of adoption from February 5, 1997, to August 1, 2001. The rule incorporates by reference the State Implementation Plan (SIP) for the Vehicle Emissions Inspection and Maintenance (I/M) Program for Utah County. The I/M program is in place to reduce vehicle emissions so that federal health standards for carbon monoxide are not exceeded. Utah County has demonstrated that its program qualifies for full credit in reducing emissions, under provisions of the National Highway System Designation Act of 1995. Before Environmental Protection Agency (EPA) can give full approval to the program, however, the SIP must be amended to include the latest improvements Utah County has made in the program. Utah County has moved to the UTAH 2000 analyzer for emissions, requires that emissions inspectors check the On-Board Diagnostic systems in 1996 and newer vehicles, and now downloads data daily from the emissions analyzers. Other changes in the SIP include replacing appendices that are out of date with the new county ordinances and moving other appendices to the Technical Support Documentation that is submitted to EPA with the SIP.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(1)(a); and Sections 41-6-163.6, 41-6-163.7, 41-6-164.5, and 41-6-165
FEDERAL REQUIREMENT FOR THIS RULE: 40 CFR Part 51, Subpart S

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: No change in costs. I/M programs are operated by the counties. The state provides ongoing technical assistance to the counties. The state's cost for overseeing the I/M components of the State Implementation Plan do not depend on the specific elements of the program.
❖LOCAL GOVERNMENTS: No change in costs. The purpose of this rule amendment is to include the County program in the State Implementation Plan; inclusion in the Plan does not change the cost for the County.
❖OTHER PERSONS: No change in costs. The purpose of this rule amendment is to include the County program in the State Implementation Plan; inclusion in the Plan does not change the cost for affected persons.
COMPLIANCE COSTS FOR AFFECTED PERSONS: No change in costs. The purpose of this rule amendment is to include the County program in the State Implementation Plan; inclusion in the Plan does not change the cost for affected persons. Dianne R. Nielson, Ph.D.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Adding the improved Utah County program to the State Implementation Plan does not change any costs to business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Environmental Quality
Air Quality
150 North 1950 West
PO Box 144820
Salt Lake City, UT 84114-4820, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jan Miller at the above address, by phone at (801) 536-4042, by FAX at (801) 536-4099, or by Internet E-mail at jmiller@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 07/02/2001; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 06/21/2001, 1:30 p.m., DEQ Bldg, Room 201, 168 North 1950 West, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 07/12/2001

AUTHORIZED BY: Cheryl Heying, Planning Branch Manager

R307. Environmental Quality, Air Quality.
R307-110. General Requirements: State Implementation Plan.
R307-110-34. Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County.

The Utah State Implementation Plan, Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County, as most recently amended by the Utah Air Quality Board on [~~February 5, 1997~~]August 1, 2001, pursuant to Section 19-2-104, is hereby incorporated by reference and made a part of these rules.

KEY: air pollution,small business assistance program*, particulate matter*, ozone
[~~February 10, 2000~~]2001 19-2-104(3)(e)
Notice of Continuation June 2, 1997

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Environmental Quality, Air Quality
R307-405-1
Definitions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23760
FILED: 05/15/2001, 10:26
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To bring definitions into alignment with federal rules (see separate filing for R307-101-2).
(**DAR Note:** The proposed amendment for R307-101-2 is under DAR No. 23759 in this *Bulletin*.)

SUMMARY OF THE RULE OR CHANGE: The current major source permitting rules require sources of air pollution that make a major modification to undergo additional review, and may require the installation of more stringent pollution control equipment. This amendment aligns the Utah rule with a 1992 federal rule revision that adds a new definition for Major Modification. The rule excludes from the definition, so long as there is no emissions increase, pollution control projects at existing electric utility steam generating units. Also excluded are the installation, operation, cessation, or removal of a temporary clean coal demonstration project. The new definition also requires that determining whether a modification at an electric utility steam generating unit is major or not is done by comparing present actual emissions to future actual emissions.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(1)(a)
FEDERAL REQUIREMENT FOR THIS RULE: 40 CFR 51.165 and 51.166

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: No change. The state's costs for reviewing and approving permit modifications are covered by fees based on the size and complexity of the modification.
❖LOCAL GOVERNMENTS: Local governments will be affected only if they make major modifications at their electric utility steam generating units, or install a clean coal demonstration project. In such cases, they may not be required to obtain an approval order, saving time and money. Exact savings would vary from project to project.
❖OTHER PERSONS: A source will be affected only if making major modifications at an electric utility steam generating unit, or installing a clean coal demonstration project. In such cases, the source may not be required to obtain an approval order, saving time and money. Exact savings would vary from project to project.
COMPLIANCE COSTS FOR AFFECTED PERSONS: A source will be affected only if making major modifications at an electric utility steam generating unit, or installing a clean coal demonstration project. In such cases, the source may not be required to obtain an approval order, saving time and money. Exact savings would vary from project to project.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Amending the rule will allow sources to more easily and cheaply install pollution control projects and clean coal demonstration projects. It also allows more realistic determination of whether a modification at an electric utility steam generating unit fits the definition of Major Modification. Dianne R. Nielson, Ph.D.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Environmental Quality
Air Quality
150 North 1950 West
PO Box 144820
Salt Lake City, UT 84114-4820, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jan Miller at the above address, by phone at (801) 536-4042, by FAX at (801) 536-4099, or by Internet E-mail at jmiller@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 07/02/2001; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR 06/21/2001, 3:00 p.m., DEQ Bldg, Room 201, 168 North 1950 West, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 07/12/2001

AUTHORIZED BY: Cheryl Heying, Planning Branch Manager

R307. Environmental Quality, Air Quality.
R307-405. Permits: Prevention of Significant Deterioration of Air Quality (PSD).
R307-405-1. Definitions.

The following additional definitions apply to R307-405:

"Baseline Area" means any intrastate area (and every part thereof) designated as attainment or unclassifiable under Section 107(d)(1)(D) or (E) of the federal Clean Air Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than 1 ug/m^3 (annual average) of the pollutant for which the minor source baseline date is established.

(1) Area redesignations under section 107(d)(1) (D) or (E) of the federal Clean Air Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which:

(a) Establishes a minor source baseline date; or

(b) Is subject to 40 CFR 52.21 or R307-405, and would be constructed in the same state as the state proposing the redesignation.

"Baseline Concentration" means that ambient concentration level which exists in the baseline area at the time of the applicable minor source baseline date.

"Major Modification" means any physical change in or change in the method of operation of a major stationary source that would result in a significant net emissions increase of any pollutant subject to regulation under the Clean Air Act.

(1) Any net emissions increase that is significant for volatile organic compounds shall be considered significant for ozone.

(2) A physical change or change in the method of operation shall not include:

(a) routine maintenance, repair, and replacement;

(b) use of an alternative fuel or raw material by reason of an order under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 (or any superseding legislation), or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(c) use of an alternative fuel by reason of an order or rule under section 125 of the Clean Air Act;

(d) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(e) use of an alternative fuel or raw material by a source which:

(i) the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition; or

(ii) the source is approved to use;

(f) an increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition;

(g) any change in ownership at a source

(h) the addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the executive secretary determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

(i) when the executive secretary has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of Title I of the Clean Air Act, if any, and

(ii) the executive secretary determines that the increase will cause or contribute to a violation of any national ambient air quality standard or PSD increment, or visibility limitation.

(i) the installation, operation, cessation, or removal of a temporary clean coal demonstration project, provided that the project complies with:

(i) the Utah State Implementation Plan; and

(ii) other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

(j) the installation or operation of a permanent clean coal technology project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis.

(k) the reactivation of a very clean coal-fired electric utility steam generating unit.

"Major Source" means:

(1) any of the following sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any pollutant subject to regulation under the Clean Air Act: Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input, coal cleaning plants (with thermal dryers), kraft pulp mills, portland cement plants, primary zinc smelters, iron and steel mill plants, primary aluminum ore reduction plants, primary copper smelters, municipal incinerators capable of charging more than 250 tons of refuse per day, hydrofluoric, sulfuric, and nitric acid plants, petroleum refineries, lime plants, phosphate rock processing plants, coke oven batteries, sulfur recovery plants, carbon black plants (furnace process), primary lead smelters, fuel conversion plants, sintering plants, secondary metal production plants, chemical process plants, fossil fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input, petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels, taconite ore processing plants, glass fiber processing plants, and charcoal production plants;

(2) any other source which emits, or has the potential to emit, 250 tons per year or more of any air pollutant; or

(3) a source which does not otherwise qualify as a major source as defined in this paragraph, but which is physically changed, which change itself would constitute a major source.

(4) a source which is major for volatile organic compounds is major for ozone.

(5) The fugitive emissions and fugitive dust of a stationary source shall not be included in determining for any of the purposes of this section whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(a) Coal cleaning plants (with thermal dryers);

(b) Kraft pulp mills;

(c) Portland cement plants;

(d) Primary zinc smelters;

(e) Iron and steel mills;

(f) Primary aluminum ore reduction plants;

(g) Primary copper smelters;

(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(i) Hydrofluoric, sulfuric, or nitric acid plants;

(j) Petroleum refineries;

(k) Lime plants;

(l) Phosphate rock processing plants;

(m) Coke oven batteries;

(n) Sulfur recovery plants;

(o) Carbon black plants (furnace process);

(p) Primary lead smelters;

(q) Fuel conversion plants;

(r) Sintering plants;

(s) Secondary metal production plants;

(t) Chemical process plants;

(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

(w) Taconite ore processing plants;

(x) Glass fiber processing plants;

(y) Charcoal production plants;

(z) Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the Federal Clean Air Act.

KEY: air pollution, PSD*, Class I area*
[~~September 15, 1998~~]2001 **19-2-104**

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Environmental Quality, Drinking Water
R309-115
Administrative Procedures

NOTICE OF PROPOSED RULE
(New)
DAR FILE NO.: 23755
FILED: 05/15/2001, 10:18
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule filing sets out procedures for conducting adjudicative proceedings under Title 19, Chapter 4, Utah Safe Drinking Water Act, and governed by Title 63, Chapter 46b, the Utah Administrative Procedures Act.

SUMMARY OF THE RULE OR CHANGE: This rule filing outlines the procedure to be used when adjudicative proceedings are conducted.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-4-104
FEDERAL REQUIREMENT FOR THIS RULE: Safe Drinking Water Act (amended Aug. 6, 1996), Title XIV, Section 1413(a)(6)

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: No incremental impact. The Division will continue to enforce the existing rules for public drinking water systems, this rule filing will clarify the appeal procedure.
❖LOCAL GOVERNMENTS: No incremental impact. This rule will clarify the appeal procedure as outlined in the Utah Administrative Procedures Act.
❖OTHER PERSONS: No incremental impact. This rule will clarify the appeal procedure as outlined in the Utah Administrative Procedures Act.
COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule change will not impose any additional requirements to any public water system or individual. The rule filing outlines the procedure to be used for conducting adjudicative proceedings as outlined in the Utah Safe Drinking Water Act and the Utah Administrative Procedures.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department of Environmental Quality agrees with the comments in Aggregate anticipated cost or savings to: State Budget, Local government and Other persons and the compliance costs for affected persons sections. Dianne R. Nielson, Ph.D.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Environmental Quality
Drinking Water
150 North 1950 West
PO Box 144830
Salt Lake City, UT 84114-4830, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ken Bousfield or Patti Fauver at the above address, by phone at (801) 536-4207 or (801)-536-4196, by FAX at (801) 536-4211, or by Internet E-mail at kbousfie@deq.state.ut.us or pfauver@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 07/02/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 07/03/2001

AUTHORIZED BY: Kevin W. Brown, Division Director and Executive Secretary

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R309. Environmental Quality, Drinking Water.
R309-115. Administrative Procedures.
R309-115-1. Scope of rule.

(1) This rule R309-115 sets out procedures for conducting adjudicative proceedings under Title 19, Chapter 4, Utah Safe Drinking Water Act, and governed by Title 63, Chapter 46b, the Utah Administrative Procedures Act.

(2) The executive secretary, or his delegatee as authorized, may issue initial orders or notices of violation as authorized by the Board. Following the issuance of an initial order or notice of violation under Title 19, Chapter 4, the recipient, or in some situations an intervenor, may contest that order or notice in a proceeding before the board or before a presiding officer appointed by the board.

(3) Issuance of initial orders and notices of violation are not governed by the Utah Administrative Procedures Act as provided under 63-46b-1(2)(k) and are not governed by sections R309-115-3 through R309-115-14 of this Rule. Initial orders and notices of violation are further described in R309-115-2(1).

(4) Proceedings to contest an initial order or notice of violation are governed by the Utah Administrative Procedures Act and by this rule R309-115.

(5) The Utah Administrative Procedures Act and this rule R309-115 also govern any other formal adjudicative proceeding before the Drinking Water Board.

R309-115-2. Initial Proceedings.

(1) Initial Proceedings Exempt from Utah Administrative Procedures Act. Initial orders and notices of violation include, but are not limited to, initial proceedings regarding:

(a) approval, denial, termination, modification, revocation, reissuance or renewal of permits, plans, or approval orders;

(b) notices of violation and orders associated with notices of violation;

(c) orders to comply and orders to cease and desist;

(d) requests for variances, exemptions, and other approvals;

(e) certification of water supply operators under R309-300 and backflow technicians under R309-302;

(f) ratings of water systems under R309-150-4; and

(g) assessment of fees except as provided in R309-115-14(7).

(2) Effect of Initial Orders and Notices of Violation.

(a) Unless otherwise stated, all initial orders or notices of violation are effective upon issuance. All initial orders or notices of violation shall become final if not contested within 30 days after the date issued.

(b) The date of issuance of an initial order or notice of violation is the date the initial order or notice of violation is mailed.

(c) Failure to timely contest an initial order or notice of violation waives any right of administrative contest, reconsideration, review, or judicial appeal.

R309-115-3. Contesting an Initial Order or Notice of Violation.

(1) Procedure. Initial orders and notices of violation, as described in R309-115-2(1), may be contested by filing a written Request for Agency Action to the Executive Secretary, Drinking Water Board, Division of Drinking Water, PO Box 144830, Salt Lake City, Utah 84114-4830.

(2) Content Required and Deadline for Request. Any such request is governed by and shall comply with the requirements of Subsection 63-46b-3(3). If a request for agency action is made by a person other than the recipient of an order or notice of violation, the request for agency action shall also specify in writing sufficient facts to allow the board to determine whether the person has standing under R309-115-6(3) to bring the requested action.

(3) A request for agency action made to contest an initial order or notice of violation shall, to be timely, be received for filing within 30 days of the issuance of the initial order or notice of violation.

(4) Stipulation for Extending Time to File Request. The executive secretary and the recipient of an initial order or notice of violation may stipulate to an extension of time for filing the request, or any part thereof.

R309-115-4. Designation of Proceedings as Formal or Informal.

(1) Contest of an initial order or notice of violation resulting from proceedings described in R309-115-2(1) shall be conducted as a formal proceeding.

(2) The board in accordance with Subsection 63-46b-4(3) may convert proceedings which are designated to be formal to informal and proceedings which are designated as informal to formal if conversion is in the public interest and rights of all parties are not unfairly prejudiced.

R309-115-5. Notice of and Response to Request for Agency Action.

(1) The presiding officer shall promptly review a request for agency action and shall issue a Notice of Request for Agency Action in accordance with Subsection 63-46b-3(3)(d) and (e). If further proceedings are required and the matter is not set for hearing at the time the Notice is issued, notice of the time and place for a hearing shall be provided promptly after the hearing is scheduled.

(2) The Notice shall include a designation of parties under R309-115-6(3), and shall notify respondents that any response to the Request for Agency Action shall be due within 30 days of the day the Notice is mailed, in accordance with 63-46b-6.

R309-115-6. Parties and Intervention.

(1) Determination of a Party. The following persons are parties to an adjudicative proceeding:

(a) The person to whom an initial order or notice of violation is directed, such as a person who submitted a permit application or approval request that was approved or disapproved by initial order of the executive secretary;

(b) The executive secretary of the board;

(c) All persons to whom the board has granted intervention under R309-115-6(2); and

(d) Any other person with standing who brings a Request for Agency Action as authorized by the Utah Administrative Procedures Act and these rules.

(2) Intervention.

(a) A Petition to Intervene shall meet the requirements of 63-46b-9. Except as provided in (2)(c), the timeliness of a Petition to Intervene shall be determined by the presiding officer under the facts and circumstances of each case.

(b) Any response to a Petition to Intervene shall be filed within 20 days of the date the Petition was filed, except as provided in R309-115-6(2)(c).

(c) A person seeking to intervene in a proceeding for which agency action has not been initiated under 63-46b-3 may file a Request for Agency Action at the same time the person files a Petition for Intervention. Any such Request for Agency Action and Petition to Intervene must be received by the board for filing within 30 days of the issuance of the initial order or notice of violation being challenged. The time for filing a Request for Agency Action and Petition to Intervene may be extended by stipulation of the executive secretary, the person subject to an initial order or notice of violation, and the potential intervenor.

(d) Any response to a Petition to Intervene that is filed at the same time as a Request for Agency Action shall be filed on or before the day the response to the Request for Agency Action is due.

(e) A Petition to Intervene shall be granted if the requirements of 63-46b-9(2) are met.

(3) Standing. No person may initiate or intervene in an agency action unless that person has standing. Standing shall be evaluated using applicable Utah case law.

(4) Designation of Parties. The presiding officer shall designate each party as a petitioner or respondent.

(5) Amicus Curiae (Friend of the Court). A person may be permitted by the presiding officer to enter an appearance as amicus curiae (friend of the court), subject to conditions established by the presiding officer.

R309-115-7. Conduct of Proceedings.

(1) Role of Board.

(a) The board is the "agency head" as that term is used in Title 63, Chapter 46b. The board is also the "presiding officer," as that term is used in Title 63, Chapter 46b, except:

(i) The chair of the board shall be considered the presiding officer to the extent that these rules allow; and

(ii) The board may appoint one or more presiding officers to preside over all or a portion of the proceedings.

(b) The chair of the board may delegate the chair's authority as specified in this rule to another board member.

(2) Appointed Presiding Officers. Unless otherwise explicitly provided by written order, any appointment of a presiding officer shall be for the purpose of conducting all aspects of an adjudicative proceeding, except rulings on intervention, stays of orders, dispositive motions, and issuance of the final order. As used in this rule, the term "presiding officer" shall mean "presiding officers" if more than one presiding officer is appointed by the board.

(3) Board Counsel. The Presiding Officer may request that Board Counsel provide legal advice regarding legal procedures, pending motions, evidentiary matters and other legal issues.

(4) Pre-hearing Conferences. The presiding officer may direct the parties to appear at a specified time and place for pre-hearing conferences for the purposes of establishing schedules, clarifying the issues, simplifying the evidence, facilitating discovery, expediting proceedings, encouraging settlement, or giving the parties notice of the presiding officer's availability to parties.

(5) Pre-hearing Documents.

(a) At least 15 business days before a scheduled hearing, the executive secretary shall compile a draft list of prehearing documents as described in (b), and shall provide the list to all other parties. Each party may propose to add documents to or delete document from the list. At least seven business days before a scheduled hearing, the executive secretary shall issue a final prehearing document list, which shall include only those documents upon which all parties agree unless otherwise ordered by the presiding officer. All documents on the final prehearing document list shall be made available to the presiding officer prior to the hearing, and shall be deemed to be authenticated.

(b) The prehearing document list shall ordinarily include any pertinent permit application, any pertinent inspection report, any pertinent draft document that was released for public comment, any pertinent public comments received, any pertinent initial order or notice of violation, the request for or notice of agency action, and any responsive pleading. The list is not intended to be an exhaustive list of every document relevant to the proceeding, however any document may be included upon the agreement of all parties.

(6) Briefs.

(a) Unless otherwise directed by the presiding officer, parties to the proceeding shall submit a pre-hearing brief, which shall include a proposed order meeting the requirements of 63-46b-10, at least fifteen business days before the hearing. The prehearing brief shall be limited to 20 pages exclusive of the proposed order.

(b) Post-hearing briefs and responsive briefs will be allowed only as authorized by the presiding officer.

(7) Schedules.

(a) The parties are encouraged to prepare a joint proposed schedule for discovery, for other pre-hearing proceedings, for the hearing, and for any post-hearing proceedings. If the parties cannot agree on a joint proposed schedule, any party may submit a proposed schedule to the presiding officer for consideration.

(b) The presiding officer shall establish a schedule for the matters described in (a) above.

(8) Motions. All motions shall be filed a minimum of 12 days before a scheduled hearing, unless otherwise directed by the presiding officer. A memorandum in opposition to a motion may be filed within 10 days of the filing of the motion, or at least one day before any scheduled hearing, whichever is earlier. Memoranda in support of or in opposition to motions may not exceed 15 pages unless otherwise provided by the presiding officer.

(9) Filing and Copies of Submissions. The original of any motion, brief, petition for intervention, or other submission shall be filed with the executive secretary. In addition, the submitter shall provide a copy to each presiding officer, to each party of record, and to all persons who have petitioned for intervention, but for whom intervention has been neither granted nor denied.

R309-115-8. Hearings.

The presiding officer shall govern the conduct of a hearing, and may establish reasonable limits on the length of witness testimony, cross-examination, oral arguments or opening and closing statements.

R309-115-9. Orders.

(1) Recommended Orders of Appointed Presiding Officers.

(a) The appointed presiding officer shall prepare a recommended order for the board, and shall provide copies of the recommended order to the board and to all parties.

(b) Any party may, within 10 days of the date the recommended order is mailed, delivered, or published, comment on the recommended order. Such comments shall be limited to 15 pages and shall cite to the specific parts of the record which support the comments.

(c) The board shall review the recommended order, comments on the recommended order, and those specific parts of the record cited by the parties in any comments. The board shall then determine whether to accept, reject, or modify the recommended order. The board may remand part or all of the matter to the presiding officer or may itself act as presiding officers for further proceedings.

(e) The board may modify this procedure with notice to all parties.

(2) Final Orders. The board shall issue a final order which shall include the information required by 63-46b-10 or 63-46b-5(1)(i).

R309-115-10. Stays of Orders.

(1) Stay of Orders Pending Administrative Adjudication.

(a) A party seeking a stay of a challenged order during an adjudicative proceeding shall file a motion with the board. If granted, a stay would suspend the challenged order for the period as directed by the board.

(b) The board may order a stay of the order if the party seeking the stay demonstrates the following:

(i) The party seeking the stay will suffer irreparable harm unless the stay is issued;

(ii) The threatened injury to the party seeking the stay outweighs whatever damage the proposed stay is likely to cause the party restrained or enjoined;

(iii) The stay, if issued, would not be adverse to the public interest; and

(iv) There is substantial likelihood that the party seeking the stay will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further adjudication.

(2) Stay of the Order Pending Judicial Review.

(a) A party seeking a stay of the board's final order during the pendency of judicial review shall file a motion with the board.

(b) The board as presiding officer may grant a stay of its order during the pendency of judicial review if the standards of R309-115-10(1)(b) are met.

R309-115-11. Reconsideration.

No agency review under Section 63-46b-12 is available. A party may request reconsideration of an order of the presiding officer as provided in Section 63-46b-13.

R309-115-12. Disqualification of Board Members or Other Presiding Officers.

(1) Disqualification of Board Members or Other Presiding Officers.

(a) A member of the board or other presiding officer shall disqualify himself from performing the functions of the presiding officer regarding any matter in which he, or his spouse, or a person within the third degree of relationship to either of them, or the spouse of such person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Has acted as an attorney in the proceeding or served as an attorney for, or otherwise represented a party concerning the matter in controversy;

(iii) Knows that he has a financial interest, either individually or as a fiduciary, in the subject matter in controversy or in a party to the proceeding;

(iv) Knows that he has any other interest that could be substantially affected by the outcome of the proceeding; or

(v) Is likely to be a material witness in the proceeding.

(b) A member of the board or other presiding officer is also subject to disqualification under principles of due process and administrative law.

(c) These requirements are in addition to any requirements under the Utah Public Officers' and Employees' Ethics Act, Utah Code Ann. Section 67-16-1 et seq.

(2) Motions for Disqualification. A motion for disqualification shall be made first to the presiding officer. If the presiding officer is appointed, any determination of the presiding officer upon a motion for disqualification may be appealed to the board.

R309-115-13. Declaratory Orders.

(1) A request for a declaratory order may be filed in accordance with the provisions of Section 63-46b-21. The request shall be titled a petition for declaratory order and shall meet the requirements of 63-46b-3(3). The request shall also set out a proposed order.

(2) Requests for declaratory order, if set for adjudicative hearing, will be conducted using formal procedures unless converted to an informal proceeding under R309-115-4(2) above.

(3) The provisions of Section 63-46b-4 through 63-46b-13 apply to declaratory proceedings, as do the provisions of this Rule R309-115.

R309-115-14. Miscellaneous.

(1) Modifying Requirements of Rules. For good cause, the requirements of these rules may be modified by order of the presiding officer.

(2) Extensions of Time. If requested before the expiration of the pertinent time limit, the presiding officer may approve extensions of any time limits established by this rule, and may extend time limits adopted in schedules established under R309-115-7(6). The presiding officer may also postpone hearings. The chair of the board may act as presiding officer for purposes of this paragraph.

(3) Computation of Time. Time shall be computed as provided in Rule 6(a) of the Utah Rules of Civil Procedure except that no additional time shall be allowed for service by mail.

(4) Appearances and Representation.

(a) An individual who is a participant to a proceeding, or an officer designated by a partnership, corporation, association, or governmental entity which is a participant to a proceeding, may represent his, her, or its interest in the proceeding.

(b) Any participant may be represented by legal counsel.

(5) Other Forms of Address. Nothing in these rules shall prevent any person from requesting an opportunity to address the board as a member of the public, rather than as a party. An opportunity to address the board shall be granted at the discretion of the board. Addressing the board in this manner does not constitute a request for agency action under R309-115-3.

(6) Settlement. A settlement may be through an administrative order or through a proposed judicial consent decree, subject to the agreement of the settlers.

(7) Requests for Records. Requests for records and related assessments of fees for records under the Title 63, Chapter 2, Utah Government Record Access and Management Act, are not governed by Title 63, Chapter 46b, Utah Administrative Procedures Act, or by this rule.

(8) Grants and loans. Determinations with respect to grants and loans made under R309-700, R309-705 and R309-352 are not governed by Title 63, Chapter 46b, Utah Administrative Procedures Act, or by this rule.

KEY: drinking water, administrative procedure, hearings*
2001 **63-46b**
19-4

Environmental Quality, Solid and Hazardous Waste
R315-2
General Requirements - Identification and Listing of Hazardous Waste

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23763
FILED: 05/15/2001, 14:21
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To adopt equivalent federal hazardous waste regulations into the state Hazardous Waste Rules

SUMMARY OF THE RULE OR CHANGE: This proposed rule change eliminates the waste code K160 as an excluded waste due to a federally-required administrative stay. The waste code is no longer listed as hazardous in the Federal Regulations and therefore should not be included in the corresponding state rules. This rule change also adopts a federal rule that will allow Autoliv, ASP Inc. of Promontory, Utah, to implement a project under the federal Project XL program. The principal objective of Autoliv's XL Project is to explore the benefits of more streamlined and flexible regulation of pyrotechnic hazardous wastes from the automobile airbag industry that are treated in industrial furnaces. The proposed rule change provides regulatory flexibility to Autoliv in the form of a conditional exemption from the definition of hazardous waste for the pyrotechnic wastes.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-6-105 and 19-6-106
FEDERAL REQUIREMENT FOR THIS RULE: 40 CFR 271.21(e)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 40 CFR 261.32, 1999 ed.

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: Since the changes in the rule do not affect State entities and the enforcement of the rule will not change, there will be no cost or savings impact.
❖LOCAL GOVERNMENTS: Since the changes in the rule do not affect local governments and the enforcement of the rule will not change, there will be no cost or savings impact.
❖OTHER PERSONS: The proposed rule changes affect only Autoliv, ASP Inc. A specific cost saving cannot be determined due to the varying amount of waste that will be managed during the project.
COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule change implements current statutory and regulatory requirements and is a less stringent regulation.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule changes affects only Autoliv, ASP Inc. A specific cost saving cannot be determined due to the varying amount of waste that will be managed during the project. Dianne R. Nielson, Ph.D.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Environmental Quality
Solid and Hazardous Waste
Cannon Health Building
288 North 1460 West
PO Box 144880
Salt Lake City, UT 84114-4880, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Susan Toronto at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or by Internet E-mail at storonto@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 07/02/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 07/20/2001

AUTHORIZED BY: Dennis R. Downs, Director

R315. Environmental Quality, Solid and Hazardous Waste.
R315-2. General Requirements - Identification and Listing of Hazardous Waste.
R315-2-4. Exclusions.

. . . . . .

(b) SOLID WASTES WHICH ARE NOT HAZARDOUS WASTES.

The following solid wastes are not hazardous wastes:

. . . . . .

(15) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, and K172 if these wastes had been generated after the effective date of the listing, February 11, 1999;

(ii) The solid wastes described in paragraph R315-2-4(b)(15)(i) were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate does not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under R317-8 of the Utah Water Quality Rules.

(v) After February 13, 2001, leachate or gas condensate will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge, There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation, e.g., shutdown of wastewater treatment system, provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this paragraph after the emergency ends.

(16) By-products resulting from the production of automobile air bag gas generants at the Autoliv ASP Inc. facility in Promontory Utah, (Autoliv) are exempt from the D003 listing, for a period of five years from the date R315-2-4(b)(16) became effective provided that:

(i) The by-product gas generants are processed on-site in Autoliv's Metal Recovery Furnace (MRF).

(A) By-product gas generants must only be fed to the MRF when it is operating in conformance with the State of Utah, Division of Air Quality's Approval Order DAQE-549-97.

(B) Combustion gas temperature must be maintained below 400 degrees Fahrenheit at the baghouse inlet.

(ii) Prior to processing in the MRF, the by-product gas generants are managed in accordance with the requirements specified in R315-5-3.34 which incorporates by reference 40 CFR 262.34.

(iii) The Autoliv facility and the MRF are operated and managed in accordance with the requirements of R315-7-8 through R315-7-12, R315-7-14 through R315-7-16, and R315-7-22.

(iv) Residues derived from the processing of by-product gas generants in the MRF are managed in accordance with the requirements specified in R315-5 and R315-13-1, which incorporates by reference 40 CFR 268.

(v) The following testing of the MRF's stack gas emissions is conducted:

(A) An initial test shall be conducted within 30 operating days of starting feed of by-product gas generants to the MRF. EPA may extend this deadline, at the request of Autoliv, when good cause is shown. The initial test shall consist of three duplicate runs sampling for:

(1) Particulate matter using Method 5 as specified in 40 CFR Part 60, Appendix A.

(2) The metals Aluminum, Arsenic, Barium, Beryllium, Boron, Cadmium, Chromium, Cobalt, Copper, Lead, and Nickel using Method 29 as specified in 40 CFR Part 60, Appendix A

(3) Polychlorinated di-benzo dioxins and furans using Method 23 0023A as specified in 40 CFR Part 60, Appendix A.

(4) Carbon monoxide using Method 10 as specified in 40 CFR Part 60, Appendix A.

(B) After the initial test is completed, an annual stack test (12 months from the previous initial stack test) of the MRF shall be conducted. The annual tests shall consist of three duplicate runs using Method 29 and Method 5 as specified in 40 CFR Part 60, Appendix A.

(C) Testing shall be conducted while by-product gas generants are fed to the MRF at no less than 90% of the planned maximum feed rate, and with the MRF operating parameters within normal ranges.

(D) Initial stack testing results and additional project performance data and information, including the quantity of by-product gas generants processed and the operating parameter values during the test runs, will be submitted by Autoliv to the State of Utah and EPA within 60 days of the completion of the initial stack test.

(E) Annual stack test results and additional project performance data and information, including the quantity of by-product gas generants processed and the operating parameter values during the test runs, will be submitted by Autoliv to EPA and the State of Utah within 60 days of the completion of the annual test.

(vi) Combustion gas discharged to the atmosphere from the MRF meets the following limits:

(A) Dioxin emissions do not exceed 0.4 ng per dry standard cubic meter on a toxicity equivalent quotient (TEQ) basis corrected to 7% Oxygen.

(B) Combined lead and cadmium emissions do not exceed 240 ug per dry standard cubic meter corrected to 7% Oxygen.

(C) Combined arsenic, beryllium, and chromium emissions do not exceed 97 ug per dry standard cubic meter corrected to 7% Oxygen.

(D) Particulate matter emissions do not exceed 34 mg per dry standard cubic meter corrected to 7% Oxygen.

(E) If the limits specified in R315-2-4(b)(16)(vi)(A) through (D) are exceeded, Autoliv shall discontinue feeding gas generants to the MRF until such time as Autoliv can demonstrate to EPA and the state of Utah satisfaction that the MRF combustion gas emissions can meet the limits specified in R315-2-4(b)(16)(vi) (A) through (D).

(vii) No by-product gas generants or other pyrotechnic wastes generated off-site will be received at the Autoliv facility in Promontory, Utah or processed in the MRF unless otherwise allowed by law (permit or regulation).

(viii) Autoliv will provide EPA and the state of Utah with semi-annual reports (by January 30 and July 30 of each year).

(A) The semi-annual reports will document the amounts of by-product gas generants processed during the reporting period.

(B) The semi-annual reports will provide a summary of the MRF Operating Record during the reporting period, including information on by-product gas generant composition, average feed rates, upset conditions, and spills or releases.

(ix) No significant changes are made to the operating parameter production values of Autoliv's production of air bag gas generants such that any of the constituents listed in R315-50-9, which incorporates by reference 40 CFR 261 appendix VIII, are introduced into the process.

(x) Autoliv reports to the EPA any noncompliance which may endanger health or the environment orally within 24 hours from the time Autoliv becomes aware of the circumstances, including:

(A) Any information of a release, discharge, fire, or explosion from the MRF, which could threaten the environment or human health.

(B) The description of the occurrence and its cause shall include:

(1) Name, address, and telephone number of the facility;

(2) Date, time, and type of incident;

(3) Name and quantity of material(s) involved;

(4) The extent of injuries, if any;

(5) An assessment of actual or potential hazards to the environment and human health, and;

(6) Estimated quantity and disposition of recovered material that resulted from the incident.

(C) A written notice shall also be provided within five days of the time Autoliv becomes aware of the circumstances. The written notice shall contain a description of the non-compliance and its cause; the period of noncompliance including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance. The EPA may waive the five day written notice requirement in favor of a written report within fifteen days.

(xi) Notifications and submissions made under R315-2-4(b)(16) shall be sent to the Regional Assistant Administrator for the Office of Partnerships and Regulatory Assistance, U.S. EPA, Region 8 and the Executive Secretary of the Utah Solid and Hazardous Waste Control Board.

. . . . . .

R315-2-10. Lists of Hazardous Wastes.

(a) A solid waste is a hazardous waste if it is listed in this section or R315-2-11, unless it has been excluded from this list under section R315-2-16.

(b) The Board will indicate the basis for listing the classes or types of wastes listed in this section and R315-2-11 by employing one or more of the following Hazard Codes:

Ignitable Waste: (I)
Corrosive Waste: (C)
Reactive Waste: (R)
Toxicity Characteristic Waste: (E)
Acute Hazardous Waste: (H)
Toxic Waste: (T)

R315-50-9, which incorporates by reference 40 CFR 261, Appendix VII, identifies the constituent which caused the Board to list the waste as a Toxicity Characteristic Waste (E) or Toxic Waste (T) in this section and R315-2-11.

(c) Each hazardous waste listed in this section and R315-2-11, is assigned an EPA Hazardous Waste Number which precedes the name of the waste. This number shall be used to comply with these rules where description and identification of a hazardous waste is required.

(d) The following hazardous wastes listed in this section are subject to the exclusion limits for acutely hazardous wastes established in R315-2-4:

EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027.

(e) The listing of hazardous wastes from non-specific sources found in 40 CFR 261.31, 2000 ed., is adopted and incorporated by reference with the following additional waste:

(1) F999 - Residues from demilitarization, treatment, and testing of nerve, military, and chemical agents CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX. (R,T,C,H)

(f) The listing of hazardous wastes from specific sources found in 40 CFR 261.32, 2000 ed., is adopted and incorporated by reference[~~, excluding the following waste:~~

~~K160 -- Solids from the production of thiocarbamates and solids from the treatment of wastes from thiocarbamates~~].

KEY: hazardous waste
[~~April 20,~~]2001 **19-6-105**
Notice of Continuation March 12, 1997 **19-6-106**

Environmental Quality, Solid and Hazardous Waste

R315-3-1

Application and Permit Procedures for Hazardous Waste Treatment, Storage, and Disposal Facilities

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23764
FILED: 05/15/2001, 14:21
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed rule change corrects a wrong reference in the rule.

SUMMARY OF THE RULE OR CHANGE: This proposed rule change corrects wrong references giving the State authority to issue enforceable documents under certain circumstances for post closure activities at hazardous waste Treatment, Storage, and Disposal (TSD) facilities.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-6-105 and 19-6-106
FEDERAL REQUIREMENT FOR THIS RULE: 40 CFR 271.21(e)

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: Since the changes in the rule do not affect State entities and the enforcement of the rule will not change, there will be no cost or savings impact.
❖LOCAL GOVERNMENTS: Since the changes in the rule do not affect local governments and the enforcement of the rule will not change, there will be no cost or savings impact.
❖OTHER PERSONS: No cost or savings impact to other persons since the rule change corrects references to appropriate state authority.
COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the rule change corrects references to appropriate state authority.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in this rule will have no fiscal impact on businesses beyond the current statutory and regulatory impact. Dianne R. Nielson, Ph.D.

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

Solid and Hazardous Waste
Cannon Health Building
288 North 1460 West
PO Box 144880
Salt Lake City, UT 84114-4880, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Susan Toronto at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or by Internet E-mail at storonto@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 07/02/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 07/20/2001

AUTHORIZED BY: Dennis R. Downs, Director

R315. Environmental Quality, Solid and Hazardous Waste.
R315-3. Application and Permit Procedures for Hazardous Waste Treatment, Storage, and Disposal Facilities.
R315-3-1. General Information.

1.1 PURPOSE AND SCOPE OF THESE REGULATIONS

(a) No person shall own, construct, modify, or operate any facility for the purpose of treating, storing, or disposing of hazardous waste without first submitting, and receiving the approval of the Executive Secretary for, a hazardous waste permit for that facility. However, any person owning or operating a facility on or before November 19, 1980, who has given timely notification as required by section 3010 of the Resource Conservation and Recovery Act (RCRA) of 1976, 42 U.S.C., section 6921, et seq., and who has submitted a proposed hazardous waste permit pursuant to this section and section 19-6-108 for that facility, may continue to operate that facility without violating this section until the time as the permit is approved or disapproved pursuant to this section.

(b) The Executive Secretary shall review each proposed hazardous waste permit application to determine whether the application will be in accord with the provisions of these rules and section 19-6-108 and, on that basis, shall approve or disapprove the application within the applicable time period specified in section 19-6-108. If, after the receipt of plans, specifications, or other information required under this section and section 19-6-108 and within the applicable time period of section 19-6-108, the Executive Secretary determines that the proposed construction, installation or establishment or any part of it will not be in accord with the requirements of this section or the applicable rules, he shall issue an order prohibiting the construction, installation or establishment of the proposal in whole or in part. The date of submission shall be deemed to be the date of all required information is provided to the Executive Secretary as required by these rules.

(c) Any permit application which does not meet the requirements of these rules shall be disapproved within the applicable time period specified in section 19-6-108. If within the applicable time period specified in section 19-6-108 the Executive Secretary fails to approve or disapprove the permit application or to request the submission of any additional information or modification to the application, the application shall not be deemed approved but the applicant may petition the Executive Secretary for a decision or seek judicial relief requiring a decision of approval or disapproval.

(d) An application for approval of a hazardous waste permit consists of two parts, part A and part B. For an existing facility, the requirement is satisfied by submitting only part A of the application until the date the Executive Secretary sets for each individual facility for submitting part B of the application, which date shall be in no case less than six months after the Executive Secretary gives notice to a particular facility that it shall submit part B of the application.

(e) Owners and operators of hazardous waste management units shall have permits during the active life, including the closure period, of the unit. Owners and operators of surface impoundments, landfills, land treatment units, and waste pile units that received waste after July 26, 1982, or that certified closure, according to R315-7-14, which incorporates by reference 40 CFR 265.115, after January 26, 1983, shall have post-closure permits, unless they demonstrate closure by removal or decontamination as provided under R315-3-1.1(e)(5) and (6), or obtain an enforceable document in lieu of a post-closure permit, as provided under R315-3-1.1(e)(7). If a post-closure permit is required, the permit shall address applicable R315-8 groundwater monitoring, unsaturated zone monitoring, corrective action, and post-closure care requirements of R315. The denial of a permit for the active life of a hazardous waste management facility or unit does not affect the requirement to obtain a post-closure permit under R315-3-1.1.

(1) Specific inclusions. Owners or operators of certain facilities require hazardous waste permits as well as permits under other environmental programs for certain aspects of facility operation. Hazardous waste permits are required for:

(i) Injection wells that dispose of hazardous waste, and associated surface facilities that treat, store, or dispose of hazardous waste. However, the owner or operator with a State or Federal UIC permit will be deemed to have a "permit by rule" if they comply with requirements of R315-3-6.1(a).

(ii) Treatment, storage, and disposal of hazardous waste at facilities requiring and NPDES permit. However, the owner or operator of a publicly owned treatment works receiving hazardous waste will be deemed to have a "permit by rule" if they comply with provisions of R315-3-6.1(b).

(2) Specific exclusions. The following persons are among those who are not required to obtain a permit:

(i) Generators who accumulate hazardous waste on-site for less than the time periods as provided in R315-5-3.34, which incorporates the requirements of 40 CFR 262.34.

(ii) Farmers who dispose of hazardous waste pesticides from their own use as provided in R315-5-7.

(iii) Persons who own or operate facilities solely for the treatment, storage, or disposal of hazardous waste excluded from regulations under R315-2-5, small quantity generator exemption.

(iv) Owners or operators of totally enclosed treatment facilities as defined in 40 CFR 260.10, which is incorporated by reference in R315-1-1.

(v) Owners of operators of elementary neutralization units or wastewater treatment units as defined in 40 CFR 260.10, which is incorporated by reference in R315-1-1.

(vi) Transporters storing manifested shipments of hazardous waste in containers meeting the requirements of R315-5-3.32(b) at a transfer facility for a period of ten days or less.

(vii) Persons adding absorbent material to waste in a container, as defined in 40 CFR 260.10, which is incorporated by reference in R315-1, and persons adding waste to absorbent material in a container, provided that these actions occur at the time waste is first placed in the container, and R315-8-2.8(b), R315-8-9.2, and R315-8-9.3 are complied with.

(viii) Universal waste handlers and universal waste transporters (as defined in R315-16-1.7) managing the wastes listed below. These handlers are subject to regulation under R315-16.

(A) Batteries as described in R315-16-1.2;

(B) Pesticides as described in R315-16-1.3;

(C) Thermostats as described in R315-16-1.4; and

(D) Mercury lamps as described in R315-16-1.6.

(3) Further exclusions.

(i) A person is not required to obtain a permit for treatment or containment activities taken during immediate response to any of the following situations;

(A) Discharge of a hazardous waste;

(B) An imminent and substantial threat of a discharge of hazardous waste.

(C) A discharge of a material which, when discharged, becomes a hazardous waste.

(ii) Any person who continues or initiates hazardous waste treatment or containment activities after the immediate response is over is subject to all applicable requirements of this part for those activities.

(4) Permits for less than an entire facility. The Executive Secretary may issue or deny a permit for one or more units at a facility without simultaneously issuing or denying a permit to all units at the facility. The interim status of any unit for which a permit has not been issued or denied is not affected by the issuance or denial of a permit to any other unit at the facility.

(5) Closure by removal. Owners or operators of surface impoundments, land treatment units, and waste piles closing by removal or decontamination under R315-7 standards shall obtain a post-closure permit unless they can demonstrate to the Executive Secretary that the closure met the standards for closure by removal or decontamination in R315-8-11.5, R315-8-13.8, or R315-8-12.6, respectively. The demonstration may be made in the following ways:

(i) If the owner or operator has submitted a part B application for a post-closure permit, the owner or operator may request a determination, based on information contained in the application, that R315-8 closure by removal standards were met. If the Executive Secretary believes that R315-8 standards were met, he will notify the public of this proposed decision, allow for public comment, and reach a final determination according to the procedures in R315-3-1.1(e)(6);

(ii) If the owner or operator has not submitted a part B permit application for a post-closure permit, the owner or operator may petition the Executive Secretary for a determination that a post-closure permit is not required because the closure met the applicable R315-8 closure standards;

(A) The petition shall include data demonstrating that closure by the removal or decontamination standards of R315-8 were met.

(B) The Executive Secretary shall approve or deny the petition according to the procedures outlined in R315-3-1.1(e)(6).

(6) Procedures for Closure Equivalency Determination.

(i) If a facility owner or operator seeks an equivalency demonstration under R315-3-1.1(e)(5), the Executive Secretary will provide the public, through a newspaper notice, the opportunity to submit written comments on the information submitted by the owner or operator within 30 days from the date of the notice. The Executive Secretary will also, in response to a request or at his own discretion, hold a public hearing whenever a hearing might clarify one or more issues concerning the equivalence of the R315-7 closure to an R315-8 closure. The Executive Secretary will give public notice of the hearing at least 30 days before it occurs. Public notice of the hearing may be given at the same time as notice of the opportunity for the public to submit written comments, and the two notices may be combined.

(ii) The Executive Secretary will determine whether the R315-7 closure met R315-8 closure by removal or decontamination requirements within 90 days of its receipt. If the Executive Secretary finds that the closure did not meet the applicable R315-8 standards, he will provide the owner or operator with a written statement of the reasons why the closure failed to meet R315-8 standards. The owner or operator may submit additional information in support of an equivalency demonstration within 30 days after receiving a written statement. The Executive Secretary will review any additional information submitted and make a final determination within 60 days.

(iii) [~~f~~]If the Executive Secretary determines that the facility did not close in accordance with R315-8-7, which incorporates by reference 40 CFR 264.110 through 264.116, closure by removal standards, the facility is subject to post-closure permit requirements.

(7) Enforceable documents for post-closure care. At the discretion of the Executive Secretary, an owner or operator may obtain, in lieu of a post-closure permit, an enforceable document imposing the requirements of R315-7-14, which incorporates by reference 40 CFR 265.121. "Enforceable document" means an order, a permit, or other document issued by the Executive Secretary that meets the requirements of [~~R315-9 and R315-101~~]19-6-104, 19-6-112, 19-6-113, and 19-6-115, including a corrective action order issued by EPA under section 3008(h), a CERCLA remedial action, or a closure or post-closure permit.

1.4 EFFECT OF A PERMIT

(a) Compliance with a permit during its term constitutes compliance, for purposes of enforcement, with these rules, except for those requirements not included in the permit which:

(1) Become effective by statute;

(2) Are promulgated under R315-13, which incorporates by reference 40 CFR 268, restricting the placement of hazardous wastes in or on the land;

(3) Are promulgated under R315-8 regarding leak detection systems for new and replacement surface impoundment, waste pile, and landfill units, and lateral expansions of surface impoundment, waste pile, and landfill units. The leak detection system requirements include double liners, CQA programs, monitoring, action leakage rates, and response action permits, and will be implemented through the procedures of R315-3-4.3, which incorporates by reference 40 CFR 270.42, Class 1 permit modifications; or

(4) Are promulgated under R315-7-26, which incorporates by reference 40 CFR 265.1030 through 265.1035, R315-7-27, which incorporates by reference 40 CFR 265.1050 through 265.1064 or R315-7-30, which incorporates by reference 40 CFR 265.1080 through 265.1091.

(b) The issuance of a permit does not convey any property rights of any sort, or any exclusive privilege.

(c) The issuance of a permit does not authorize any injury to persons or property or invasion of other private rights, or any infringement of State or local law or regulations.

KEY: hazardous waste
[~~October 20, 2000~~]2001 **19-6-105**
Notice of Continuation March 12, 1997 **19-6-106**

Environmental Quality, Water Quality
R317-1
Definitions and General Requirements

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23766
FILED: 05/15/2001, 15:48
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Water Quality Act was amended by H.B. 14 during the 2001 legislative session. The proposed amendment updates definitions so that the rule is consistent with the new Statutory Language.
(**DAR Note:** H.B. 14 can be found at 2001 Utah Laws 274 and will be effective July 1, 2001.)

SUMMARY OF THE RULE OR CHANGE: The proposed amendment updates several definitions concerning underground wastewater disposal systems.

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

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: None--The proposed amendment updates several definitions. The changes will be addressed with existing resources and will not result in a cost or saving to the state budget.
❖LOCAL GOVERNMENTS: None--The proposed amendment updates several definitions. The changes will be addressed with existing resources and will not result in a cost or saving to local government.
❖OTHER PERSONS: None--The proposed amendment updates several definitions. The changes will not result in a cost or saving to other persons
COMPLIANCE COSTS FOR AFFECTED PERSONS: The amendments are being proposed to achieve consistency with changes made to the Utah Water Quality Act during the 2001 Legislative Session. No compliance costs are associated with these changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments are being proposed to achieve consistency with changes made to the Utah Water Quality Act during the 2001 Legislative Session. No fiscal impacts to businesses are anticipated as a result of these changes.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Environmental Quality
Water Quality
Cannon Health Building
288 North 1460 West
PO Box 144870
Salt Lake City, UT 84114-4870, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jay Pitkin at the above address, by phone at (801) 538-6146, by FAX at (801) 538-6052, or by Internet E-mail at jpitkin@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 07/02/2001; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR June 19, 2001, at Southeastern Health Department Conference Room, 28 South 100 East Price, UT 84501, at 10:30 a.m.; June 19, 2001, at Iron County Visitor Center, West Meeting Room, 585 North Main, Cedar City, UT 84720 at 7:00 p.m.; and June 20, 2001, at Cannon Health Building, Room 125, 288 North 1460 West, Salt Lake City, UT 84114 from 2:00 - 4:00 p.m..

THIS RULE MAY BECOME EFFECTIVE ON: 07/23/2001

AUTHORIZED BY: Dianne R. Nielson, Executive Director

R317. Environmental Quality, Water Quality.
R317-1. Definitions and General Requirements.
R317-1-1. Definitions.

1.1 "Absorption system" means a device constructed under the ground surface to receive and to distribute effluent in such a manner that the effluent is effectively filtered and retained below ground surface.

1.2 "Board" means the Utah Water Quality Board.

1.3 "BOD" means 5-day, 20 degrees C. biochemical oxygen demand.

1.4 "Body Politic" means the State or its agencies or any political subdivision of the State to include a county, city, town, improvement district, taxing district or any other governmental subdivision or public corporation of the State.

1.5 "Building sewer" means the pipe which carries wastewater from the building drain to a public sewer, a wastewater disposal system or other point of disposal. It is synonymous with "house sewer".

1.6 "CBOD" means 5-day, 20 degrees C., carbonaceous biochemical oxygen demand.

1.7 "Deep well" means a drinking water supply source which complies with all the applicable provisions of the State of Utah Public Drinking Water Regulations.

1.8 "Digested sludge" means sludge in which the volatile solids content has been reduced to about 50% by a suitable biological treatment process.

1.9 "Division" means the Utah State Division of Water Quality.

1.10 "Domestic wastewater" means a combination of the liquid or water-carried wastes from residences, business buildings, institutions, and other establishments with installed plumbing facilities, together with those from industrial establishments, and with such ground water, surface water, and storm water as may be present. It is synonymous with the term "sewage".

1.11 "Effluent" means the liquid discharge from any unit of a wastewater treatment works, including a septic tank.

1.12 "Human pathogens" means specific causative agents of disease in humans such as bacteria or viruses.

1.13 "Onsite[~~Individual~~] wastewater[~~ disposal~~] system" means[~~, for the purposes of Section 19-5-102(7), a~~] an[~~system for~~] underground wastewater disposal system for[~~of~~] domestic wastewater which is designed for a capacity of 5,000 gallons per day or less and is not designed to serve multiple dwelling units which are owned by separate owners except condominiums and twin homes. It usually consists of a building sewer, a septic tank and an absorptions system.

1.14 "Industrial wastes" means the liquid wastes from industrial processes as distinct from wastes derived principally from dwellings, business buildings, institutions and the like. It is synonymous with the term "industrial wastewater".

1.15 "Influent" means the total wastewater flow entering a wastewater treatment works.

1.16 "Large underground wastewater disposal system" means the same type of device as described under 1.1.13 above, except that it is designed to handle more than 5,000 gallons per day of domestic wastewater which originates in multiple dwellings, commercial establishments, recreational facilities, schools, or any other wastewater disposal system not covered in 1.1.13 above. The Board controls the installation of such systems.

1.17 "Person" means any individual, corporation, partnership, association, company, or body politic, including any agency or instrumentality of the United States government (Section 19-1-103).

1.18 "Point source" means any discernible, confined and discrete conveyance including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, concentrated animal feeding operation, or vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flow from irrigated agriculture.

1.19 "Polished Secondary Treatment" means a treatment process that can produce an effluent meeting or exceeding the following standards:

A. The arithmetic mean of BOD values determined on effluent samples collected during any 30-day period shall not exceed 15 mg/l, nor shall the arithmetic mean exceed 20 mg/l during any 7-day period.

B. The arithmetic mean of SS values determined on effluent samples collected during any 30-day period shall not exceed 10 mg/l, nor shall the arithmetic mean exceed 12 mg/l during any 7-day period.

C. The geometric mean of total coliform and fecal coliform bacteria in effluent samples collected during any 30-day period shall not exceed either 200 per 100 ml or 20 per 100 ml respectively, nor shall the geometric mean exceed 250 per 100 ml or 25 per 100 ml respectively during any 7-day period.

D. The effluent pH values shall be maintained within the limits of 6.5 to 9.0.

1.20 "Pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the state, or such discharge of any liquid, gaseous or solid substance into any waters of the state as will create a nuisance or render such waters harmful or detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.

1.21 "Seepage trench" means a modified seepage pit, an absorption system consisting of trenches filled with coarse filter material into which septic tank effluent is discharged.

1.22 "Seepage pit" means an absorption system consisting of a covered pit into which effluent is discharged.

1.23 "Septic tank" means a water-tight receptacle which receives the discharge of a drainage system or part thereof, designed and constructed so as to retain solids, digest organic matter through a period of detention and allow the liquids to discharge into the soil outside of the tank through an underground absorption system meeting the requirements of these regulations.

1.24 "Shallow well" means a well providing a source of drinking water which does not meet the requirements of a "deep well".

1.25 "Sludge" means the accumulation of solids which have settled from wastewater. As initially accumulated, and prior to treatment, it is known as "raw sludge".

1.26 "SS" means suspended solids.[

~~1.27 "Subsurface absorption bed" means an absorption system consisting of a covered, gravel-filled bed into which effluent is discharged through specifically designed underground pipes.~~

~~1.28 "Subsurface absorption field" means an absorption system consisting of a series of covered, gravel-filled trenches into which effluent is discharged through specifically designed underground pipes.~~]

1.2[~~9~~]7 "Treatment works" means any plant, disposal field, lagoon, dam, pumping station, incinerator, or other works used for the purpose of treating, stabilizing or holding wastes. (Section 19-5-102).

1.[~~30~~]28 "Wastes" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water. (Section 19-5-102).

1.[~~31~~]29 "Wastewater" means sewage, industrial waste or other liquid substances which might cause pollution of waters of the state. Intercepted ground water which is uncontaminated by wastes is not included.

1.[~~32~~]30 "Waters of the state" means all streams, lakes, ponds, marshes, water-courses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of

water, surface and underground, natural or artificial, public or private, which are contained within, flow through, or border upon this state or any portion thereof, except that bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, or a public health hazard, or a menace to fish and wildlife, shall not be considered to be "waters of the state" under this definition (Section 19-5-102).

1.31 "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.

R317-1-2. General Requirements.

2.1 Water Pollution Prohibited. No person shall discharge wastewater or deposit wastes or other substances in violation of the requirements of these regulations.

2.2 Construction Permit. No person shall make or construct any device for treatment or discharge of wastewater (including storm sewers), except to an existing sewer system, without first receiving a permit to do so from the Board or its authorized representative, except as provided in R317-1-2.5. Issuance of such permit shall be construed as approval of plans for the purposes of authorizing release of federal or state funds allocated for planning or construction purposes. Construction permits shall expire one year after date of issuance unless substantial and continuous construction is under way. Upon application, construction permits may be extended on an individual basis provided application for such extension is made prior to the permit expiration date.

2.3 Submission of Plans. Any person desiring a permit as required by R317-1-2.2, shall submit complete plans, specifications, and other pertinent documents covering the proposed construction to the Division for review.

2.4 Review of Plans. The Division shall review said plans and specifications as to their adequacy of design for the intended purpose and shall require such changes as are found necessary to assure compliance with pertinent parts of these regulations.

2.5 Exceptions.

A. [~~Individual~~]Onsite Wastewater Disposal Systems. Construction plans and specifications for [~~individual~~]onsite wastewater disposal systems shall be submitted to the local health authority having jurisdiction and need not be submitted to the Division. Such devices, in any case, shall be constructed in accordance with regulations for [~~individual~~]onsite wastewater disposal systems adopted by the Water Quality Board. Compliance with the regulations shall be determined by an on-site inspection by the appropriate health authority.

B. Small Animal Waste (Manure) Lagoons. Construction plans and specifications for small animal waste lagoons as defined in R317-6 (permitted by rule for ground water permits) need not be submitted to the Division if the design is prepared or certified by the U.S.D.A. Natural Resources Conservation Service (NRCS) in accordance with criteria provided for in the Memorandum of Agreement between the Division and the NRCS, and the construction is inspected by the NRCS. Compliance with these rules shall be determined by on-site inspection by the NRCS.

2.6 Compliance with Water Quality Standards. No person shall discharge wastes into waters of the state except in compliance with these regulations and under circumstances which assure compliance with water quality standards in R317-2.

2.7 Operation of Wastewater Treatment Works. Wastewater treatment works shall be so operated at all times as to produce effluents meeting all requirements of these regulations and otherwise in a manner consistent with adequate protection of public health and welfare. Complete daily records shall be kept of the operation of wastewater treatment works covered under R317-3 on forms approved by the Division and a copy of such records shall be forwarded to the Division at monthly intervals.

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KEY: water pollution, waste disposal, industrial waste, effluent standards*
[~~January 23,~~]2001 19-5
Notice of Continuation December 12, 1997

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Environmental Quality, Water Quality
R317-4
Onsite Wastewater Systems

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23768
FILED: 05/15/2001, 15:56
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Water Quality Act was amended by H.B. 14 during the 2001 legislative session. The proposed amendment updates definitions and adds certification requirements to make the rule consistent with the new statutory language.
(**DAR Note:** H.B. 14 can be found at 2001 Utah Laws 274 and will be effective July 1, 2001.)

SUMMARY OF THE RULE OR CHANGE: The proposed amendment updates several definitions concerning on-site wastewater disposal systems. In addition, the amendment adds a requirement that after January 1, 2002, on-site wastewater disposal designs must be prepared in accordance with certification requirements in Rule R317-11, and the system designer must, following construction of the system, certify in writing that the system was installed in accordance with the approved plans and specifications.
(**DAR Note:** R317-11 is a proposed new rule that is under DAR No. 23767 in this *Bulletin*.)

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

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: None--The proposed changes will be addressed using existing staff and resources and will not result in a cost or saving to the state budget.
❖LOCAL GOVERNMENTS: None--The proposed changes will be addressed using existing staff and resources. and will not result in a cost or saving to local government.
❖OTHER PERSONS: The rule requires that after January 1, 2002, persons who design, inspect or maintain underground wastewater disposal systems, and who conduct percolation tests or soil evaluations for these systems, must be certified by the State. The cost of obtaining certification is estimated at $50 to $100 for training.
COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule requires that after January 1, 2002, persons who design, inspect or maintain underground wastewater disposal systems, and who conduct percolation tests or soil evaluations for these systems, must be certified by the State. The cost of obtaining certification is estimated at $50 to $100 for training.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The rule requires that after January 1, 2002, persons who design, inspect or maintain underground wastewater disposal systems, and who conduct percolation tests or soil evaluations for these systems, must be certified by the State. The cost of obtaining certification is estimated at $50 to $100 for training.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Environmental Quality
Water Quality
Cannon Health Building
288 North 1460 West
PO Box 144870
Salt Lake City, UT 84114-4870, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jay Pitkin at the above address, by phone at (801) 538-6146, by FAX at (801) 538-6052, or by Internet E-mail at jpitkin@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 07/02/2001; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR June 19, 2001, at Southeastern Health Department Conference Room, 28 South 100 East Price, UT 84501, at 10:30 a.m.; June 19, 2001, at Iron County Visitor Center, West Meeting Room, 585 North Main, Cedar City, UT 84720 at 7:00 p.m.; and June 20, 2001, at Cannon Health Building, Room 125, 288 North 1460 West, Salt Lake City, UT 84114 from 2:00 - 4:00 p.m..

THIS RULE MAY BECOME EFFECTIVE ON: 07/23/2001

AUTHORIZED BY: Dianne R. Nielson, Executive Director

R317. Environmental Quality, Water Quality.
R317-4. Onsite Wastewater Systems.
R317-4-1. Definitions.

1.1. "Absorption bed" means an absorption system consisting of a covered, gravel-filled bed into which septic tank effluent is discharged through specially designed distribution pipes for seepage into the soil.

1.2. "Absorption system" means a device constructed to receive and to distribute effluent in such a manner that the effluent is effectively filtered and retained below ground surface.

1.3. "Absorption trench" means standard trenches, shallow trenches with capping fill, and chambered trenches constructed to receive and to distribute effluent in such a manner that the effluent is effectively filtered and retained below ground surface.

1.4. "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[~~, unless all applicable effluent discharge requirements are met~~].

1.5. "At-Grade" System means an alternative type of onsite wastewater system where the bottom of the absorption system is placed at or below the elevation of the existing site grade, and the top of the distribution pipe is above the elevation of existing site grade, and the absorption system is contained within a fill body that extends above that grade.

1.6. "Bedroom" means any portion of a dwelling which is so designed as to furnish the minimum isolation necessary for use as a sleeping area. It may include, but is not limited to, a den, study, sewing room, sleeping loft, or enclosed porch. Unfinished basements shall be counted as a minimum of one additional bedroom.

1.7. "Building sewer" means the pipe which carries wastewater from the building drain to a public sewer, an onsite wastewater system or other point of disposal. It is synonymous with "house sewer".

1.8. "Chambered trench" means a type of absorption system where the media consists of an open bottom, chamber structure of an approved material and design, which may be used as a substitute for the gravel media with a perforated distribution pipe.

1.9. "Condominium" means the ownership of a single unit in a multi-unit project together with an undivided interest in common, in the common areas and facilities of the property.

1.10. "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.

1.11. "Curtain drain" means any ground water interceptor or drainage system that is gravel backfilled and is intended to interrupt or divert the course of shallow ground water or surface water away from the onsite wastewater system.

1.12. "Deep wall trench" means an absorption system consisting of deep trenches filled with clean, coarse filter material, with a minimum sidewall absorption depth of 24 inches of suitable soil formation below the distribution pipe, into which septic tank effluent is discharged for seepage into the soil.

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

1.14. "Disposal area" means the entire area used for the subsurface treatment and dispersion of septic tank effluent by an absorption system.

1.15. "Distribution box" means a watertight structure which receives septic tank effluent and distributes it concurrently, in essentially equal portions, into two or more distribution pipes leading to an absorption system.

1.16. "Distribution pipe" means approved perforated pipe used in the dispersion of septic tank effluent into an absorption system.

1.17. "Domestic wastewater" means a combination of the liquid or water-carried wastes from residences, business buildings, institutions, and other establishments with installed plumbing facilities, together with those from industrial establishments, excluding non-domestic wastewater. It is synonymous with the term "sewage".

1.18. "Domestic septage" means the semi-liquid material that is pumped out of septic tanks receiving domestic wastewater. It consists of the sludge, the liquid, and the scum layer of the septic tank.

1.19. "Drainage system" means all the piping within public or private premises, which conveys sewage or other liquid wastes to a legal point of treatment and disposal, but does not include the mains of a public sewer system or a public sewage treatment or disposal plant.

1.20. "Drop box" means a watertight structure which receives septic tank effluent and distributes it into one or more distribution pipes, and into an overflow leading to another drop box and absorption system located at a lower elevation.

1.21. "Dwelling" means any structure, building, or any portion thereof which is used, intended, or designed to be occupied for human living purposes including, but not limited to, houses, mobile homes, hotels, motels, apartments, business, and industrial establishments.

1.22. "Earth fill" means an excavated or otherwise disturbed suitable soil which is imported and placed over the native soil. It is characterized by having no distinct horizons or color patterns, as found in naturally developed undisturbed soils.

1.23. "Effluent lift pump" means a pump used to lift septic tank effluent to a disposal area at a higher elevation than the septic tank.

1.24. "Ejector pump" means a device to elevate or pump untreated sewage to a septic tank, public sewer, or other means of disposal.

1.25. "Experimental onsite wastewater system" means an onsite wastewater treatment and disposal system which is still in experimental use and requires further testing in order to provide sufficient information to determine its acceptance.

1.26. "Final local health department approval" means, for the purposes of the grandfather provisions in R317-4-2 (Table 1, footnote a) and R317-4-3, the approval given by a local health department which would allow construction and installation of subdivision improvements. Note: Even though final local health department approval may have been given for a subdivision, individual lot approval would still be required for issuance of a building permit on each lot.

1.27. "Ground water" means that portion of subsurface water that is in the zone of soil saturation.

1.28. "Ground water table" means the surface of a body of unconfined ground water in which the pressure is equal to that of the atmosphere.

1.29. "Ground water table, perched" means unconfined ground water separated from an underlying body of ground water by an unsaturated zone. Its water table is a perched water table. It is underlain by a restrictive strata or impervious layer. Perched ground water may be either permanent, where recharge is frequent enough to maintain a saturated zone above the perching bed, or temporary, where intermittent recharge is not great or frequent enough to prevent the perched water from disappearing from time to time as a result of drainage over the edge of or through the perching bed.

1.30. "Impervious strata" means a layer which prevents water or root penetration. In addition, it shall be defined as having a percolation rate greater than 60 minutes per inch.[

~~1.31. "Individual wastewater disposal system", is synonymous to an onsite system and, means for the purposes of Section 19-5-102(7), a system for underground treatment and disposal of domestic wastewater which is designed for a capacity of 5,000 gallons per day or less and is not designed to serve multiple dwelling units which are owned by separate owners except condominiums. It usually consists of a building sewer, a septic tank, and an absorption system.~~]

1.3[~~2~~]1. "Invert" is the lowest portion of the internal cross section of a pipe or fitting.

1.3[~~3~~]2. "Liquid waste operation" means any business activity or solicitation by which liquid wastes are collected, transported, stored, or disposed of by a collection vehicle. This shall include, but not be limited to, the cleaning out of septic tanks, sewage holding tanks, chemical toilets, and vault privies.

1.3[~~4~~]3. "Liquid waste pumper" means any person who conducts a liquid waste operation business.

1.3[~~5~~]4. "Local health department" means a city-county or multi-county local health department established under Title 26A.

1.3[~~6~~]5. "Lot" means a portion of a subdivision, or any other parcel of land intended as a unit for transfer of ownership or for development or both and shall not include any part of the right-of-way of a street or road.

1.3[~~7~~]6. "Malfunctioning or failing system" means an onsite wastewater system which is not functioning in compliance with the requirements of this regulation and includes, but is not limited to, the following:

A. Absorption systems which seep or flow to the surface of the ground or into waters of the state.

B. Systems which have overflow from any of their components.

C. Systems which, due to failure to operate in accordance with their designed operation, cause backflow into any portion of a building plumbing system.

D. Systems discharging effluent which does not comply with applicable effluent discharge standards.

E. Leaking septic tanks.

1.3[~~8~~]7. "Maximum ground water table" means the highest elevation that the top of the "ground water table" or "ground water table, perched" is expected to reach for any reason over the full operating life of the onsite wastewater system at that site.

1.3[~~9~~]8. "Mound System" means an alternative onsite wastewater system where the bottom of the absorption system is

placed above the elevation of the existing site grade, and the absorption system is contained in a mounded fill body above that grade.

1.[~~40~~]39. "Non-domestic wastewater" means process wastewater originating from the manufacture of specific products. Such wastewater is usually more concentrated, more variable in content and rate, and requires more extensive or different treatment than domestic wastewater.

1.4[~~1~~]0. "Non-public water source" means a culinary water source that is not defined as a public water source.

1.4[~~2~~]1. "Onsite Wastewater System" means [~~a~~]an underground wastewater disposal system [~~consisting of a building sewer, a septic tank, and an absorption system for underground treatment and disposal of domestic wastewater~~]for domestic wastewater which is designed for a capacity of 5,000 gallons per day or less, and is not designed to serve multiple dwelling units which are owned by separate owners except condominiums. It usually consists of a building sewer, a septic tank and an absorption system.

1.4[~~3~~]2. "Percolation rate" means the time expressed in minutes per inch required for water to seep into saturated soil at a constant rate during a percolation test.

1.4[~~4~~]3. "Percolation test" means the method used to measure the percolation rate of water into soil as described in these rules.

1.4[~~5~~]4. "Permeability" means the rate at which a soil transmits water when saturated.

1.4[~~6~~]5. "Person" means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state (Section 19-1-103).

1.4[~~7~~]6. "Pollution" means any man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of any waters of the state, unless the alteration is necessary for public health and safety (Section 19-5-102).

1.4[~~8~~]7. "Public health hazard" means, for the purpose of this rule, a condition whereby there are sufficient types and amounts of biological, chemical, or physical agents relating to water or sewage which are likely to cause human illness, disorders or disability. These include, but are not limited to, pathogenic viruses and bacteria, parasites, toxic chemicals and radioactive isotopes. A malfunctioning onsite wastewater system constitutes a public health hazard.

1.4[~~9~~]8. "Public water source" means a culinary water source, either publicly or privately owned, providing water for human consumption and other domestic uses, as defined in R309.

1.[~~50~~]49. "Regulatory Authority" means either the Utah Division of Water Quality or the local health department having jurisdiction.

1.5[~~1~~]0. "Replacement area" means sufficient land with suitable soil, excluding streets, roads, and permanent structures, which complies with the setback requirements of these rules, and is intended for the 100 percent replacement of absorption systems.

1.5[~~2~~]1. "Restrictive layer" means a layer in the soil that because of its structure or low permeability does not allow water entering from above to pass through as rapidly as it accumulates. During some part of every year, a restrictive layer is likely to have temporarily perched ground water table accumulated above it.

1.5[~~3~~]2. "Scum" means a mass of sewage solids floating on the surface of wastes in a septic tank which is buoyed up by entrained gas, grease, or other substances.

1.5[~~4~~]3. "Seepage pit" means an absorption system consisting of a covered pit into which septic tank effluent is discharged.

1.5[~~5~~]4. "Septic tank" means a watertight receptacle which receives the discharge of a drainage system or part thereof, designed and constructed so as to retain solids, digest organic matter through a period of detention and allow the liquids to discharge into the soil outside of the tank through an absorption system meeting the requirements of these rules.

1.5[~~6~~]5. "Septic tank effluent" means partially treated sewage which is discharged from a septic tank.

1.5[~~7~~]6. "Sewage holding tank" means a watertight receptacle which receives water-carried wastes from the discharge of a drainage system and retains such wastes until removal and subsequent disposal at an approved site or treatment facility.

1.5[~~8~~]7. "Shall" means a mandatory requirement except when modified by action of the Department on the basis of justifying facts submitted as part of plans and specifications for a specific installation.

1.5[~~9~~]8. "Shallow trenches with capping fill" means an absorption trench which meets all of the requirements of standard trenches except for the elevation of the installed trench. The minimum depth of installation is 10 inches from the natural existing grade to the trench bottom. The gravel and soil fill required above the pipe are placed as a "cap" to the trenches, installed above the natural existing grade.

1.[~~60~~]59. "Should" means recommended or preferred and is intended to mean a desirable standard.

1.6[~~1~~]0. "Single-family dwelling" means a building designed to be used as a home by the owner or lessee of such building, and shall be the only dwelling located on a lot with the usual accessory buildings.

1.6[~~2~~]1. "Sludge" means the accumulation of solids which have settled in a septic tank or a sewage holding tank.

1.6[~~3~~]2. "Soil exploration pit" means an open pit dug to permit examination of the soil to evaluate its suitability for absorption systems.

1.6[~~4~~]3. "Standard Trench" means an absorption system consisting of a series of covered, gravel-filled trenches into which septic tank effluent is discharged through specially designed distribution pipes for seepage into the soil.

1.6[~~5~~]4. "Waste" or "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into water (Section 19-5-102).

1.6[~~6~~]5. "Wastewater" means sewage, industrial waste or other liquid substances which might cause pollution of waters of the state. Intercepted ground water which is uncontaminated by wastes is not included.

1.6[~~7~~]6. "Waters of the state" means all streams, lakes, ponds, marshes, watercourses, waterways, wells, springs, irrigation systems, drainage systems, and all other bodies or accumulations of water, surface and underground, natural or artificial, public or

private, which are contained within, flow through, or border upon this state or any portion thereof, except that bodies of water confined to and retained within the limits of private property, and which do not develop into or constitute a nuisance, or a public health hazard, or a menace to fish and wildlife, are not "waters of the state" (Section 19-5-102).

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R317-4-3. Onsite Wastewater Systems General Requirements.

3.1. Units Required in an Onsite Wastewater System. The onsite wastewater system shall consist of the following components:

A. A building sewer.

B. A septic tank.

C. An absorption system. This may be a standard trench, a shallow trench with capping fill, a chambered trench, a deep wall trench, a seepage pit or pits, an absorption bed, or alternative or experimental systems as specified in this rule, depending on location, topography, soil conditions and ground water table.

3.2. Multiple Dwelling Units. Multiple dwelling units under individual ownership, except condominiums, shall not be served by a single onsite wastewater system except where that system is under the sponsorship of a body politic. Plans and specifications for such systems shall be submitted to and approved by the Utah Water Quality Board. Issuance of a construction permit by the Board shall constitute approval of plans and authorization for construction.

3.3. Review Criteria for Establishing Onsite Wastewater System Feasibility of Proposed Housing Subdivisions and Other Similar Developments. The local health department will review plans for proposed subdivisions and other similar developments for wastewater permit feasibility, prepared at the owner's expense by or under the supervision of a qualified person such as, a licensed environmental health scientist, or a registered civil, environmental or geotechnical engineer, certified by the regulatory authority. A plan of the subdivision shall be submitted to the local health department for review and shall be drawn to such scale as needed to show essential features. Ground surface contours must be included, preferably at two-foot intervals unless smaller intervals are necessary to describe existing surface conditions. Intervals larger than two feet may be authorized on a case-by-case basis where it can be shown that they are adequate to describe all necessary terrain features. The plan must be specifically located with respect to the public land survey of Utah. A vicinity location map, preferably a U.S. Geological Survey 7-1/2 or 15 minute topographic map, shall be provided with the plan for ease in locating the subdivision area. A narrative feasibility report addressing the short-range and long-range water supply and wastewater system facilities proposed to serve the development must be submitted for review. The feasibility report shall include the following information:

A. Name and location of proposed development.

B. Name and address of the developer of the proposed project and the engineer or individual who submitted the feasibility report.

C. Statement of intended use of proposed development, such as residential-single family, multiple dwellings, commercial, industrial, or agricultural.

D. The proposed street and lot layout, the size and dimensions of each lot and the location of all water lines and easements, and if possible, the areas proposed for sewage disposal. All lots shall be consecutively numbered. The minimum required area of each lot shall be sufficient to permit the safe and effective use of an onsite wastewater system and shall include a replacement area for the absorption system. Plans used for multiple dwellings, commercial, and industrial purposes will require a study of anticipated sewage flows prior to developing suitable area requirements for sewage disposal.

E. Ground surface slope of areas proposed for onsite wastewater systems shall conform with the requirements of R317-4-4.

F. The location, type, and depth of all existing and proposed nonpublic water supply sources within 200 feet of onsite wastewater systems, and of all existing or proposed public water supply sources within 1500 feet of onsite wastewater systems.

G. The locations of all rivers, streams, creeks, washes (dry or ephemeral), lakes, canals, marshes, subsurface drains, natural storm water drains, lagoons, artificial impoundments, either existing or proposed, within or adjacent to the area to be planned , and cutting or filling of lots that will affect building sites. Areas proposed for onsite wastewater systems shall be isolated from pertinent ground features as specified in Table 2.

H. Surface drainage systems shall be included on the plan , as naturally occurring, and as altered by roadways or any drainage, grading or improvement, installed or proposed by the developer. The details of the surface drainage system shall show that the surface drainage structures, whether ditches, pipes, or culverts, will be adequate to handle all surface drainage so that it in no way will affect onsite wastewater systems on the property. Details shall also be provided for the final disposal of surface runoff from the property.

I. If any part of a subdivision lies within or abuts a flood plain area, the flood plain shall be shown within a contour line and shall be clearly labeled on the plan with the words "flood plain area".

J. The location of all soil exploration pits and percolation test holes shall be clearly identified on the subdivision final plat and identified by a key number or letter designation. The results of such soil tests, including stratified depths of soils and final percolation rates for each lot shall be recorded on or with the final plat. All soil tests shall be conducted at the owner's expense.

K. A report by an engineer, geologist, or other person qualified by training and experience to prepare such reports must be submitted to show a comprehensive log of soil conditions for each lot proposed for an onsite wastewater system.

1. A sufficient number of soil exploration pits shall be dug on the property to provide an accurate description of subsurface soil conditions. Soil description shall conform with the United States Department of Agriculture soil classification system. Soil exploration pits shall be of sufficient size to permit visual inspection, and to a minimum depth of ten feet, and at least four feet below the bottom of proposed absorption systems. One end of each pit should be sloped gently to permit easy entry if necessary. Deeper soil exploration pits are required if deep absorption systems, such as deep wall trenches or seepage pits, are proposed.

2. For each soil exploration pit, a log of the subsurface formations encountered must be submitted for review which describes the texture, structure, and depth of each soil type, the depth of the ground water table if encountered, and any indications of the maximum ground water table.

3. Soil exploration pits and percolation tests shall be made at the rate of at least one test per lot. The local health department may allow fewer tests based on the uniformity of prevailing soil and ground water characteristics and available percolation test data. Percolation tests shall be conducted in accordance with R317-4-5. If soil conditions and surface topography indicate, a greater number of soil exploration pits or percolation tests may be required by the regulatory authority. Whenever available, information from published soil studies of the area of the proposed subdivision shall be submitted for review. Soil exploration pits and percolation tests must be conducted as closely as possible to the absorption system sites on the lots or parcels. The regulatory authority shall have the option of inspecting the open soil exploration pits and monitoring the percolation test procedure. Complete results shall be submitted for review, including all unacceptable test results. Absorption systems are not permitted in areas where the requirements of R317-4-5 cannot be met or where the percolation rate is slower than 60 minutes per inch or faster than one minute per inch. Where soil and other site conditions are clearly unsuitable, there is no need for conducting soil exploration pits or percolation tests.

L. A statement by an engineer, geologist, or other person qualified by training and experience to prepare such statements, must be submitted indicating the present and maximum ground water table throughout the development. If there is evidence that the ground water table ever rises to less than two feet from the bottom of the proposed absorption systems , onsite wastewater absorption systems will not be approved. Ground water table determinations must be made in accordance with R317-4-5.

M. If ground surface slopes exceed four percent, or if soil conditions, drainage channels, ditches, ponds or watercourses are located in or near the project so as to complicate design and location of an onsite wastewater systems, a detailed system layout shall be provided for those lots presenting the greatest design difficulty. A typical lot layout will include, but not be limited to the following information, and shall be drawn to scale:

1. All critical dimensions and distances for the selected lot(s), including the distance of the onsite wastewater system from lakes, ponds, watercourses, etc.

2. Location of dwelling, with distances from street and property lines.

3. Location of water lines, water supply, onsite wastewater system, property lines, and lot easements.

4. Capacity of septic tank and dimensions and cross-section of absorption system.

5. Results and locations of individual soil exploration pits and percolation tests conducted on the selected lot(s).

6. If nonpublic wells or springs are to be provided, the plan shall show a typical lot layout indicating the relative location of the building, well or spring, and onsite wastewater system.

N. If proposed developments are located in aquifer recharge areas or areas of other particular geologic concern, the regulatory authority may require such additional information relative to ground water movement, or possible subsurface sewage flow.

O. Excessively Permeable Soil and Blow Sand. Soil having excessively high permeability, such as cobbles or gravels with little fines and large voids, affords little filtering action to effluents flowing through it and may constitute grounds for rejection of sites. The extremely fine-grained "blow sand" (aeolian sand) found in some parts of Utah is unsuitable for absorption systems, and onsite wastewater system for installation in such blow sand conditions shall not be approved. This shall not apply to lots which have received final local health department approval prior to the effective date of this rule.

1. Percolation test results in blow sand will generally be rapid, but experience has shown that this soil has a tendency to become sealed with minute organic particles within a short period of time. For lots which are exempt as described above, systems may be constructed in such material provided it is found to be within the required range of percolation rates specified in these rules, and provided further that the required area shall be calculated on the assumption of the minimum acceptable percolation rate (60 minutes per inch for standard trenches, deep wall trenches, and seepage pits, and 30 minutes per inch for absorption beds).

2. Prohibition of Onsite Wastewater Systems. If soil studies described in the foregoing paragraphs indicate conditions which fail in any way to meet the requirements specified herein, the use of onsite wastewater systems in the area of study will be prohibited.

P. After review of all information, plans, and proposals, the regulatory authority will send a letter to the individual who submitted the feasibility report stating the results of the review or the need for additional information. An affirmative statement of feasibility does not imply that it will be possible to install onsite wastewater systems on all of the proposed lots, but shall mean that such onsite wastewater systems may be installed on the majority of the proposed lots in accordance with minimum State requirements and any conditions that may be imposed.

3.4. Submission, Review, and Approval of Plans for Onsite Wastewater Systems.

A. Plans and specifications for the construction, alteration, extension, or change of use of onsite wastewater systems which receive domestic wastewater, prepared at the owner's expense by or under the supervision of a qualified person such as, a licensed environmental health scientist, or a registered civil, environmental or geotechnical engineer, certified by the regulatory authority, shall be submitted to, and approved by the local health department having jurisdiction before construction of either the onsite wastewater system or building to be served by the onsite wastewater system may begin. Details for said site, plans, and specifications are listed in R317-4-4. After January 1, 2002, the design must be prepared in accordance with certification requirements in R317-11, and the system designer must, following construction of the system, certify in writing that the system was installed in accordance with the approved plans and specifications.

B. Plans and specifications for the construction, alteration, extension, or change of use of onsite wastewater systems which receive nondomestic wastewater shall be submitted to and approved by the Division of Water Quality.

C. The local health department having jurisdiction, or the Division, shall review said plans and specifications as to their adequacy of design for the intended purpose, and shall, if necessary, require such changes as are required by these rules. When the reviewing regulatory authority is satisfied that plans and specifications are adequate for the conditions under which a system is to be installed and used, written approval shall be issued to the individual making the submittal and the plans shall be stamped indicating approval. Construction shall not commence until the plans have been approved by the regulatory authority. The installer

shall not deviate from the approved design without the approval of the reviewing regulatory authority.

D. Depending on the individual site and circumstances, or as determined by the local board of health some or all of the following information may be required. Compliance with these rules must be determined by an on-site inspection after construction but before backfilling. Onsite wastewater systems must be constructed and installed in accordance with these rules.

E. In order that approval can be expedited, plans submitted for review must be drawn to scale (1" = 8', 16', etc. but not exceed 1" = 30'), or dimensions indicated. Plans must be prepared in such a manner that the contractor can read and follow them in order to install the system properly. Plan information that may be required is as follows:

1. Plot or property plan showing:

a. Date of application.

b. Direction of north.

c. Lot size and dimensions.

d. Legal description of property if available.

e. Ground surface contours (preferably at two-foot intervals) of both the original and final (proposed) grades of the property, or relative elevations using an established bench mark.

f. Location and dimensions of paved and unpaved driveways, roadways and parking areas.

g. Location and explanation of type of dwelling to be served by an onsite wastewater system.

h. Maximum number of bedrooms (including statement of whether a finished or unfinished basement will be provided), or if other than a single family dwelling, the number of occupants expected and the estimated gallons of wastewater generated per day.

i. Location and dimensions of the essential components of the onsite wastewater system.

j. Location of soil exploration pit(s) and percolation test holes.

k. Location of building sewer and water service line to serve dwelling.

l. The location, type, and depth of all existing and proposed nonpublic water supply sources within 200 feet of onsite wastewater systems, and of all existing or proposed public water supply sources within 1500 feet of onsite wastewater systems.

m. Distance to nearest public water main and size of main.

n. Distance to nearest public sewer, size of sewer, and whether accessible by gravity.

o. Location of easements or drainage right-of-ways affecting the property.

p. Location of all streams, ditches, watercourses, ponds, subsurface drains, etc., (whether intermittent or year-round) within 100 feet of proposed onsite wastewater system.

2. Statement of soil conditions obtained from soil exploration pit(s) dug (preferably by backhoe) to a depth of ten feet in the absorption system area, or to the ground water table if it is shallower than 10 feet below ground surface. In the event that absorption system excavations will be deeper than six feet, soil exploration pits must extend to a depth of at least four feet below the bottom of the proposed absorption system excavation. One end of each pit should be sloped gently to permit easy entry if necessary. Whenever possible data from published soil studies of the site should also be submitted. Soil logs should be prepared in accordance with the United States Department of Agriculture soil classification system.

3. Statement with supporting evidence indicating (A) present and (B) maximum anticipated ground water table and (C) flooding potential for onsite wastewater system site.

4. The results of at least one stabilized percolation test for the design flow less than 2,000 gallons per day, or three tests if the design flow is more than 2,000 gallons per day, but less than 5,000 gallons per day, in the area of the proposed absorption system, conducted according to R317-4-5. Percolation tests should be conducted at a depth of six inches below the bottom of the proposed absorption system excavation and test results should be submitted on a "Percolation Test Certificate" obtainable upon request. If a deep wall trench or seepage pit is proposed, a completed "Deep Wall Trench Construction Certificate" may be submitted if percolation tests are not required.

5. Relative elevations (using an established bench mark) of the:

a. Building drain outlet.

b. The inlet and outlet inverts of the septic tank(s).

c. The outlet invert of the distribution box (if provided) and the ends or corners of each distribution pipe lateral in the absorption system.

d. The final ground surface over the absorption system.

e. Septic tank access cover, including length of extension, if used.

6. Schedule or grade, material, diameter, and minimum slope of building sewer.

7. Septic tank capacity, design (cross sections, etc.), materials, and dimensions. If tank is commercially manufactured, state name and address of manufacturer.

8. Details of drop boxes or distribution boxes (if provided)

9. Absorption system details which include the following:

a. Schedule or grade, material, and diameter of distribution pipes.

b. Required and proposed area for absorption system.

c. Length, slope, and spacing of each distribution pipeline.

d. Maximum slope across ground surface of absorption system area.

e. Slope of distribution pipelines (maximum slope four inches/100 feet., level preferred)

f. Distance of distribution pipes from trees, cut banks, fills or other subsurface disposal systems.

g. Type and size of filter material to be used (must be clean, free from fines, etc.).

h. Cross section of absorption system showing:

i. Depth and width of absorption system excavation.

ii. Depth of distribution pipe.

iii. Depth of filter material.

iv. Barrier (i.e., synthetic filter fabric, straw, etc.) used to separate filter material from backfill.

v. Depth of backfill.

10. Schedule or grade, type, and capacity of sewage pump, pump well, discharge line, siphons, siphon chambers, etc., if required as part of the onsite wastewater system.

11. Statement indicating (A) source of water supply for dwelling (whether a well, spring, or public system) and (B) location and (C) distance from onsite wastewater disposal system. If plan approval of a nonpublic water supply system is desired, information regarding that system must be submitted separately.

12. Complete address of dwelling to be served by this onsite wastewater system. Also the name, current address, and telephone number of:

a. The person who will own the proposed onsite wastewater system.

b. The person who will construct and install the onsite wastewater system.

c. If mortgage loan for dwelling is insured or guaranteed by a federal agency, the name and local address of that agency.

F. All applicants requesting plan approval for an onsite wastewater system must submit a sufficient number of copies of the above required information to enable the regulatory authority to retain one copy as a permanent record.

G. Applications will be rejected if proper information is not submitted.

3.5. Final On-Site Inspection.

A. After an onsite wastewater system has been installed and before it is backfilled or used, the entire system shall be inspected by the appropriate regulatory authority to determine compliance with these rules. For deep wall trenches and seepage pits, the regulatory authority should make at least two inspections, with the first inspection being made following the excavation and the second inspection after the trench or pit has been filled with stone or constructed, but before any backfilling has occurred.

B. Each septic tank shall be tested for water tightness before backfilling in accordance with the requirements and procedure outlined in the American Society for Testing Materials' Standard ASTM C-1227, or concrete tanks should be filled 24 hours before the inspection to allow stabilization of the water level. During the inspection there shall be no change in the water level for 30 minutes. Nor shall moving water, into or out of the tank , be visible. The regulatory authority may allow two piece tanks, with the joint below the water level, to be backfilled up to three inches below the joint to provide adequate support to the seam of the tank. Testing shall be supervised by the regulatory authority. Tanks exhibiting obvious defects or leaks shall not be approved unless such deficiencies are repaired to the satisfaction of the regulatory authority.

3.6. Appeals. The appeals process for this rule is outlined in R317-1-8.

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R317-4-5. Soil and Ground Water Requirements.

5.1. Soil Requirements.

A. In areas where onsite wastewater systems are to be constructed, soil cover must be adequate to insure at least 48 inches of suitable soil between bedrock formations or impervious strata and the bottom of the absorption system excavation. In cases where an approved fill is used, there shall be at least three feet of suitable soil from prevailing site grade to bedrock formations or impervious strata. For the purposes of this regulation, unsuitable soil or bedrock formations shall be deemed to be (1) soil or bedrock formations which are so slowly permeable that they prevent downward passage of effluent, or (2) soil or bedrock formations with open joints or solution channels which permit such rapid flow that effluent is not renovated. This includes coarse particles such as gravel, cobbles, or angular rock fragments with insufficient soil to fill the voids between the particles. Solid or fractured bedrock such as shale, sandstone, limestone, basalt, or granite are unacceptable for absorption systems. Where a mound system is used, there shall be at least two feet of suitable soil from prevailing site grade to formations which will permit such rapid flow that effluent will not be renovated.

B. A suitable soil for absorption systems shall meet the following criteria:

1. The distance between the maximum ground water table and the bottom of the absorption system excavation complies with the requirements of these rules.

2. Has the capacity to adequately disperse the designed effluent loading as determined by field percolation rates, or by other approved soil tests.

3. Does not exhibit inhibiting swelling or collapsing characteristics.

4. Does not visually exhibit a jointed or fractured pattern of an underlying bedrock.

5. Is not consolidated, cemented, indurated, or plugged by a buildup of secondary deposited calcium carbonate (caliche).

6. Acts as an effective effluent filter within its depth for the removal of pathogenic organisms.

7. Criteria for alternative onsite wastewater systems, as specified in R317-4-11 for earth fill systems, "at-grade" systems, and mound systems.

5.2. Ground Water Requirements.

A. In areas where absorption systems are to be constructed, the elevation of the anticipated maximum ground water table shall be at least 24 inches below the bottom of the absorption system excavation and at least 48 inches below finished grade. Local health departments and other local government entities may impose stricter separation requirements between absorption systems and the maximum ground water table when deemed necessary. Building lots recorded or having received final local health department approval prior to May 21,1984 shall be subject to the ground water table separation requirements of the then Part IV of the Code of Waste Disposal Regulations dated June 21, 1967. Unrecorded lots which are part of subdivisions that have received final local health department approval prior to May 21, 1984 are only exempt from the ground water table separation requirements of this regulation if the developer has and is proceeding with reasonable diligence. Notwithstanding this grandfather provision for recorded or other approved lots, the depth to ground water requirements are applicable if compelling or countervailing public health interests would necessitate application of the more stringent requirements of this regulation.

B. The maximum ground water table shall be determined by one or more of the following methods:

1. Direct visual observation of the maximum ground water table in a soil exploration pit.

2. Regular monitoring of the "ground water table" or "ground water table, perched" in an observation well for a period of one year, or for the period of maximum ground water table. Ground water monitoring shall be required where the anticipated maximum ground water table, including irrigation induced water table, might be expected to rise closer than 48 inches to the elevation of the bottom of the onsite wastewater system, or where alternative onsite wastewater systems may be considered.

3. Observation of soil in a soil exploration pit for evidence of crystals of salt left by the maximum ground water table; or chemically reduced iron in the soil, reflected by a mottled coloring.

C. If the highest elevation that the top of the ground water table or ground water table, perched, ever recorded, is expected to reach for any reason, including irrigation induced water table, over the full operating life of the conventional onsite wastewater system is within 24 inches of the bottom of the conventional onsite wastewater system the use of conventional onsite wastewater systems in the area of study will be prohibited.

D. Previous ground water records and climatological or other information may be consulted for each site proposed for an onsite wastewater system and may be used to adjust the observed maximum ground water table elevation in determining the anticipated maximum ground water table elevation. In cases where the anticipated maximum ground water table is expected to rise to closer than 34 inches from the original ground surface and an alternative or experimental onsite wastewater system would be considered, previous ground water records and climatological or other information shall be used to adjust the observed maximum ground water table in determining the anticipated maximum ground water table.

E. A curtain drain or other effective ground water interceptor may be required to be installed for an absorption system as a condition for its approval. The health authority may require that the effectiveness of such devices in lowering the ground water table be demonstrated during the season of maximum ground water table.

5.3. Soil Exploration Requirements.

A. Suitable soil exploration pits, of sufficient size to permit visual inspection, and to a minimum depth of ten feet, or at least 48 inches below the bottom of proposed onsite wastewater systems, shall be dug on each absorption system site to determine the ground water table and subsurface soil and bedrock conditions. One end of each pit should be sloped gently to permit easy entry if necessary. A log of the soil and bedrock formations encountered must be submitted describing the texture, structure, and depth of each soil type, the depth of the ground water table encountered, and indications of the maximum elevation of the ground water table. Soil logs should be prepared in accordance with the United States Department of Agriculture Soil Classification System by qualified individuals. After January 1, 2002, the soil exploration and evaluation must be done in accordance with certification requirements in R317-11.

B. Proper safety precautions shall be taken whenever soil exploration pits or other excavations are dug for onsite wastewater systems.

5.4. Percolation Test Requirements. After January 1, 2002, percolation tests must be done in accordance with certification requirements in R317-11. At least one stabilized percolation test for the design flow less than 2,000 gallons per day, or three tests if the design flow is more than 2,000 gallons per day, but less than 5,000 gallons per day, shall be performed on the site of each absorption system to determine minimum required absorption area. More tests may be required where soil structure varies, where limiting geologic conditions are encountered, where the proposed property improvements will require large disposal systems, or where the health authority deems it necessary. Percolation tests shall be conducted in accordance with the instructions in this section. Absorption systems are not permitted in areas where the soil percolation rate is slower than 60 minutes per inch or faster than one minute per inch.

A. When percolation tests are made, such tests shall be made at points and elevations selected as typical of the area in which the absorption system will be located. Consideration should be given to the finished grades of building sites so that test results will represent the percolation rate of the soil in which absorption systems will be constructed. After the suitability of any area to be used for onsite wastewater systems has been evaluated and approved for construction, no grade changes shall be made to this area unless the regulatory authority is notified and a reevaluation of the area's suitability is made prior to the initiation of construction.

B. Test results when required shall be considered an essential part of plans for absorption systems and shall be submitted on a signed "Percolation Test Certificate" or equivalent. Copies of the recommended Percolation Test Certificate form can be obtained from the Division of Water Quality. The test certificate must contain the following:

1. a signed statement certifying that the tests were conducted in accordance with this rule;

2. The name of the individual conducting the tests;

3. The location of the property

4. the depth and rate of each test in minutes per inch;

5. the date of the tests;

6. the logs of the soil exploration pits, including a statement of soil explorations to a depth of ten feet. In the event that absorption systems will be deeper than six feet, soil explorations must extend to a depth of at least four feet below the bottom of the proposed absorption system including, deep wall trench, seepage pit or absorption bed;

7. a statement of the present and anticipated maximum ground water table;

8. all other factors affecting percolation test results.

C. Percolation tests shall be conducted at the owner's expense by or under the supervision of a qualified person such as, a licensed environmental health scientist, or a registered civil, environmental or geotechnical engineer, certified by the regulatory authority, in accordance with the following:

1. Conditions Prohibited for Test Holes. Percolation tests shall not be conducted in test holes which extend into ground water, bedrock, or frozen ground. Where a fissured soil formation is encountered, tests shall be made under the direction of the regulatory authority.

2. Soil Exploration Pit Prerequisite to Percolation Tests. Since the appropriate percolation test depth depends on the soil conditions at a specific site, the percolation test should be conducted only after the soil exploration pit has been dug and examined for suitable and porous strata and ground water table information. Percolation test results should be related to the soil conditions found.

3. Number and Location of Percolation Tests. One or more tests shall be made in separate test holes on the proposed absorption system site to assure that the results are representative of the soil conditions present. Percolation tests conducted for deep wall trenches and seepage pits shall comply with R317-4-9. Where questionable or poor soil conditions exist, the number of percolation tests and soil explorations necessary to yield accurate, representative information shall be determined by the regulatory authority and may be accepted only if conducted with an authorized representative present.

4. Test Holes to Commence in Specially Prepared Excavations. All percolation test holes should commence in specially prepared larger excavations (preferably made with a backhoe) of sufficient size which extend to a depth approximately six inches above the strata to be tested.

5. Type, Depth, and Dimensions of Test Holes. Test holes shall be dug or bored, preferably with hand tools such as shovels or augers, etc., and shall have horizontal dimensions ranging from four to 18 inches (preferably eight to twelve inches). The vertical sides shall be at least twelve inches deep, terminating in the soil at an elevation six inches below the bottom of the proposed onsite wastewater system. In testing individual soil strata for deep wall trenches and seepage pits, the percolation test hole shall be located entirely within the strata to be tested, if possible.

6. Preparation of Percolation Test Hole. Carefully roughen or scratch the bottom and sides of the hole with a knife blade or other sharp pointed instrument, in order to remove any smeared soil surfaces and to provide an open, natural soil interface into which water may percolate. Remove all loose soil from the bottom of the hole. Add two to three inches of clean coarse sand gravel to protect the bottom from scouring or sealing with sediment when water is added. Caving or sloughing in some test holes can be prevented by placing in the test hole a wire cylinder or perforated pipe surrounded by clean coarse gravel.

7. Saturation and Swelling of the Soil. It is important to distinguish between saturation and swelling. Saturation means that the void spaces between soil particles are full of water. This can be accomplished in a relatively short period of time. Swelling is a soil volume increase caused by intrusion of water into the individual soil particles. This is a slow process, especially in clay-type soil, and is the reason for requiring a prolonged swelling period.

8. Placing Water in Test Holes. Water should be placed carefully into the test holes by means of a small-diameter siphon hose or other suitable method to prevent washing down the side of the hole.

9. Percolation Rate Measurement, General. Necessary equipment should consist of a tape measure (with at least 1/16-inch calibration) or float gauge and a time piece or other suitable equipment. All measurements shall be made from a fixed reference point near the top of the test hole to the surface of the water.

10. Test Procedure for Sandy or Granular Soils. For tests in sandy or granular soils containing little or no clay, the hole shall be carefully filled with clear water to a minimum depth of twelve inches over the gravel and the time for this amount of water to seep away shall be determined. The procedure shall be repeated and if the water from the second filling of the hole at least twelve inches above the gravel seeps away in ten minutes or less, the test may proceed immediately as follows:

a. Water shall be added to a point not more than six inches above the gravel.

b. Thereupon, from the fixed reference point, water levels shall be measured at ten minute intervals for a period of one hour.

c. If six inches of water seeps away in less than ten minutes a shorter time interval between measurements shall be used, but in no case shall the water depth exceed six inches.

d. The final water level drop shall be used to calculate the percolation rate.

11. Test Procedure for Other Soils Not Meeting the Above Requirements. The hole shall be carefully filled with clear water and a minimum depth of twelve inches shall be maintained above the gravel for at least a four hour period by refilling whenever necessary. Water remaining in the hole after four hours shall not be removed. Immediately following the saturation period, the soil shall be allowed to swell not less than 16 hours or more than 30 hours. Immediately following the soil swelling period, the percolation rate measurements shall be made as follows:

a. Any soil which has sloughed into the hole shall be removed and water shall be adjusted to six inches over the gravel.

b. Thereupon, from the fixed reference point, the water level shall be measured and recorded at approximately 30 minute intervals for a period of four hours unless two successive water level drops do not vary more than 1/16 of an inch and indicate that an approximate stabilized rate has been obtained.

c. The hole shall be filled with clear water to a point not more than six inches above the gravel whenever it becomes nearly empty.

d. Adjustments of the water level shall not be made during the last 3 measurement periods except to the limits of the last water level drop.

e. When the first six inches of water seeps away in less than 30 minutes, the time interval between measurements shall be ten minutes, and the test run for one hour.

f. The water depth shall not exceed six inches at any time during the measurement period.

g. The drop that occurs during the final measurement period shall be used in calculating the percolation rate.

12. Calculation of Percolation Rate. The percolation rate is equal to the time elapsed in minutes for the water column to drop, divided by the distance the water dropped in inches and fractions thereof.

13. Using Percolation Rate to Determine Absorption Area. The minimum or slowest percolation rate shall be used in calculating the required absorption area.

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R317-4-13. Recommendations for the Maintenance of Septic Tanks and Absorption Systems.

13.1. Recommendations for the Maintenance of Septic Tanks and Absorption Systems.

A. Septic tanks must be cleaned before too much sludge or scum is allowed to accumulate and seriously reduce the tank volume settling depth. If either the settled solids or floating scum layer accumulate too close to the bottom of the outlet baffle or bottom of the sanitary tee pipe in the tank, solid particles will overflow into the absorption system and eventually clog the soil and ruin its absorption capacity. Illustrations of typical absorption system components such as septic tanks, distribution boxes, and absorption systems are contained in an addendum to these rules, available through the Division of Water Quality

B. A septic tank which receives normal loading should be inspected at yearly intervals to determine if it needs emptying. Although there are wide differences in the rate that sludge and scum accumulate in tanks, a septic tank for a private residence will generally require cleaning every three to five years. Actual measurement of scum and sludge accumulation is the only sure way to determine when a tank needs to be cleaned. Experience for a particular system may indicate the desirability of longer or shorter

intervals between inspections. Scum and sludge accumulations can be measured as follows:

1. Scum can be measured with a long stick to which a weighted flap has been hinged, or any device that can be used to determine the bottom of the scum mat. The stick is forced through the mat, the hinged flap falls into a horizontal position, and the stick is lifted until resistance from the bottom of the scum is felt. With the same tool, the distance to the bottom of the outlet device (baffle or tee) can be found.

2. Sludge can be measured with a long stick wrapped with rough, white toweling and lowered into the bottom of the tank. The stick should be small enough in diameter so it can be lowered through the outlet device (baffle or tee) to avoid scum particles. After several minutes, if the stick is carefully removed, the height to which the solids (sludge) have built up can be distinguished by black particles clinging to the toweling.

C. The tank should be pumped out if either the bottom of the floating scum mat is within three inches of the bottom of the outlet device (baffle or tee) or the sludge level has built up to approximately 12 inches from the bottom of the outlet device (baffle or tee). Little long-term benefit is derived by pumping out only the liquid waste in septic tanks. All three wastewater components, scum, sludge, and liquid waste should be removed. Tanks should not be washed or disinfected after pumping. A small amount of sludge should be left in the tank for seeding purposes.

D. If multiple tanks or tanks with multiple compartments are provided, care should be taken to insure that each tank or compartment is inspected and cleaned. Hollow-lined seepage pits may require cleaning on some occasions.

E. Professional septic tank cleaners, with tank trucks and pumping equipment, are located in most large communities and can be hired to perform cleaning service. In any case, the septic tank wastes contain disease causing organisms and must be disposed of only in areas and in a manner that is acceptable to local health authorities and consistent with State rules.

F. The digestion of sewage solids gives off explosive, asphyxiating gases. Therefore, extreme caution should be observed if entering a tank for cleaning, inspection, or maintenance. Forced ventilation or oxygen masks and a safety harness should be used.

G. Immediate replacement of broken-off inlet or outlet fittings in the septic tank is essential for effective operation of the system. On occasion, paper and solids become compacted in the vertical leg of an inlet sanitary tee. Corrective measures include providing a nonplugging sanitary tee of wide sweep design or a baffle.

H. Following septic tank cleaning, the interior surfaces of the tank should be inspected for leaks or cracks using a strong light. Distribution boxes, if provided, should be inspected and cleaned when the septic tank is cleaned.

I. A written record of all cleaning and maintenance to the septic tank and absorption system should be kept by the owner of that system.

J. The functional operation of septic tanks is not improved by the addition of yeasts, disinfectants or other chemicals; therefore, use of these materials is not recommended.

K. Waste brine from household water softening units, soaps, detergents, bleaches, drain cleaners, and other similar materials, as normally used in a home or small commercial establishment, will have no appreciable adverse effect on the system. If the septic tank is adequately sized as herein required, the dilution factor available will be sufficient to overcome any harmful effects that might otherwise occur. The advice of your local health department and other responsible officials should be sought before chemicals arising from a hobby or home industry are discharged into a septic tank system.

L. Economy in the use of water helps prevent overloading of a septic tank system that could shorten its life and necessitate expensive repairs. The plumbing fixtures in the building should be checked regularly to repair any leaks which can add substantial amounts of water to the system. Industrial wastes, and other liquids that may adversely affect the operation of the [~~individual~~]onsite wastewater disposal system should not be discharged into such a system. Paper towels, facial tissue, newspaper, wrapping paper, disposable diapers, sanitary napkins, coffee grounds, rags, sticks, and similar materials should also be excluded from the septic tank since they do not readily decompose and can lead to clogging of both the plumbing and the absorption system.

M. Crushed, broken, or plugged distribution pipes should be replaced immediately.

KEY: waste water, onsite wastewater systems, alternative onsite wastewater systems, septic tanks
[~~December 1, 2000~~]2001 **19-5-104**

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Environmental Quality, Water Quality
R317-5
Large Underground Wastewater Disposal Systems

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23769
FILED: 05/15/2001, 15:57
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Utah Water Quality Act was amended by H.B. 14 during the 2001 legislative session. The proposed amendment updates definitions and adds certification requirements to make the rule consistent with the new statutory language.
(**DAR Note:** H.B. 14 can be found at 2001 Utah Laws 274 and will be effective July 1, 2001.)

SUMMARY OF THE RULE OR CHANGE: The proposed amendment updates several definitions concerning on-site wastewater disposal systems. In addition, the amendment add a requirement that after January 1, 2002, on-site wastewater disposal designs must be prepared in accordance with certification requirements in Rule R317-11, and the system designer must, following construction of the system, certify in writing that the system was installed in accordance with the approved plans and specifications.
(**DAR Note:** R317-11 is a proposed new rule under DAR No. 23767 in this *Bulletin*.)

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

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: None--The proposed changes will be addressed using existing staff and resources and will not result in a cost or saving to the state budget.
❖LOCAL GOVERNMENTS: None--The proposed changes will be addressed using existing staff and resources. and will not result in a cost or saving to local government.
❖OTHER PERSONS: The rule requires that after January 1, 2002, persons who design, inspect or maintain underground wastewater disposal systems, and who conduct percolation tests or soil evaluations for these systems, must be certified by the State. The cost of obtaining certification is estimated at $50 to $100 for training.
COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule requires that after January 1, 2002, persons who design, inspect or maintain underground wastewater disposal systems, and who conduct percolation tests or soil evaluations for these systems, must be certified by the State. The cost of obtaining certification is estimated at $50 to $100 for training.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The rule requires that after January 1, 2002, persons who design, inspect or maintain underground wastewater disposal systems, and who conduct percolation tests or soil evaluations for these systems, must be certified by the State. The cost of obtaining certification is estimated at $50 to $100 for training.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Environmental Quality
Water Quality
Cannon Health Building
288 North 1460 West
PO Box 144870
Salt Lake City, UT 84114-4870, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jay Pitkin at the above address, by phone at (801) 538-6146, by FAX at (801) 538-6052, or by Internet E-mail at jpitkin@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 07/02/2001; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR June 19, 2001, at Southeastern Health Department Conference Room, 28 South 100 East Price, UT 84501, at 10:30 a.m.; June 19, 2001, at Iron County Visitor Center, West Meeting Room, 585 North Main, Cedar City, UT 84720 at 7:00 p.m.; and June 20, 2001, at Cannon Health Building, Room 125, 288 North 1460 West, Salt Lake City, UT 84114 from 2:00 - 4:00 p.m..

THIS RULE MAY BECOME EFFECTIVE ON: 07/23/2001

AUTHORIZED BY: Dianne R. Nielson, Executive Director

R317. Environmental Quality, Water Quality.
R317-5. Large Underground Wastewater Disposal Systems.
R317-5-1. General.

1.1 SCOPE: These regulations shall apply to large underground disposal systems for domestic wastewater discharges which exceed 5,000 gallons per day (gpd) and all other domestic wastewater discharges not covered under the definition of an "[~~Individual~~]Onsite wastewater disposal system" in R317-1-1.[~~22~~]13. Usually these systems should not be designed for over 15,000 gpd. In general, it is not acceptable to dispose of industrial wastewater in an underground disposal system.

1.2 ENGINEERING REPORT: An engineering report shall be submitted which shall contain design criteria along with all other information necessary to clearly describe the proposed project and demonstrate project feasibility.

1.3 SUBMISSION OF PLANS FOR REVIEW: Plans for new large underground wastewater disposal systems or extensions of existing systems shall be submitted to the Department for review as required by R317-1. All designs shall be prepared and submitted under the supervision of a registered professional engineer licensed to practice in the State of Utah. A construction permit must be issued by the Utah Water Pollution Control Committee prior to construction of the wastewater disposal system or the building(s) to be served by the wastewater system. After January 1, 2002, the design must be prepared by a person certified pursuant to R317-11, and the system designer must, following construction of the system, certify in writing that the system was installed in accordance with the approved plans and specifications.

1.4 OPERATION AND MAINTENANCE: Operation and maintenance shall be provided by the owner to insure the disposal system is functioning properly at all times. A written operation and maintenance document describing the treatment and disposal system and outlining routine maintenance procedures, including checklists and maintenance logs needed for proper operation of the system, shall be required. The document must be available at the time of final inspection.

1.5 LARGE UNDERGROUND WASTEWATER DISPOSAL SYSTEM REQUIRED:

The drainage system of any building or establishment covered herein shall receive all wastewater as required by R309-100, the Utah Plumbing Code and shall have a connection to a public sewer except when such sewer is not available for use, in which case connection shall be made as follows:

A. To an underground wastewater disposal system found to be adequate and constructed in accordance with requirements stated herein.

B. To any other type of disposal system acceptable under R317-3.

1.6 MULTIPLE UNITS UNDER SEPARATE OWNERSHIP: Multiple Units Under Separate Ownership shall not be served by a common large underground disposal system except when, based upon sound engineering judgment, other alternatives are determined infeasible. In such cases, a common subsurface system may be used provided the following requirements are met:

A. The common subsurface disposal system and conveyance sewers shall be under the sponsorship of a body politic.

B. The subsurface absorption system shall be designed and constructed to provide duplicate capacity (two independent systems). Each system shall be designed to accommodate the total anticipated maximum daily flow. The duplicate systems shall be designed with appropriate valving, etc., to allow for periodic alternation of the use of each system.

C. Sufficient land area with suitable characteristics shall be available to provide for a third absorption system capable of handling the total maximum daily wastewater flow. This area shall be kept free of permanent structures, traffic or soil modification (See Section R317-5-3.1(L)).

D. The subsurface absorption system should be used only until a more permanent system becomes available.

1.7 NEW PROCESSES AND METHODS OF DISPOSAL: Where unusual conditions exist, other methods of disposal not described herein may be employed if approved by the Utah Water Pollution Control Committee and by the local health authority having jurisdiction. The approval will be based on evidence of adequacy to meet water quality standards and other requirements of the Code.

1.8 UNITS REQUIRED IN A[~~N~~] LARGE UNDERGROUND WASTEWATER DISPOSAL SYSTEM: The underground wastewater disposal system shall typically consist of the following:

A. A wastewater drainage line or building sewer.

B. A septic tank.

C. A subsurface absorption system. This may be an absorption field, seepage pits, seepage trenches or an absorption bed, depending on location, topography, soil conditions and maximum ground water level.

1.9 LOCATION AND INSTALLATION: Location and installation of the wastewater disposal system shall be such that with reasonable maintenance it will function properly and will not create a nuisance, health hazard or endanger the quality of any waters of the State. Due consideration shall be given to the size and shape of the area in which the system is installed, slope of natural and finished grade, soil characteristics, maximum ground water elevation, proximity of existing or future water supplies or water courses, possible flooding and expansion potential of the disposal system.

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R317-5-3. Absorption Systems.

3.1 GENERAL REQUIREMENTS:

A. Suitable soil exploration, to a depth of about 10 feet, or at least 4 feet below the bottom of the proposed absorption systems and percolation tests, shall be made to provide information on subsoil conditions. Percolation tests and soil exploration reports shall be completed and submitted as part of the engineering report for the disposal facility. After January 1, 2002, the soil evaluation and percolation tests must be done in accordance with certification requirements in R317-11. A minimum of 5 percolation tests must be conducted at different sites for each disposal system. Additional tests may be required, where necessary to adequately evaluate the total absorption system or where there is significant variability in test results. In general, the system will be sized based on the slowest stabilized percolation test rate. Soil logs should be prepared in accordance with the Unified Soil Classification System by a qualified individual. Requirements outlined in R317-5-4.1 and Table 5-8 will be helpful in developing this information.

B. Absorption devices, including seepage pits or trenches, placed in sloping ground should be so constructed that the horizontal distance between the distribution line and the ground surface is at least 10 feet.

C. Soil having excessively high permeability, such as gravel with large voids, affords little filtering and is unsuitable for absorption systems. Percolation rates (R317-5-4.1) of approximately 5 minutes per inch or less usually will not be acceptable.

The extremely fine-grained "blow sand" found in some parts of Utah is generally unsuitable for absorption systems and should be avoided. If no choice is available, systems may be constructed in such material, provided it is within the required percolation range specified in this code, and the required area is calculated on the minimum percolation rate (60 minutes per inch for absorption fields and 30 minutes per inch for absorption beds).

D. Absorption system excavations may be made by machinery provided that the soil in the bottom and sides of the excavation is not compacted. Strict attention shall be given to the protection of the natural absorption properties of the soil. Absorption systems shall not be excavated when the soil is wet enough to smear or compact easily. All smeared or compacted surfaces should be raked to a depth of one inch, and loose material removed before the filter material is placed in the absorption system excavation.

E. Effluent distribution lines or pipe shall be perforated and should consist of 4-inch diameter pipe of appropriate material which has demonstrated satisfactory results for the given application. The distribution pipe shall be bedded true to line and grade, uniformly and continuously supported on firm, stable material.

F. The coarse material in the absorption system shall consist of crushed stone, gravel, or similar material of equivalent strength and durability. It shall be free from fines, dust, sand or clay. The top of the stone or gravel shall be covered with a pervious material such as an acceptable synthetic filter fabric, a 2-inch compacted layer of straw, or similar material before being covered with earth backfill to prevent infiltration of backfill into the stone or gravel.

G. Distribution pipes placed under driveways or other areas subjected to heavy loads shall receive special design considerations to insure against crushing or disruption of alignment. Absorption area under driveways or pavement shall not be considered in determining the minimum required absorption area.

H. Absorption systems shall be backfilled with earth that is free from debris and large rocks. The first 4 to 6 inches of soil backfill should be hand placed. Distribution pipes shall not be crushed or misaligned during backfilling. When backfilling, the earth should be mounded slightly above the surface of the ground to allow for settlement.

I. Heavy equipment shall not be driven in or over absorption systems during backfilling or after completion.

J. That portion of absorption system below the top of distribution pipes shall be in natural soil. Under unusual circumstances the Utah Water Pollution Control Committee may allow installation in acceptably stabilized earth fill. The earth fill and location will have to be evaluated on a case-by-case basis,

taking into consideration the soil characteristics and degree of consolidation of the fill material.

K. Soil and Ground Water Requirements. In areas where absorption systems are to be constructed, soil cover must be adequate to insure at least 4 feet of soil between bedrock or any other impervious formation, and the bottom of absorption systems. Maximum ground water elevation must be at least 2 feet below the bottom of absorption systems and at least 4 feet below finished grade.

L. Replacement Area for Absorption System. Adequate and suitable land shall be reserved and kept free of permanent structures, traffic, or adverse soil modification for replacement of the absorption system. Suitability must be demonstrated through soil exploration and percolation tests results.

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KEY: water pollution, sewerage
[~~1991~~]2001 **19-5**
Notice of Continuation December 12, 1997

Environmental Quality, Water Quality
R317-8-4
Permit Conditions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23780
FILED: 05/15/2001, 16:35
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment updates procedural notice requirements for treatment plant bypasses. A recent bypass event at a municipal wastewater treatment plant has brought into question the adequacy of the Utah Pollutant Discharge Elimination System (UPDES) rule, Subsection R317-8-4(4.1)(13), governing bypasses. Utah was required to adopt the equivalent of federal rules in order to gain primacy of the National Pollutant Discharge Elimination System (NPDES) discharge permit program. As a result, the bypass rule is identical to the federal EPA rule. The proposed rule has more stringent requirements than the counterpart federal rules. However, the Utah Water Quality Board and the Division of Water Quality have determined that the more stringent rules are necessary in this case in order to protect public health and the environment.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment provide specific notice requirements for permittees needing treatment plant bypasses. Prior notice of a bypass is changed from 10 days to 90 days for anticipated bypasses. Notice provisions are added for emergency bypasses and unanticipated bypasses.

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

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: None--The proposed amendment updates procedural notice requirements for treatment plant bypasses. The changes will be addressed with existing resources and will not result in a cost or saving to the state budget.
❖LOCAL GOVERNMENTS: None--The proposed amendment updates procedural issues regarding notice requirements for treatment plant bypasses. The changes will be addressed with existing resources and will not result in a cost or saving to local government.
❖OTHER PERSONS: None--The proposed amendment updates procedural issues regarding notice requirements for treatment plant bypasses. The changes will not result in a cost or saving to other persons.
COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendment updates procedural notice requirements for treatment plant bypasses. No significant compliance costs are associated with these changes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed amendment updates procedural notice requirements for treatment plant bypasses. No fiscal impacts to businesses are anticipated as a result of these changes.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Environmental Quality
Water Quality
Cannon Health Building
288 North 1460 West
PO Box 144870
Salt Lake City, UT 84114-4870, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Fred Pehrson at the above address, by phone at (801) 538-6146, by FAX at (801) 538-6052, or by Internet E-mail at fpehrson@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 07/02/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 07/23/2001

AUTHORIZED BY: Dianne R. Nielson, Executive Director

R317. Environmental Quality, Water Quality.
R317-8. Utah Pollutant Discharge Elimination System (UPDES).
R317-8-4. Permit Conditions.

4.1 CONDITIONS APPLICABLE TO ALL UPDES PERMITS. The following conditions apply to all UPDES permits. Additional conditions applicable to UPDES permits are in R317-8-4.1(15). All conditions applicable shall be incorporated into the

permits either expressly or by reference. If incorporated by reference, a specific citation to these regulations must be given in the permit. In addition to conditions required in all UPDES permits, the Executive Secretary will establish conditions as required on a case-by-case basis under R317-8-4.2 and R317-8-5.

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(13) Occurrence of a Bypass.

(a) Definitions.

1. "Bypass" means the[~~intentional~~] diversion of waste streams from any portion of a treatment facility.

2. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(b) Bypass Not Exceeding Limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to R317-8-4.1(13)(c)[~~1 and 2~~] or [~~R317-8-4.1(13)~~](d).

([~~d~~]c) Prohibition of Bypass.

1. Bypass is prohibited, and the Executive Secretary may take enforcement action against a permittee for bypass, unless:

a. Bypass was unavoidable to prevent loss of human life, personal injury, or severe property damage;

b. There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate backup equipment should have been installed in the exercise of reasonable engineering judgement to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance, and

c. The permittee submitted notices as required under R317-8-4.1(13)([~~c~~]d).

2. The Executive Secretary may approve an anticipated bypass, after considering its adverse effects, if the Executive Secretary determines that it will meet the three conditions listed in R317-8-4.1(13)([~~d~~]c) a, b, and c.

([~~c~~]d) Notice.

1. Anticipated bypass. Except as provided in R317-8-4.1(13)(b) and R317-8-4.1(13)(d)2, [~~f~~]if the permittee knows in advance of the need for a bypass, it shall submit prior notice,[~~if possible~~] at least [~~ten~~]90 days before the date of bypass. The prior notice shall include the following unless otherwise waived by the Executive Secretary:

a. Evaluation of alternatives to the bypass, including cost-benefit analysis containing an assessment of anticipated resource damages;

b. A specific bypass plan describing the work to be performed including scheduled dates and times. The permittee must notify the Executive Secretary in advance of any changes to the bypass schedule;

c. Description of specific measures to be taken to minimize environmental and public health impacts;

d. A notification plan sufficient to alert all downstream users, the public and others reasonably expected to be impacted by the bypass;

e. A water quality assessment plan to include sufficient monitoring of the receiving water before, during and following the bypass to enable evaluation of public health risks and environmental impacts; and

f. Any additional information requested by the Executive Secretary.

2. Emergency Bypass. Where ninety days advance notice is not possible, the permittee must notify the Executive Secretary, and the Director of the Department of Natural Resources, as soon as it becomes aware of the need to bypass and provide to the Executive Secretary the information in R317-8-4.1(13)(d)1.a. through f. to the extent practicable.

[~~2~~]3. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass to the Executive Secretary as required in R317-8-4.1(12)(f). The permittee shall also immediately notify the Director of the Department of Natural Resources , the public and downstream users and shall implement measures to minimize impacts to public health and the environment to the extent practicable.

(14) Occurrence of an Upset.

(a) Definition. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(b) Effect of an Upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of R317-8-4.1(14)(c) are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, if final administrative action subject to judicial review.

(c) Conditions Necessary for a Demonstration of Upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate through properly signed, contemporaneous operating logs, or other relevant evidence that:

1. An upset occurred and that the permittee can identify the specific cause(s) of the upset;

2. The permitted facility was at the time being properly operated; and

3. The permittee submitted notice of the upset as required in R317-8-4.1(12)(f) (twenty-four hour notice).

4. The permittee complied with any remedial measures required under R317-8-4.1(4).

(d) Burden of Proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

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KEY: water pollution, discharge permits
[~~January 23,~~]2001 **19-5**
Notice of Continuation December 12, 1997 **19-5-104**
40 CFR 503

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

NOTICE OF PROPOSED RULE
(New)
DAR FILE NO.: 23767
FILED: 05/15/2001, 15:54
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed rule provides language to implement amendments made to the Utah Water Quality Act by H.B. 14 during the 2001 Legislative Session.
(**DAR Note:** H.B. 14 can be found at 2001 Utah Laws 274 and will be effective July 1, 2001.)

SUMMARY OF THE RULE OR CHANGE: The proposed rule implements amendments made to the Utah Clean Water Act by H.B. 14 during the 2001 legislative session. The rule implements the requirement that, after January 1, 2002, persons who design, inspect or maintain underground wastewater disposal systems, and who conduct percolation tests or soil evaluations for these systems, must be certified by the State. The proposed rule outlines procedures for obtaining certification, who is required to obtain certification, training, appeals, qualifications and definitions.

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

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: None--The proposed changes will be addressed using existing staff and resources.
❖LOCAL GOVERNMENTS: None--The proposed changes will be addressed using existing staff and resources.
❖OTHER PERSONS: The proposed rule requires that after January 1, 2002, persons who design, inspect or maintain underground wastewater disposal systems, and who conduct percolation tests or soil evaluations for these systems, must be certified by the State. The cost of obtaining certification is estimated at $50 to $100.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed rule requires that after January 1, 2002, persons who design, inspect or maintain underground wastewater disposal systems, and who conduct percolation tests or soil evaluations for these systems, must be certified by the State. The cost of obtaining certification is estimated at $50 to $100 for training.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule requires that after January 1, 2002, persons who design, inspect or maintain underground wastewater disposal systems, and who conduct percolation tests or soil evaluations for these systems, must be certified by the State. The cost of obtaining certification is estimated at $50 to $100 for training.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Environmental Quality
Water Quality
Cannon Health Building
288 North 1460 West
PO Box 144870
Salt Lake City, UT 84114-4870, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jay Pitkin at the above address, by phone at (801) 538-6146, by FAX at (801) 538-6052, or by Internet E-mail at jpitkin@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 07/02/2001; OR ATTENDING A PUBLIC HEARING SCHEDULED FOR June 19, 2001, at Southeastern Health Department Conference Room, 28 South 100 East Price, UT 84501, at 10:30 a.m.; June 19, 2001, at Iron County Visitor Center, West Meeting Room, 585 North Main, Cedar City, UT 84720 at 7:00 p.m.; and June 20, 2001, at Cannon Health Building, Room 125, 288 North 1460 West, Salt Lake City, UT 84114 from 2:00 - 4:00 p.m..

THIS RULE MAY BECOME EFFECTIVE ON: 07/23/2001

AUTHORIZED BY: Dianne R. Nielson, Executive Director

R317. 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.
R317-11-1. Scope.

These certification rules apply to any person who designs, inspects, or maintains underground wastewater disposal systems, or who conducts percolation tests or soil evaluations for underground wastewater disposal systems. A 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 Division 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. "Training Center" means the Utah On-site Wastewater Treatment Training Center which has been designated by the Division of Water Quality for training and administration of examinations for certification of persons who design, inspect, maintain, or conduct soil and percolation tests for underground wastewater disposal systems.

2.8. "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.

R317-11-3. Classes of Certification.

3.1 There are three classes of certification:

A. Level 1, soil evaluations and percolation testing;

B. Level 2, design, inspection and maintenance of conventional underground wastewater disposal systems; and

C. Level 3, design, inspection and maintenance of alternative underground wastewater disposal systems.

3.2. Certification at any level also requires 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 individuals family resides or an employee of the individual resides without payment of rent.

4.2. An uncertified individual may conduct 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. Soil Evaluation and Percolation Testing. In order to be certified, a person must:

A. Attend a training course provided by the Training Center specifically for the purposes of certification;

B. Successfully pass an examination to be given at the conclusion of the training course.

5.2. Design, Inspection and Maintenance of Conventional Systems. In order to be certified, a person must:

A. Attend a training course provided by the Training Center specifically for the purposes of certification;

B. Successfully pass an examination to be given at the conclusion of the training course.

C. Be certified for soil evaluation and percolation testing.

5.3. Design, Inspection and Maintenance of Alternative Systems. In order to be certified, a person must:

A. Attend training courses for both conventional and alternative systems, provided by the Training Center specifically for the purposes of certification.

B. Successfully pass an examination to be given at the conclusion of the training course.

C. Be certified for soil evaluation and percolation testing, and certified for design, inspection and maintenance of conventional systems

5.4. An environmental health scientist licensed under Title 58, Chapter 20a, Environmental Health Scientist Act, who has at least one year of experience in soils evaluation and percolation testing, and/or the design, inspection and maintenance of underground wastewater disposal systems, is certified by rule and is not required to obtain the training or be tested as required in this section. Evidence of experience appropriate to the class of certification must be provided to the Division or other entity as designated by the Division. After July 1, 2003, the required experience must be under the supervision of a person certified under this program.

5.5. A professional engineer licensed under Title 58, Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act, who has received education or experience related to soils evaluation and percolation testing, and/or the design, inspection and maintenance of wastewater disposal systems, is certified by rule and is not required to obtain the training or be tested as required in this section. Evidence of education appropriate

to the class of certification must be provided to the Division or other entity as designated by the Division.

5.6. A licensed contractor, who has five or more years of experience installing underground wastewater disposal systems, including performing soils evaluations and percolation tests, and/or the design, inspection and maintenance of underground wastewater disposal systems, is certified by rule and is not required to obtain the training or be tested as required in this section. Evidence of experience appropriate to the class of certification must be provided to the Division or other entity as designated by the Division.

R317-11-6. Application for Certification.

6.1. In order to be certified by training and examination, a person must register for a training course with the Training Center. Upon successful completion of the training and testing, the person must submit an application to the Division of Water Quality on forms provided by the Division, along with payment of applicable fees.

6.2. In order to be certified by rule, a person must submit an application to the Division of Water Quality, on forms provided by he 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 depending on the need.

R317-11-8. Certificates.

8.1. For those required to be trained and tested in order to be certified, certificates will be issued by the Division upon receiving notification from the Training Center that the person has received the required training and successfully passed the examination. Notification shall include a copy of the application for certification, results of testing, and documentation of the attendance at training.

8.2. For those who are certified by rule based on licensing, education, and/or experience, a certificate will be issued by the Division upon receipt of the application and evidence that the requirements of R317-11-5 above have been met.

R317-11-9. Renewal of Certification.

9.1. For those certified at Level 1 for soils 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 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 two years from the date of issuance of a certificate under R317-11-8 above. Certificate renewal will be required of those certified based on training/testing and those certified based on licensing, education and/or experience. Renewal of a certificate may be obtained by:

A. Making application to the Division along with payment of applicable fees, and

B. Showing evidence of successfully completing a refresher course as provided by the Training Center, or other training approved by the Division of Water Quality.

R317-11-10. Appeals.

Any person may request a hearing before the Board of an action or decision by the Training Center or the Division affecting that person. The person must file the appeal within 30 days of the Division's decision. The hearing will be at a time and location set by the Board. All appeals should be submitted to: Executive Secretary of the Water Quality Board, Division of Water Quality, Department of Environmental Quality, State of Utah, Salt Lake City, UT 84114-4870.

R317-11-11. Suspension or Revocation of Certification.

11.1. An individual may have his certificate suspended or revoked based on the grounds listed in subparagraph 11.2. Prior to suspension or revocation of a certification, the individual shall be informed in writing of the reasons the Executive Secretary is considering such action and shall be allowed the opportunity to submit a response prior to the Executive Secretary making a decision.

11.2. Grounds for suspending or revoking certification may be 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.

11.3. Suspension or revocation 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 an individual shall not be grounds for a suspension or revocation action.

11.4. Any suspension or revocation decision by the Division may be appealed to the Board. Written request for a hearing before the Board must be filed with the Division within 30 days of the decision.

R317-11-12. Certification Requirements and Effective Dates.

After January 1, 2002, no person shall design, inspect, maintain, or conduct percolation or soil tests for an underground wastewater disposal system without first obtaining certification from the Board. However, if a person has submitted an application to be certified prior to January 1, 2002, they are considered to be temporarily certified for purposes of this rule, and subject to R317-4 and any local health department requirements, until their application is acted upon or July 1, 2002, whichever is earlier. If a person has submitted an application to be certified after January 1, 2002, but before July 1, 2002, they are also considered to be temporarily certified for purposes of this rule, and subject to R317-4 and any local health department requirements, but only from the date of submittal of the application until their application is acted upon or July 1, 2002, whichever is earlier. In no event shall any person be considered to be certified after July 1, 2002, unless they have successfully completed training and testing, if required, and received a certification from the Board.

KEY: waste water, occupational licensing
July 23, 2001 **19-5-104**

Health, Community and Family Health Services, Immunization

R396-100

Immunization Rule for Students

NOTICE OF PROPOSED RULE
(Repeal and Reenact)
DAR FILE NO.: 23762
FILED: 05/15/2001, 11:57
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is required by state statute. The rule change is necessary to include Varicella and Hepatitis A for kindergarten entrance. Utah is one of the nation's 17 states identified by the Centers for Disease Control (CDC) as endemic for Hepatitis A and ranks fifth highest in the nation. Immunizing children is the best way to control the disease as children as the reservoir of the disease. The rule change is necessary to clarify language regarding admitting/exclusion procedure for noncompliant and conditional students. The change incorporates by reference specific dosing instead of listing them in the rule.

SUMMARY OF THE RULE OR CHANGE: This rule establishes a requirement for Hepatitis A and Varicella vaccine for kindergarten entrance starting July 1, 2002. It updates Utah's immunization rule by clarifying language regarding admission/exclusion procedures for non-compliant and conditional students; adds definitions; and removes language about specific dosing requirements from the rule by incorporating by reference the United States Public Health Service's Advisory Committee on Immunization Practices (ACIP) recommended vaccines and dosing requirements.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 53A-11-303 and 53A-11-306

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 1) General Recommendations on Immunization: January 28, 1994/ Vol. 43/No. RR-1; 2) Immunization of Adolescents: November 22, 1996/Vol. 45/No. RR-13; 3) Diphtheria, Tetanus, and Pertussis: Recommendations for Vaccine Use and Other Preventive Measures: August 8, 1991/Vol. 40/No. RR-10; 4) Pertussis Vaccination: Use of Acellular Pertussis Vaccines Among Infants and Children: March 28, 1997/Vol. 46/No. RR-7; 5) Use of Diphtheria Toxoid-Tetanus Toxoid-Acellular Pertussis Vaccine as a Five-Dose Series: Supplemental Recommendations of the Advisory Committee on Immunization Practices: November 17, 2000/Vol. 49/No. RR-13; 6) Protection Against Viral Hepatitis: February 9, 1990/Vol. 39/No. RR-2; 7) Hepatitis B: A Comprehensive Strategy for Eliminating Transmission in the United States Through Universal Childhood Vaccination: November 22, 1991/Vol. 40/No. RR-13; 8) Hemophilus b Conjugate Vaccines for Prevention of Hemophilus influenza Type b Disease Among Infants and Children Two Months of Age and Older: January 11, 1991/Vol. 40/No. RR-1; 9) Recommendations for Use of Hemophilus b Conjugate Vaccines and a Combined Diphtheria, Tetanus, and Pertussis, and Hemophilus b Vaccine: September 17, 1993/Vol. 42/No. RR-13; 10) Measles, Mumps, and Rubella-Vaccine Use and Strategies for Elimination of Measles, Rubella, and Congenital Rubella Syndrome and Control of Mumps: May 22, 1998/Vol. 47/No. RR-8; 11) Poliomyelitis Prevention in the United States: May 19, 2000/Vol. 49/No. RR-5; 12) Prevention of Varicella: July 12, 1996/Vol. 45/No. RR-11; 13) Prevention of Varicella: Updated Recommendations of the Advisory Committee on Immunization Practices: May 28, 1999/Vol. 48/No. RR-6; and 14) Prevention of Hepatitis A Through Active or Passive Immunization: October 1, 1999/Vol. 48/No. RR-12

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Hepatitis A: $25,858 from the current state vaccine funds. The remainder of the costs for publicly funded vaccine comes from the federal Vaccine for Children program (VFC) federal 317 vaccine funds.
Varicella: $41,060 from the current state vaccine funds. The remainder of the costs for publicly funded vaccine comes from the federal Vaccine for Children program (VFC) and federal 317 vaccine funds. Varicella has been provided from all the above funding sources since 1996. It is impossible to estimate how many children may have already had chickenpox which means they would not need vaccination.

❖LOCAL GOVERNMENTS: Hepatitis A: Of the total 42,475 children, 45.5% or 19,326 children are estimated to be covered in the public sector. Publicly-funded vaccines are currently provided to local health departments at no cost to the local health departments through the federal Vaccine for Children program (VFC) to cover children on Medicaid, without insurance, and underinsured. Local Health Departments choosing to serve children with private health insurance who have these vaccines as a covered service would have to purchase vaccine (as a public entity they can purchase at a lower CDC contract price) and be reimbursed by contracts with insurance providers.
Varicella: Of the total 42,475 children, 45.5% or 19,326 children are estimated to be covered in the public. Publicly-funded vaccines are currently provided to local health departments at no cost to the local health departments through the federal Vaccine for Children program (VFC) to cover children on Medicaid, without insurance, and for the underinsured. Local Health Departments choosing to serve children with private health insurance who have these vaccines as a covered service would have to purchase vaccine (as a public entity they can purchase at a lower CDC contract price) and be reimbursed by contracts with insurance providers. It is impossible to estimate how many children may have already had chickenpox which would mean they would not need vaccination.

❖OTHER PERSONS: Varicella: It is estimated that of the total 42,475 children, 52% or 22,087 children do not receive immunizations from publicly funded programs. This includes children covered by insurance providers, Medicaid managed care providers, and Children's Health Insurance Program (CHIP) providers. The costs for this would be $782,101. Varicella has been a standard immunization since 1996 and is a covered service by the majority of insurance providers in the state. CHIP is mandated to cover all ACIP recommended vaccines. Any child whose plan does not cover Varicella as a covered medical service would then be deemed as underinsured and covered under state and federal 317 funds. It is impossible to estimate how many children may have already had chickenpox which would mean they would not need vaccination. If a Latter-day Saint missionary has not had chicken pox, the Church of Jesus Christ of Latter-day Saints recommends that they receive the Varicella vaccine. Hepatitis A: It is estimated that of the total 42,475 children, 52% or 22, 087 children do not receive immunizations from publicly funded programs. This includes children covered by insurance providers, Medicaid managed care providers, and CHIP providers. The costs for this would be $492,540. Although Hepatitis A has been a standard immunization since 1996, it is not a covered service by the majority of insurance providers in the state. These children would then be deemed as underinsured and covered under state and federal 317 funds. CHIP is mandated to cover all ACIP recommended vaccines. Hepatitis A is mandatory for LDS missionaries and there could be significant costs savings to families in Utah if the prospective missionary were vaccinated before age 18.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The costs to an individual not covered by insurance or under a public program would be $22.30 for a 2-dose Hepatitis A series and $35.11 for 1 dose of Varicella; costs to individuals could be higher if provider doesn't purchase vaccine from CDC. There could be additional administrative fees assessed which could range from $10.50 in the public sector to $15.09 in the private sector. Costs for individuals covered by private insurance are dependent upon the co-pay or deductible charged by the insurer.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Department of Health Immunization Program staff believe that the impact on the public and businesses will be offset by costs saved due to the prevention of vaccine-preventable diseases and the absence of disease outbreaks. In the event that insurance does not pay for these new vaccines, public funds will be available to cover the cost through the under-insured category. The Immunization Program has evaluated the costs of supplying additional vaccine and estimates that the costs of vaccine can be supported by federal and state vaccine funds. I am satisfied that the costs to individual families and businesses are justified pending further input from the public during the rule comment period. Rod L. Betit

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

Health
Community and Family Health Services,
Immunization
Cannon Health Building
288 North 1460 West
PO Box 142001
Salt Lake City, UT 84114-2001, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Linda Abel at the above address, by phone at (801) 538-9450, by FAX at (801) 538-9440, or by Internet E-mail at label@doh.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 07/02/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 07/03/2001

AUTHORIZED BY: Rod L. Betit, Executive Director

R396. Health, Community and Family Health Services, Immunization.
R396-100. Immunization Rule for Students.
[~~**R396-100-1. Purpose and Authority.**~~
~~(1) This rule prescribes the:~~
~~(a) immunizations required for attendance at a public, private, or parochial kindergarten, elementary, or secondary school through grade 12, nursery school, licensed day care center, child care facility, family care home, or Headstart program in this state;~~
~~(b) required doses and frequency of vaccine administration;~~
~~(c) reporting of statistical data; and~~
~~(d) time periods for conditional enrollment.~~
~~(2) This rule is required by Section 53A-11-303 and authorized by Section 53A-11-306.~~

~~**R396-100-2. Definitions.**~~
~~(1) "Conditional enrollment" means enrollment according to the provisions of R396-100-6.~~
~~(2) "Department" means the Utah Department of Health.~~
~~(3) "Exemption" means a relief from the statutory immunization requirements by reason of qualifying under Sections 53A-11-302 and 302.5.~~
~~(4) "Parent" means a biological or adoptive parent who has legal custody of a child, a legal guardian, or a legal age brother or sister of a student who is without a parent or guardian, or a student, if of legal age.~~
~~(5) "School" means a public, private, or parochial kindergarten, elementary, or secondary school through grade 12, nursery school, licensed day care center, child care facility, family care home, or Headstart program~~
~~(6) "School entry" means a student, at any grade, entering a Utah school for the first time.~~
~~(7) "School official" means a director, superintendent, principal, operator, or his designee.~~
~~(8) "Student" means an individual enrolled in a school as defined in R396-100-2(5).~~

R396-100-3. Required Immunizations.

(1) To attend a Utah school, a student must meet the minimum immunization requirements of Sections R396-100-4, 5, 6, 7, 8, and 9.

(2) Persons administering vaccines shall administer them according to the route, dosage, and site recommendations of the United States Public Health Service's Advisory Committee on Immunization Practices, the American Academy of Pediatrics, or the American Academy of Family Physicians.

(a) If a student received a dose of vaccine at less than the recommended age, less than the minimum interval between doses, or less than the recommended dosage, the vaccination must be repeated at the correct interval and dose.

(b) Doses of measles, mumps and rubella vaccines must be repeated if administered before a student's first birthday.

(c) If doses of vaccine are received in a series with a longer interval between doses than recommended, additional doses are not required.

(3) All vaccines required by this rule may be administered alone, or in combination, or concurrently with all other vaccines required by this rule.

R396-100-4. Required Immunizations for Diphtheria, Tetanus, and Pertussis Vaccines.

A student must be immunized for diphtheria, tetanus, and pertussis according to the applicable schedule of the following three schedules:

(1) Schedule No. 1. A student under seven years of age must receive four doses of diphtheria, tetanus and acellular pertussis (DTaP), or diphtheria, tetanus, whole-cell pertussis (DTP), or pediatric diphtheria, tetanus (DT) vaccines. Administer the first three doses a minimum of one month apart, the fourth dose six months or more after the third dose. If a student started the series late, an interval of four months between the third and fourth doses is acceptable. If the fourth dose is administered before a student's fourth birthday, a fifth dose of DTaP, DTP or DT is required before a student enters kindergarten, or first grade if a student did not attend kindergarten.

(2) Schedule No. 2. A student who is seven or older and who has not completed the series must receive three doses of adult Tetanus, diphtheria (Td). The first two doses must be administered a minimum of one month apart and the third dose six months after receiving the second dose. If the series was started before the student's seventh birthday with DTaP, DTP, or DT, they may be counted toward the three-dose series of Td.

(3) Schedule No. 3. A student who is seven and who has not received any of the tetanus or diphtheria vaccines must receive three doses of adult Td. The first dose must be administered before school entry and the second dose at a minimum of one month, but not more than two months after receiving the first dose. The third dose must be administered six months after the second dose.

R396-100-5. Required Immunizations for Poliomyelitis (Polio).

A student must be immunized for Poliomyelitis (polio) according to one of the following three schedules:

(1) Schedule No. 1. A student must receive sequential administration of two doses of inactivated polio vaccine (IPV) followed by 2 doses of live oral polio vaccine (OPV) for a total of four doses. The first three doses, two IPV and one OPV, must be administered a minimum of one month apart. The second dose of OPV must be administered according to the following three conditions:

(a) on or after a student's fourth birthday;

(b) a minimum of one month after receiving the first dose of OPV;

(c) before a student enters kindergarten, or first grade if a student did not attend kindergarten.

(2) Schedule No. 2(a). A student must receive four doses of OPV. The first three doses must be administered a minimum of one month apart. The fourth dose of OPV must be administered according to the following four conditions:

(i) on or after a student's fourth birthday;

(ii) a minimum of one month after receiving the third dose of OPV;

(iii) before a student enters kindergarten, or first grade if a student did not attend kindergarten; and

(b) If the third dose of OPV is administered on or after a student's fourth birthday, the fourth dose of OPV is not required

(3) Schedule No. 3(a). A student must receive four doses of IPV. The first three doses must be administered a minimum of one month apart. The fourth dose of IPV must be administered according to the following four conditions:

(i) on or after a student's fourth birthday;

(ii) a minimum of one month after receiving the third dose of IPV;

(iii) before a student enters kindergarten, or first grade if a student did not attend kindergarten; and

(b) if the third dose of IPV is administered on or after a student's fourth birthday, the fourth dose of IPV is not required

R396-100-6. Required Immunizations for Measles.

(1) A student must be immunized for Measles by receiving two doses of measles-containing vaccine. The first dose must be administered on or after the student's first birthday. The second dose must be administered before the student enters kindergarten, or first grade if the student did not attend kindergarten. The interval between doses one and two is a minimum of one month.

(a) If the student received the first dose of measles-containing vaccine less than one month before school entry into any grade, kindergarten through twelfth, the second dose of measles-containing vaccine must be administered at a minimum of one month, but not more than two months after receiving the first dose.

(b) A student one year of age or older entering school must have received one dose of measles-containing vaccine before school entry.

(2) After July 1, 1999, a student attending a school at any grade, kindergarten through twelfth grade, shall provide written documentation of receiving a second dose of measles-containing vaccine before school entry, if previous documentation has not been provided. The minimum interval between the first and second doses is one month.

R396-100-7. Required Immunizations for Mumps and Rubella.

(1) A student must be immunized for mumps by receiving one dose of mumps-containing vaccine on or after the student's first birthday.

(2) A student must be immunized for Rubella by receiving one dose of rubella-containing vaccine on or after the student's first birthday.

R396-100-8. Required Immunizations for Haemophilus Influenza Type b (Hib).

(1) A student must be immunized for Haemophilus influenza type b (Hib) if the student attends a Utah school before his fifth birthday. Although the schedules and number of doses recommended by the manufacturers vary, the minimum required doses of Hib vaccine necessary for compliance is dependent on a student's current age and does not depend on the prior number of Hib vaccine doses received.

(a) For a student less than 12 months of age, a minimum of two doses is required. An additional dose is required on or after the first birthday.

(b) For a student 12 through 14 months of age, a minimum of two doses is required, with at least one of the two doses required on or after the first birthday.

(c) For a student 15 months through four years of age, and only one dose is required, but only if one dose was given after the first birthday. If the student did not receive one dose after the first birthday, the student must receive one dose to be in compliance with this rule.

(2) The recommended interval between Hib doses is two months. A one-month interval is also acceptable.

(3) Hib vaccine is not required nor recommended after a student's fifth birthday.

R396-100-9. Required Immunizations for Hepatitis B.

After July 1,1999, a student enrolling for the first time at a Utah school, except for a student in first grade or above, shall provide written documentation of receiving three doses of hepatitis B vaccine. The first two doses must be administered a minimum of one month apart. The third dose must be administered according to the following three conditions:

(1) a minimum of two months after receiving the second dose;

(2) the minimum interval between doses one and three is four months;

(3) the student is a minimum of six months of age.

R396-100-10. Official Utah School Immunization Record.

(1) The Department shall provide the official Utah School Immunization Record forms to all schools, private physicians, child care facilities, and local health departments.

(2) A school official shall accept any immunization record provided by a licensed physician, registered nurse, or public health official as certification of immunization, and shall transfer this information to the Utah School Immunization Record with the following information:

(a) name of student;

(b) student's birth date;

(c) type of vaccine administered;

(d) minimally the month and year each dose was administered; however, the month, day and year are required for the first dose of measles, mumps and rubella vaccine.

(3) A parent claiming an exemption to immunization, as allowed by Section 53A-11-302, shall provide to a school official the Utah School Immunization Record with the required signatures and completion of the exemption information on the back of the School Immunization Record, with the appropriate signatures. If an exemption is claimed for personal beliefs, a parent shall also provide to a school official, a Personal Exemption Form, as required by Section 53A-11-302.5.

(a) A parent shall fill in the required information on the Personal Exemption Form and sign in the presence of a representative of the local health department in the county where the student resides.

(b) The health department representative shall witness and sign the Personal Exemption Form and attach the Exemption Form to the Utah School Immunization Record.

(4) A school official shall maintain a file of the Utah School Immunization Record for each student in all grades and a Utah Department of Health Personal Exemption Form for each student in all grades claiming a personal exemption. A school official shall return the Utah School Immunization Record and the Personal Exemption Form to the parent of a student when the student withdraws, transfers, is promoted, or otherwise leaves the school. As an alternative, a school official may transfer the School Immunization Record and the Personal Exemption Form with a student's official school record to the new school.

(5) A representative of the Department or the local health department may examine, audit, and verify immunization records maintained by a school official.

(6)(a) For all students under a school official's jurisdiction, the school official shall provide to the Department's Immunization Program:

(i) by November 30 of each year, a written statistical report of the immunization status of students enrolled in a licensed day care center, Headstart program, and kindergarten or first grade if the student did not attend kindergarten;

(ii) by November 30 of each year, commencing 1999, a written statistical report of the two-dose measles immunization status of all kindergarten through twelfth grade students.

(iii) by January 31 of each year, a written statistical report of the immunization status of all transfer students.

(b) the Department shall prescribe the information needed and the format for the reports.

R396-100-11. Conditional Enrollment and Exclusion.

A school may conditionally enroll a student who is not completely immunized against each specific disease as required in this rule if the student has received at least one dose of each specific vaccine required by this rule for his age. To remain in school, the student must complete the required subsequent doses in each vaccine series on schedule and provide written documentation to the school official.

(1) A school official shall review the immunization status of a conditionally enrolled student every 60 days to ensure continued compliance in completing the required doses of vaccines. If the student has not received a subsequent dose or immunization within one month of the first date that the subsequent dose or immunization can be administered, the student is not in compliance and the school must exclude the student from school attendance.

(2) A student's exclusion from school attendance begins five days after the conditional enrollment period expires. Within these five days, a school official shall mail to the last-known address of the student's parent or guardian, a written notice of the student's

~~pending exclusion from school and of a parent's right to claim an exemption to immunization.~~

~~**R396-100-12. Notification to Parents.**~~

~~(1) If a school official has not received a student's School Immunization Record or Certificate of Personal Exemption one month before the start of the school year, the school official shall notify the parent by mail, telephone, or in person that:~~

~~(a) The school official does not have a completed Utah School Immunization Record or Certificate of Personal Exemption for an enrolling student.~~

~~(b) A school official cannot admit a student without proof of complete immunizations, or evidence that a student qualifies for conditional enrollment, or evidence that a student qualifies for an exemption on medical, personal, or religious grounds.~~

~~(c) Immunizations and documentation are available from a licensed medical doctor (M.D.), doctor of osteopathy (D.O.), public health department, or any community clinic.~~

~~(2) A school official shall notify the parent of these requirements at the time of first registration.~~

~~**R396-100-13. Exclusion of Students Who Are Under Exemption and Conditionally Enrolled Status.**~~

~~(1) A local health officer, may exclude students who are under exemption and conditionally enrolled status from school attendance if there is good cause to believe that a student:~~

~~(a) attending school under an exemption or conditional enrollment has a vaccine-preventable disease;~~

~~(b) has been exposed to a vaccine-preventable disease;~~

~~(c) will be exposed to a vaccine-preventable disease as a result of school attendance.~~

~~(2) A student shall not attend school until the local health officer is satisfied that a student is no longer at risk of contracting or transmitting a vaccine-preventable disease.~~

~~**R396-100-14. Penalties.**~~

~~Enforcement provisions and penalties for the violation or for the enforcement of public health rules, including this Immunization Rule for Students, are prescribed under Section 26-23-6. A violation is punishable as a class B misdemeanor on the first offense, a class A misdemeanor on the second offense or by civil penalty of up to $5,000 for each violation.~~

~~**KEY: immunization, rules and procedures**~~
~~**August 12, 1998 53A-11-303**~~]

R396-100-1. Purpose and Authority.

(1) This rule implements the immunization requirements of Title 53A, Chapter 11, Part 3. It establishes minimum immunization requirements for attendance at a public, private, or parochial kindergarten, elementary, or secondary school through grade 12, nursery school, licensed day care center, child care facility, family home care, or Head Start program in this state. It establishes:

(a) required doses and frequency of vaccine administration;

(b) reporting of statistical data; and

(c) time periods for conditional enrollment.

(2) This rule is required by Section 53A-11-303 and authorized by Section 53A-11-306.

R396-100-2. Definitions.

As used in this rule:

"Department" means the Utah Department of Health.

"Early Childhood Program" means a nursery or preschool, licensed day care center, child care facility, family care home, or Head Start program.

"Exemption" means a relief from the statutory immunization requirements by reason of qualifying under Sections 53A-11-302 and 302.5.

"Parent" means a biological or adoptive parent who has legal custody of a child; a legal guardian, or the student, if of legal age.

"School" means a public, private, or parochial kindergarten, elementary, or secondary school through grade 12.

"School entry" means a student, at any grade, entering a Utah school or an early childhood program for the first time.

"Student" means an individual enrolled or attempting to enroll in a school or early childhood program.

R396-100-3. Required Immunizations.

(1) A student born before July 1, 1994 must meet the minimum immunization requirements of the ACIP prior to school entry for the following antigens: Diphtheria, Tetanus, Pertussis, Polio, Measles, Mumps, and Rubella.

(2) A student born after July 1, 1994 must meet the minimum immunization requirements of the ACIP prior to school entry for the following antigens: Diphtheria, Tetanus, Pertussis, Polio, Measles, Mumps, Rubella, and Hepatitis B.

(3) Commencing July 1, 2002, a student born after July 1, 1996 must meet the minimum immunization requirements of the ACIP prior to school entry for the following antigens: Diphtheria, Tetanus, Pertussis, Polio, Measles, Mumps, Rubella, Hepatitis B, Hepatitis A, and Varicella.

(4) To attend a Utah early childhood program, a student must meet the minimum immunization requirements of the ACIP for the following antigens: Diphtheria, Tetanus, Pertussis, Polio, Measles, Mumps, Rubella, and Haemophilus Influenza Type b prior to school entry.

(5) The vaccinations must be administered according to the recommendations of the United States Public Health Service's Advisory Committee on Immunization Practices (ACIP) as listed below which are incorporated by reference into this rule:

(a) General Recommendations on Immunization: January 28, 1994/ Vol. 43/No. RR-1;

(b) Immunization of Adolescents: November 22, 1996/Vol. 45/No. RR-13;

(c) Diphtheria, Tetanus, and Pertussis: Recommendations for Vaccine Use and Other Preventive Measures: August 8, 1991/Vol. 40/No. RR-10;

(d) Pertussis Vaccination: Use of Acellular Pertussis Vaccines Among Infants and Children: March 28, 1997/Vol. 46/No. RR-7;

(e) Use of Diphtheria Toxoid-Tetanus Toxoid-Acellular Pertussis Vaccine as a Five-Dose Series: Supplemental Recommendations of the Advisory Committee on Immunization Practices: November 17, 2000/Vol. 49/No. RR-13;

(f) Protection Against Viral Hepatitis: February 9, 1990/Vol. 39/No. RR-2;

(g) Hepatitis B: A Comprehensive Strategy for Eliminating Transmission in the United States Through Universal Childhood Vaccination: November 22, 1991/Vol. 40/No. RR-13;

(h) Haemophilus b Conjugate Vaccines for Prevention of Haemophilus influenzae Type b Disease Among Infants and Children Two Months of Age and Older: January 11, 1991/Vol. 40/No. RR-1;

(i) Recommendations for Use of Haemophilus b Conjugate Vaccines and a Combined Diphtheria, Tetanus, and Pertussis, and Haemophilus b Vaccine: September 17, 1993/Vol. 42/No. RR-13;

(j) Measles, Mumps, and Rubella-Vaccine Use and Strategies for Elimination of Measles, Rubella, and Congenital Rubella Syndrome and Control of Mumps: May 22, 1998/Vol. 47/No. RR-8;

(k) Poliomyelitis Prevention in the United States: May 19, 2000/Vol. 49/No. RR-5;

(l) Prevention of Varicella: July 12, 1996/Vol. 45/No. RR-11;

(m) Prevention of Varicella: Updated Recommendations of the Advisory Committee on Immunization Practices: May 28, 1999/Vol. 48/No. RR-6; and

(n) Prevention of Hepatitis A Through Active or Passive Immunization: October 1, 1999/Vol. 48/No. RR-12.

R396-100-4. Official Utah School Immunization Record (USIR).

(1) Schools and early childhood programs shall use the official Utah School Immunization Record (USIR) form as the record of each student's immunizations. The Department shall provide copies of the USIR to schools, early childhood programs, physicians, and local health departments upon each of their requests.

(2) Each school or early childhood program shall accept any immunization record provided by a licensed physician, registered nurse, or public health official as certification of immunization. It shall transfer this information to the USIR with the following information:

(a) name of the student;

(b) student's date of birth;

(c) vaccine administered; and

(d) the month, day, and year each dose of vaccine was administered.

(3) Each school and early childhood program shall maintain a file of the USIR for each student in all grades and an exemption form for each student claiming an exemption.

(a) The school and early childhood programs shall maintain up-to-date records of the immunization status for all students in all grades such that it can quickly exclude all non-immunized students if an outbreak occurs.

(b) If a student withdraws, transfers, is promoted or otherwise leaves school, the school or early childhood program shall either:

(i) return the USIR and any exemption form to the parent of a student; or

(ii) transfer the USIR and any exemption form with the student's official school record to the new school or early childhood program.

(4) A representative of the Department or the local health department may examine, audit, and verify immunization records maintained by any school or early childhood program.

(5) Schools and early childhood programs may meet the record keeping requirements of this section by keeping its official school immunization records in the Utah Statewide Immunization Information System (USIIS).

R396-100-5. Exemptions.

A parent claiming an exemption to immunization for medical, religious or personal reasons, as allowed by Section 53A-11-302, shall provide to the student's school or early childhood program the required completed forms. The school or early childhood program shall attach the forms to the student's USIR.

R396-100-6. Reporting Requirements.

(1) Each school and early childhood program shall report the following to the Department in the form or format prescribed by the Department:

(a) by November 30 of each year, a statistical report of the immunization status of students enrolled in a licensed day care center, Head Start program, and kindergartens;

(b) by November 30 of each year, a written statistical report of the two-dose measles immunization status of all kindergarten through twelfth grade students; and

(c) by January 31 of each year, a written statistical report of the immunization status of all students kindergarten through twelfth grade new to a school after the school's regular registration period ends.

(2) The information that the Department requires in the reports shall be in accordance with the Centers for Disease Control and Prevention guidelines.

R396-100-7. Conditional Enrollment and Exclusion.

A school or early childhood program may conditionally enroll a student who is not appropriately immunized as required in this rule. To be conditionally enrolled, a student must have received at least one dose of each required vaccine and be on schedule for subsequent immunizations. If subsequent immunizations are one calendar month past due, the school or early childhood program must immediately exclude the student from the school or early childhood program.

(1) A school or early childhood program with conditionally enrolled students shall routinely review every 30 days the immunization status of all conditionally enrolled students until each student has completed the subsequent doses and provided written documentation to the school or early childhood program.

(2) Once the student has met the requirements of this rule, the school or early childhood program shall take the student off conditional status.

R396-100-8. Exclusions of Students Who Are Under Exemption and Conditionally Enrolled Status.

(1) A local or state health department representative may exclude a student who has claimed an exemption or who is conditionally enrolled from school attendance if there is good cause to believe that the student has a vaccine preventable disease and:

(a) has been exposed to a vaccine-preventable disease; or

(b) will be exposed to a vaccine-preventable disease as a result of school attendance.

(2) An excluded student may not attend school until the local health officer is satisfied that a student is no longer at risk of contracting or transmitting a vaccine-preventable disease.

R396-100-9. Penalties.

Enforcement provisions and penalties for the violation or for the enforcement of public health rules, including this Immunization

Rule for Students, are prescribed under Section 26-23-6. A violation is punishable as a class B misdemeanor on the first offense, a class A misdemeanor on the second offense or by civil penalty of up to $5,000 for each violation.

KEY: immunization, rules and procedures
2001 **53A-11-303**
53A-11-306

Health, Community and Family Health Services, Health Education Services

R402-5

Birth Defects Reporting

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23731
FILED: 05/03/2001, 11:07
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The original new rule went into effect on November 22, 1999, and since that time the Birth Defect Network staff as well as Intermountain Health Care have found a need to clarify data requirements.

SUMMARY OF THE RULE OR CHANGE: The proposed changes allow for identification of: any birth outcome where a birth defect is detected (so limiting gestational age is no longer needed); children older than 12 months of age who have just been diagnosed with a birth defect; and cases through other laboratories such as a pathology laboratory.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62-1-30

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: It is anticipated that this rule change will not impose any new or additional cost since the information has been collected in a voluntary manner prior to this rule.
❖LOCAL GOVERNMENTS: Those local governments that operate hospitals will not have new costs imposed as a result of this rule change. In as much as the Department of Health does all the work in collecting the information at these hospitals, no additional work is required of any of them.
❖OTHER PERSONS: This amendment requires no appreciable new work for other persons. No additional costs are imposed because no additional time or effort is necessary as a result of this rule change.
COMPLIANCE COSTS FOR AFFECTED PERSONS: This proposed rule change will not impose any new or increased costs because no additional time or effort is needed to comply with the change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Technical changes with this proposed rule amendment will bring the existing rule into line with existing practice on reporting birth defects. No fiscal impact on regulated businesses is anticipate. Rob L. Betit

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Health
Community and Family Health Services,
Health Education Services
44 North Medical Drive
PO Box 144697
Salt Lake City, UT 84114-4697, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Marcia Feldkamp at the above address, by phone at (801) 584-8443, by FAX at (801) 584-8488, or by Internet E-mail at mfeldkam@doh.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 07/02/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 07/03/2001

AUTHORIZED BY: Rod L. Betit, Executive Director

R402. Health, Community and Family Health Services, Health Education Services.
R402-5. Birth Defects Reporting.

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R402-5-2. Definitions.

As used in this rule:

(1) "Cytogenetics laboratory" means a laboratory in Utah that conducts genetic analysis of samples taken from humans.

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

(3) "Birth defect" means a congenital anomaly listed in the ICD-9-CM (International Classification of Diseases, 9th Revision, Clinical Modification, established by the United States Center for Health Statistics) with a diagnostic code from 740.0 to 759.9 or in the ICD-10 (International Classification of Diseases, 10th Revision, established by the World Health Organization) with a diagnostic code from Q00-Q99.

(4) "Fetal death" means the delivery of a dead fetus that is of 20 weeks or more gestation, calculated from the date the last menstrual period began to the date of delivery.

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

~~(6) "Infant" means an individual under 12 months of age.~~]

R402-5-3. Reporting by Hospitals and Birthing Centers.

The hospital or birthing center where there is a live birth with a birth defect, any outcome of pregnancy where a birth defect is

detected[~~a fetal death with a birth defect~~], or admission of [~~an infant~~]a child under 24 months of age with a birth defect shall report or cause to report to the department within 40 days after any such event[~~following the birth, fetal death, or admission of the infant~~] the following:

(1) [~~infant's~~]child's name;
(2) [~~infant's~~]child's date of birth;
(3) mother's name;
(4) mother's date of birth;
(5) delivery hospital;
(6) birth defects diagnoses;[~~and~~]
(7) mother's state of residency at delivery;
(8) child's sex; and
(9) mother's zip code.

R402-5-4. Reporting by[~~Cytogenetic~~] Laboratories.

[~~A cytogenetic~~]Any 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, [~~infant's~~]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.

R402-5-5. Record Abstraction.

Hospitals and birthing centers required to report pursuant to this rule as well as community health care providers who participate voluntarily shall allow personnel from the department or its contractors to abstract information from the mother's and [~~infant's~~]child's files on their demographic characteristics, family history of birth defects, prenatal information and outcomes of that and other pregnancies by that mother.

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R402-5-7. Penalties.

As required by Section 63-46a-3(5): Any hospital, birthing center, or[~~cytogenetic~~] laboratory that violates any provision of this rule may be assessed a civil money penalty not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

KEY: birth defects, birth defect reporting
[~~November 22, 1999~~]2001 **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

R414-303

Coverage Groups

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23752
FILED: 05/15/2001, 09:01
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 4733 of the Balanced Budget Act allows coverage of an optional categorically needy group of people with disabilities who have earned income. Coverage is being added for persons with disabilities who have earned income, whose combined family income does not exceed 250% of the federal poverty guidelines for their family size. The intent is to encourage people with disabilities to return to work or to increase their earnings. The rule change is also necessary to allow the Department to provide Medicaid coverage to uninsured women under age 65 who are identified through the Centers for Disease Control and Prevention's (CDC) National Breast and Cervical Cancer Early Detection Program (NBCCEDP) and are in need for treatment for breast or cervical cancer.

SUMMARY OF THE RULE OR CHANGE: The requirement that a person with earned income above the substantial gainful activity level could be denied disability status no longer applies. The Medicaid agency can determine if a person has a disability regardless of the level of earned income the person has. A provision is added for an earned income disregard for a person with disabilities has earned income, so that when the total countable income does not exceed 250% of the federal poverty guideline, the Department will disregard enough earned income to reduce the income below the SSI income level so that the person may qualify for the Medicaid Work Incentive Program. A provision is added to require an individual who is eligible for the program to apply for cost-effective health insurance that is available to them. A provision is added to allow a person who was eligible for the program to continue to be eligible for an additional 12 months after they no longer have earned income to give them a period of time to return to the workforce. The rule change also sets forth the eligibility requirements for coverage under the Medicaid Cancer Program.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-1-5 and 26-18-10

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: Department of Health could incur an annual cost of about $500,000 that will be offset by the buy-in premium amounts collected. The State could benefit financially through increased tax collection revenue. The

coverage for certain types of cancer would be an annual cost to the Department of about $134,000.

❖LOCAL GOVERNMENTS: This rule does not apply to local governments, therefore there should be no fiscal impact.

❖OTHER PERSONS: Individuals qualifying for continued Medicaid could anticipate a personal savings because they would not have to pay for medical expenses out of pocket. This personal savings to an eligible family could be substantial.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There would not be a fiscal impact on affected persons other than those described in aggregate anticipated cost or savings to State Budget, Local Government, and Other Persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Enhanced eligibility for working disabled and certain women under the Medicaid Cancer Program will have a positive impact on both individuals and businesses. Rod L. Betit

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

Health
Health Care Financing,
Coverage and Reimbursement Policy
Cannon Health Building
288 North 1460 West
PO Box 143102
Salt Lake City, UT 84114-3102, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Linda Asa at the above address, by phone at (801) 538-7091, by FAX at (801) 538-6952, or by Internet E-mail at lasa@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 07/02/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 07/03/2001

AUTHORIZED BY: Rod L. Betit, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-303. Coverage Groups.
R414-303-1. A, B and D Medicaid and A, B and D Institutional Medicaid Coverage Groups.

The definitions in R414-1 apply to this rule.

(1) The Department shall provide Medicaid coverage to individuals as described in 42 CFR 435.116, 435.120, 435.122, 435.131 through 435.133, 435.135, 435.138, 435.210, 435.211, 435.301, 435.320, 435.322, 435.324, 435.340, and 435.541, 1998 ed., which are incorporated by reference. The Department shall provide coverage to individuals as described in 20 CFR 416.901 through 416.1094, 1998 ed., which is incorporated by reference. The Department shall provide coverage to individuals as required by Sections 470 through 479, 1634(b), (c) and (d), 1902(a)(10)(A)(i)(II), 1902(a)(10)(E) and 1902(e) of Title XIX of the Social Security Act in effect January 1, 1999. The Department shall provide coverage to individuals described in Section 1902(a)(10)(A)(ii)(XIII) of Title XIX of the Social Security Act in effect January 1, 1999. Coverage under Section 1902(a)(10)(A)(ii)(XIII) shall be referred to as the Medicaid Work Incentive Program.

(2) Proof of disability includes a certification of disability from the State Medicaid Disability Office, Supplemental Security Income (SSI) status, or proof that a disabled client is recognized as disabled by the Social Security Administration (SSA).

(3) If a client has been denied SSI or SSA and claims to have become disabled since the SSI or SSA decision, the State Medicaid Disability Office shall review current medical information to determine if the client is disabled.

(4) If a client has earned income and claims to be disabled, The State Medicaid Disability Office shall review medical information to determine if the client is disabled without regard to whether the earned income exceeds the Substantial Gainful Activity level defined by the Social Security Administration. This applies even if the individual has been denied by Social Security based on a determination of being able to work at a substantial gainful activity level.

([~~4~~]5) The age requirement for A Medicaid is 65 years of age.

([~~5~~]6) For children described in Section 1902(a)(10)(A)(i)(II) of the Social Security Act in effect January 1, 1999, the Department shall conduct periodic redeterminations to assure that the child continues to meet the SSI eligibility criteria as required by the section.

([~~6~~]7) Coverage for qualifying individuals described in Section 1902(a)(10)(E)(iv) of Title XIX of the Social Security Act in effect January 1, 1999, is limited to the amount of funds allocated under Section 1933 of Title XIX of the Social Security Act in effect January 1, 1999 for a given year. Applicants will be denied coverage when the uncommitted allocated funds are insufficient to provide such coverage.

(8) To determine eligibility under Section 1902(a)(19)(A)(ii)(XIII), if the countable income of the individual and the individual's family does not exceed 250% of the federal poverty guideline for the applicable family size, the Department shall disregard an amount of earned and unearned income of the individual, the individual's spouse, and a minor individual's parents that equals the difference between the total income and the Supplemental Security Income maximum benefit rate payable.

(9) The Department shall require individuals eligible under Section 1902(a)(10)(A)(ii)(XIII) to apply for cost-effective health insurance that is available to them.

(10) Individuals eligible under Section 1902(a)(10)(A)(ii)(XIII) who experience a period without earned income after they have become eligible under this section may continue to be eligible for an additional 12 months regardless of the reason for the lack of earned income. At the end of this period, if the individual continues to have no earned income, eligibility will be determined using criteria for other existing Medicaid coverage groups.

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R414-303-4. Four Month Transitional Family Medicaid.

(1) The Department adopts 42 CFR 435.112, 1998 ed., and Title XIX of the Social Security Act, Section 1931(c)(1) in effect January 1, 1999 which are incorporated by reference.

(2) Changes in household composition do not affect eligibility for the four month extension period. New household members may be added to the case only if they meet the AFDC or AFDC two-parent criteria for being included in the household if they were applying in the current month. Newborn babies are considered household members even if they were unborn the month the household became ineligible for Family Medicaid under Section 1931 of the Social Security Act. New members added to the case will lose eligibility when the household loses eligibility. Assistance shall be terminated for household members who leave the household.

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R414-303-9. Prenatal and Newborn Medicaid.

(1) The Department [~~complies with~~]adopts Title XIX of the Social Security Act, Section 1902(a)(10)(A)(i)(IV), (VI), (VII) and (l), in effect January 1, 1999, Title XIX of the Social Security Act, Section 1902(k) in effect January 1, 1993, and Section 26-18-3.1.

(2) The Department elects to impose a resource standard on Newborn Medicaid coverage for children age six to the month in which they turn age 19. The resource standard is the same as other Family Medicaid Categories.

(3) The Department elects to provide Prenatal Medicaid coverage to pregnant women whose countable income is equal to or below 133% of poverty.

(4) At the initial determination of eligibility for Prenatal Medicaid applicants who have $5,000 or more of assets, the Department will require the applicant to pay four percent of countable resources to become eligible for Prenatal Medicaid. This payment amount shall not exceed $3,367. The payment must be met with cash; incurred medical bills and medical expenses are not allowed to meet this payment.

(5) In subsequent months, through the 60 day postpartum period, the Department disregards all excess resources.

(6) This resource payment applies only to pregnant women covered under Sections 1902(a)(10)(A)(i)(IV) and 1902(a)(10)(A)(ii)(IX)(A) of the Social Security Act in effect January 1, 1999.

(7) No resource payment will be required when the Department makes a determination based on information received from a medical professional that social, medical, or other reasons place the woman in a high risk category.

(8) Children born after September 30, 1983 may qualify for the newborn program through the month in which they turn 19.

(9) Children born before October 1, 1983 may qualify for the Newborn program through the month in which they turn 18.

R414-303-10. PG Medicaid.

The Department [~~complies with Public Law 74-271~~(]adopts Title XIX of the Social Security Act, Section 1902[~~,~~](a)(10)(A)(i)(III) in effect January 1, 1999.

R414-303-11. DD/MR Home and Community Based Services Waiver.

(1) The Department adopts 42 CFR 441.301 and 435.726, 1997 ed., which are incorporated by reference. The Department [~~complies with Public Law 74-271~~(]adopts Title XIX of the Social Security Act, Section 1915[~~,~~](c) in effect January 1, 1999.

(2) Medicaid Eligibility for Developmentally Disabled Mentally Retarded (DD/MR) Home and Community-Based Services is limited to mentally retarded and developmentally disabled individuals. Eligibility is limited to those referred by the Division of Services to People with Disabilities (DSPD) or any DD/MR worker.

(3) Medicaid eligibility for DD/MR Home and Community-Based Services is limited to individuals who qualify for a regular Medicaid coverage group.

(4) A client's resources must be equal to or less than the regular Medicaid resource limit. The spousal impoverishment resource provisions for married, institutionalized individuals in R414-305-3 apply.

(5) All of the client's income is countable.

(6) To determine spenddown the Department will deduct from the individual's earned income an amount equal to the substantial gainful activity level of earnings defined in Section 223(d)(4) of the Compilation of the Social Security Laws in effect January 1, 1999.

(7) The Department shall allow deductions for any health insurance or medical expenses for the waiver eligible client that are paid by the waiver client.

(8) The spousal impoverishment provisions for Institutional Medicaid income apply.

(9) The client obligation for spenddown will be the amount of income that exceeds the personal needs allowance after allowable deductions.

(10) The Department shall count parental and spousal income only if the client is given a cash contribution from a parent or spouse.

(11) A client who transfers resources for less than fair market value for the purpose of obtaining Medicaid may be ineligible for an indefinite period of time. If the transfer occurred prior to August 11, 1993, the period of ineligibility shall not exceed 30 months.

R414-303-12. Aging Home and Community Based Services Waiver.

(1) The Department adopts 42 CFR 441.301 and 435.726, 1998 ed., which are incorporated by reference. The Department [~~complies with Public Law 74-271~~(]adopts Title XIX of the Social Security Act, Section 1915[~~,~~](c) in effect January 1, 1999.

(2) Medicaid eligibility for Aging Home and Community-Based Services is limited to individuals eligible for Aged Medicaid who could qualify for skilled nursing home care except that the spousal impoverishment resource limits apply. Eligibility is limited to those referred by the Division of Aging or a county aging worker.

(3) A client's resources must be equal to or less than the regular Medicaid resource limit. The spousal impoverishment resource provisions for married, institutionalized individuals in R414-305-3 apply.

(4) All income is counted, unless excluded under other federal laws. Spenddown is determined counting only the client's income less allowable deductions.

(5) The spousal impoverishment provisions for Institutional Medicaid income apply. Income deductions include health insurance premiums, medical expenses, a percentage of shelter costs and an aging waiver deduction.

(6) A client who transfers resources for less than fair market value for the purpose of obtaining Medicaid may be ineligible for an indefinite period of time. If the transfer occurred prior to August 11, 1993, the period of ineligibility shall not exceed 30 months.

(7) The Department shall count a spouse's income only if the client is given a cash contribution from a spouse.

R414-303-13. Technologically Dependent Child Waiver/Travis C. Waiver.

(1) The Department adopts 42 CFR 441.301 and 435.726, 1998 ed., which are incorporated by reference. The Department [~~complies with Public Law 74-271(~~]adopts Title XIX of the Social Security Act, Section 1915[~~)~~](c) in effect January 1, 1999.

(2) The Department will operate this program statewide with a limited number of available slots.

(3) Eligibility for services under this waiver require that the individual meets the medical criteria established by the Department and the Division in Section Appendix C-4 of the Home and Community Based Waiver for Technology Dependent/Medically Fragile Children implementation plan effective on January 1, 1995 and temporarily extended from December 27, 1998 through March 27, 1999, which is incorporated by reference.

(4) To be eligible for admission to this waiver, the individual must be under age 21 at the time of admission to the waiver. An individual is considered to be under age 21 until the month after the month in which the twenty first birthday falls.

(5) Once admitted to the waiver, the individual can continue to receive waiver benefits and services as long as the individual continues to meet the medical criteria defined by the Department non-financial Medicaid eligibility criteria in R414-302, a Medicaid category of coverage defined in R414-303, and the income and resource criteria defined in R414-303-11, except that the earned income deduction is limited to $125.

(6) Income and resource eligibility requirements follow the rules for the DD/MR Home and Community Based Services Waiver found in R414-303-11.

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R414-303-15. Personal Assistance Waiver for Adults with Physical Disabilities.

(1) The Department adopts 42 CFR 435.726 and 435.217, 1998 ed., which are incorporated by reference. The Department [~~complies with~~]adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 1999.

(2) The waiver shall be limited to individuals 18 years of age and over.

(3) The individual must meet non-financial criteria for Aged, Blind, or Disabled Medicaid.

(4) A client must qualify for a nursing home level of care. Eligibility is limited to those referred by the Division of Services to People with Disabilities and determined medically eligible by the Bureau of Medicare/Medicaid Program Certification and Resident Assessment.

(5) A client's resources must be equal to or less than $2000. The spousal impoverishment resource provisions for married, institutionalized clients in R414-305-3 apply to this rule.

(6) Countable income is determined using income rules of Aged, Blind, or Disabled Institutional Medicaid. After determining countable income, eligibility is determined counting only the gross income of the client.

(7) The client's income can not exceed three times the SSI benefit amount payable under Section 1611(b)(1) of the Social Security Act, except that individuals with income over this amount can spenddown to the Medicaid Basic Maintenance Standard for a household of one.

(8) Transfer of resource provisions described in R414-305-6 apply to this rule.

R414-303-16. Medicaid Cancer Program.

The Department shall provide coverage to individuals described in 1902(a)(10)(A)(ii)(XVIII) of the Social Security Act in effect January 1, 1999, as amended by Pub. L. No. 106-354 effective October 24, 2000. This coverage shall be referred to as the Medicaid Cancer Program.

(1) Medicaid eligibility for services under this program will be provided to women who have been screened for breast or cervical cancer under the Centers for Disease Control and prevention Breast and Cervical Cancer Early Detection Program established under Title XV of the Public Health Service Act and are in need of treatment.

(2) A woman who is covered for treatment of breast or cervical cancer under a group health plan or other health insurance coverage defined by the Health Insurance Portability and Accountability Act (HIPAA) of Section 2701 (c) of the Public Health Service Act, is not eligible for coverage under the program.

(3) A woman who is eligible for Medicaid under any mandatory categorically needy eligibility group, is not eligible for coverage under the program.

(4) A woman must be under 65 years of age to enroll in the program.

KEY: income, coverage groups*
[~~March 13,~~]2001 26-18
Notice of Continuation February 6, 1998

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-304

Income and Budgeting

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23753
FILED: 05/15/2001, 09:01
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 4733 of the Balanced Budget Act of 1997 created a new optional categorically needy eligibility group to allow States to provide Medicaid to disabled working individuals who would not qualify because of high earnings. The Legislature appropriated $1,621,100 for the State to do this. The Department proposes to establish the Medicaid Work Incentive Program with the appropriated funds.

SUMMARY OF THE RULE OR CHANGE: The division is changing the way it looks at income and whose income to count to determine a Medicaid buy-in premium for working individuals with a disability. Specifically, the net income of clients, their spouse if married, and parents if the client is a minor is reviewed. The net income will be compared to the 250% of the federal guideline for the household size. The household will consist of the client, the spouse if married, parents if the client is a minor, and any minor children or siblings. Also included in the household will be children or siblings who are age 18, 19, or 20 if they are attending school full-time. Net income will be determined by allowing a $20 disregard, then allowing a deduction of $65, and one half of the remainder of the income. If the household passes this income test, the Medicaid buy-in premium will be calculated by taking the net income of the eligible client and subtracting any health insurance premiums they pay for themselves or other family members, and multiplying the remainder by 20%. If the spouse is also eligible, their net income will be combined, subtracting any health insurance premiums paid, and then multiplying by 20%.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-1-5 and 26-18-1

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Department of Health could incur a cost of about $500,000 that will be offset by the buy-in premium amounts collected. The State could benefit financially through increased tax collection revenue.

❖LOCAL GOVERNMENTS: This rule has no application to local government, so there should not be a fiscal impact.

❖OTHER PERSONS: People with disabilities who are working and currently paying a Medicaid spenddown will save money, as the Medicaid buy-in premium will be less that what they are paying now.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There would not be a fiscal impact on affected persons other than those described in aggregate anticipated cost or savings to State Budget, Local Government, and Other Persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule implements the Medicaid Work Incentive Program. More disabled adults will be able to work and not jeopardize their Medicaid eligibility. This will have a positive impact on both individuals and businesses. Rod L. Betit

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

Health
Health Care Financing,
Coverage and Reimbursement Policy
Cannon Health Building
288 North 1460 West
PO Box 143102
Salt Lake City, UT 84114-3102, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Linda Asa at the above address, by phone at (801) 538-7091, by FAX at (801) 538-6952, or by Internet E-mail at lasa@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 07/02/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 07/03/2001

AUTHORIZED BY: Rod L. Betit, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-304. Income and Budgeting.

. . . . . .

R414-304-2. A, B and D Medicaid and A, B and D Institutional Medicaid Unearned Income Provisions.

(1) The Department adopts 42 CFR 435.725 through 435.832, 1998 ed., and 20 CFR 416.1102, 416.1103, 416.1120 through 416.1148, 416.1150, 416.1151, 416.1163 through 416.1166, and Appendix to Subpart K of 416, 1998 ed., which are incorporated by reference. The Department adopts [~~Pub. L. No. 105-33(4735) enacted August 5, 1997~~]Subsection 404(h)(4) and 1612(b)(22) of the Compilation of the Social Security Laws in effect January 1, 1999 which [~~is~~]are incorporated by reference. [~~The Department adopts Pub. L. No. 104-204(1805)(c) and (d) enacted September 26, 1996 and 105-306(7)(a) and (c) enacted October 28, 1998 which is incorporated by reference.~~]The Department shall not count as income any payments that are prohibited under other federal laws rom being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The following definitions apply to this section:

(a) "Deeming" or "deemed" means a process of counting income from a spouse of an aged, blind, or disabled person or from a parent of a blind or disabled child to decide what amount of income after certain allowable deductions, if any, must be considered income to an aged, blind, or disabled person or child.

(b) "Eligible spouse" means the member of a married couple who is either aged, blind, or disabled.

(c) "In-kind support donor" means an individual who provides food or shelter without receiving full market value compensation in return.

(d) "Presumed maximum value" means the allowed maximum amount an individual is charged for the receipt of food and shelter. This amount shall not exceed 1/3 of the SSI payment plus $20.

(3) Only the portion of a VA check to which the client is legally entitled is countable income. VA payments for aid and

attendance do not count as income. The portion of a VA payment which is made because of unusual medical expenses is not countable income. Other VA income based on need is countable income, but is not subject to the $20 general income disregard.

(4) The value of special circumstance items is not countable income if the items are paid for by donors.

(5) For A, B and D Medicaid two-thirds of child support received a month is countable unearned income. It does not matter if the payments are voluntary or court-ordered. It does not matter if the child support is received in cash or in-kind.

(6) For A, B and D Institutional Medicaid court-ordered child support payments must be paid to the Office of Recovery Services (ORS) when the child resides out-of-home in a Medicaid 24-hour care facility. If the child has no income or insufficient income to provide for a personal needs allowance, ORS will allow the parent to retain up to the amount of the personal needs allowance to send to the child for personal needs. All other child support payments received by the child or guardian that are not subject to collection by ORS shall count as unearned to the child.

(7) The interest earned from a sales contract on either or both the lump sum and installment payments is countable unearned income when it is received or made available to the client.

(8) If the client, or the client and spouse do not live with an in-kind support donor, in-kind support and maintenance is the lesser of the value or the presumed maximum value of food or shelter received. If the client, or the client and spouse live with an in-kind support donor and do not pay a prorated share of household operating expenses, in-kind support and maintenance is the difference between the prorated share of household operating expenses and the amount the client, or the client and spouse actually pay, or the presumed maximum value, whichever is less.

(9) SSA reimbursements of Medicare premiums are not countable income.

(10) Reimbursements of a portion of Medicare premiums made by the state Medicaid agency to an individual eligible for QI-Group 2 coverage are not countable income.

(11) Payments under a contract, retroactive payments from SSI and SSA reimbursements of Medicare premiums are not considered lump sum payments.

(12) Educational loans, grants, and scholarships guaranteed by the U.S. Department of Education are not countable income if the recipient is an undergraduate. Income from service learning programs is not countable income if the recipient is an undergraduate. Deductions are allowed from countable educational income if receipt of the income depends on school attendance and if the client pays the expense. Allowable deductions include:

(a) tuition;

(b) fees;

(c) books;

(d) equipment;

(e) special clothing needed for classes;

(f) travel to and from school at a rate of 21 cents a mile, unless the grant identifies a larger amount;

(g) child care necessary for school attendance.

(13) Except for an individual eligible for the Medicaid Work Incentive Program, [~~T~~]the following provisions apply to non-institutional medical assistance:

(a) For A, B, or D Medicaid, the income of a spouse shall not be considered in determining Medicaid eligibility of a person who receives SSI. SSI recipients who meet all other Medicaid eligibility factors shall be eligible for Medicaid without spending down.

(b) If an ineligible spouse of an aged, blind, or disabled person has more income after deductions than the allocation for a spouse, that income shall be deemed to be income to the aged, blind, or disabled spouse to determine eligibility.

(c) The Department shall determine household size and whose income counts for A or D Medicaid as described below.

(i) If only one spouse is aged or disabled:

(A) income of the ineligible spouse shall be deemed to be income to the eligible spouse when it exceeds the allocation for a spouse. The combined income shall then be compared to 100% of the federal poverty guideline for a two-person household. If the combined income exceeds that amount, it shall be compared, after allowable deductions, to the BMS for two to calculate the spenddown.

(B) If the ineligible spouse's income does not exceed the allocation for a spouse, the ineligible spouse's income shall not be counted and the ineligible spouse shall not be included in the household size or the BMS. Only the eligible spouse's income shall be compared to 100% of the federal poverty guideline for one. If the income exceeds that amount, it shall be compared, after allowable deductions, to the BMS for one to calculate the spenddown.

(ii) If both spouses are either aged or disabled, the income of both spouses is combined and compared to 100% of the federal poverty guideline for a two-person household. SSI income is not counted.

(A) If the combined income exceeds that amount, and one spouse receives SSI, only the income of the non-SSI spouse, after allowable deductions, shall be compared to the BMS for a one-person household to calculate the spenddown.

(B) If neither spouse receives SSI and their combined income exceeds the federal poverty guideline, then the income of both spouses, after allowable deductions, shall be compared to the BMS for a two-person household to calculate the spenddown.

(C) If neither spouse receives SSI and only one spouse will be covered under the applicable program, income of the non-covered spouse shall be deemed to the covered spouse when it exceeds the spousal allocation. If the non-covered spouse's income does not exceed the spousal allocation, then only the covered spouse's income shall be counted. In both cases, the countable income shall be compared to the two-person poverty guideline. If it exceeds the limit, then income shall be compared to the BMS.

(I) If the non-covered spouse has deemable income, the countable income shall be compared to a two-person BMS to calculate a spenddown.

(II) If the non-covered spouse does not have deemable income, then only the covered spouse's income shall be compared to a one-person BMS to calculate the spenddown.

(iii) If an aged or disabled person has a spouse who is blind, then income of the blind spouse shall be deemed to the aged or disabled person when this income exceeds the allocation for a spouse to determine eligibility for the poverty-related Aged or Disabled Medicaid programs. If the deemed income of the blind spouse does not exceed the allocation for a spouse, none of the blind spouse's income shall be counted. In either case, countable income shall be compared to the poverty guideline for a two-person household to determine eligibility for the aged or disabled spouse.

(A) If the countable income does not exceed the two-person poverty guideline, then the aged or disabled spouse shall be eligible under the poverty-related Aged or Disabled Medicaid program.

(B) If the countable income exceeds the two-person poverty guideline, then eligibility under the spenddown program shall be determined as described in (ii)(A) if the blind spouse receives SSI or as in (ii)(B)or (ii)(C)(I) or (II) if the blind spouse does not receive SSI.

(d) The Department shall determine household size and whose income counts for B Medicaid as described below.

(i) If the spouse of a blind client is aged, blind, or disabled and does not receive SSI, income of both spouses shall be combined and, after allowable deductions, compared to the BMS for a two-person household to calculate the spenddown.

(A) If only one spouse will be covered, or the aged or disabled spouse is eligible under the A or D poverty-related program, income of the non-covered spouse shall be deemed when it exceeds the allocation for a spouse. The total countable income shall then be compared to the BMS for a two-person household to calculate the spenddown.

(B) If the non-covered spouse's income does not exceed the allocation for a spouse, then only the covered spouse's income shall be counted and compared to the BMS for a one-person household.

(C) If the spouse of a blind client receives SSI, then only the income of the blind spouse shall be compared to the BMS for one.

(ii) If the spouse is not aged, blind, or disabled, income shall be deemed to the blind spouse when it exceeds the allocation for a spouse, and, after allowable deductions, the combined income shall be compared to the BMS for two. If the ineligible spouse's income does not exceed the allocation for a spouse, only the blind spouse's income, after allowable deductions, shall be compared to the BMS for one person to calculate the spenddown.

(e) The Department shall determine household size and whose income counts for QMB, SLMB, and QI assistance as described below.

(i) If both spouses receive Part A Medicare and both want coverage, income shall be combined and compared to the applicable percentage of the poverty guideline for a two-person household. SSI income shall not be counted.

(ii) If one spouse receives Part A Medicare, and the other spouse is aged, blind, or disabled, does not receive Part A Medicare, or does not want coverage, then income of the ineligible spouse shall be deemed to the eligible spouse when it exceeds the allocation for a spouse. If the income of the ineligible spouse does not exceed the allocation for a spouse, then only the income of the eligible spouse shall be counted. In both cases, the countable income shall be compared to the applicable percentage of the federal poverty guideline for a two-person household.

(f) If any parent in the home receives SSI, the income of neither parent shall be considered to determine a child's eligibility for B or D Medicaid.

(g) Payments for providing foster care to a child are countable income. The portion of the payment that represents a reimbursement for the expenses related to providing foster care is not countable income.

(14) For institutional Medicaid, the Department shall only count the client in the household size and only count the client's income to determine contribution to cost of care.

(15) Interest accrued on an Individual Development Account as defined in Sections 404-416 of Pub. L. No. 105-285 effective October 27, 1998 shall not count as income.

R414-304-3. Medicaid Work Incentive Program Unearned Income Provisions.

(1) The Department adopts 20 CFR 416.1102, 416.1103, 416.1120 through 416.1148, 416.1150, 416.1151, and Appendix to Subpart K of 416, 1998 ed., which are incorporated by reference. The Department adopts Pub. L. No. 105-33 (4735) enacted August 5, 1997, Pub. L. No. 104-193, Section 103 effective August 22, 1996, and Pub. L. No. 105-285, Section 404-416 effective October 27, 1998 which are incorporated by reference. The Department adopts Pub. L. No. 104-204 (1805)(c) and (d) enacted September 26, 1996 and 105-306 (7)(a) and (c) enacted October 28, 1998 which is incorporated by reference.

(2) The Department shall allow the provisions found in R414-304-2 (3) through (12) and (14).

(3) The income from from an ineligible spouse or parent shall be determined by the total of the earned and unearned income using the appropriate exclusions in 416.1161, except that court ordered support payments would not be allowed.

(4) For the Medicaid Work Incentive Program, the income of a spouse or parent shall not be considered in determining eligibility of a person who receives SSI. SSI recipients who meet all other Medicaid Work Incentive Program eligibility factors shall be eligible without paying a Medicaid buy-in premium.

(5) The Department shall determine household size and whose income counts for the Medicaid Work Incentive Program as described below:

(a) If the Medicaid Work Incentive Program individual is an adult and is not living with a spouse, count only the income of the individual. After allowable deductions, the net income shall be compared to 250% of the federal poverty guideline for one person.

(b) If the Medicaid Work Incentive Program individual is living with a spouse, combine their income before allowing any deductions. Include in the household size the spouse and any children under age 18. Also include in the household size any children who are 18, 19, or 20 and are full-time students. Compare the net income of the Medicaid Work Incentive Program individual and spouse to 250% of the federal poverty guideline for the household size involved.

(c) If the Medicaid Work Incentive Program individual is a child living with a parent, combine the income of the Medicaid Work Incentive Program individual and the parents before allowing any deductions. Include in the household size the parents, any minor siblings, and siblings who are age 18, 19, or 20 and are full-time students. Compare the net income of the Medicaid Work Incentive Program individual and their parents to 250% of the federal poverty guideline for the household size involved.

(6) Interest accrued on an Individual Develotment Account as defined in Sections 404-416 Of Pub. L. No. 105-285 effective October 27, 1998 shall not count as income.

R414-304-[3]4. Family Medicaid and Institutional Family Medicaid Unearned Income Provisions.

(1) The Department adopts 42 CFR 435.725 through 435.832, 1998 ed., and 45 CFR 233.20(a)(1), 233.20(a)(3)(iv), 233.20(a)(3)(v), 233.20(a)(3)(xxi), 233.20 (4)(ii), and 233.51, 1998

ed., which are incorporated by reference. [~~The Department adopts Pub. L. No. 105-33 (4735) enacted August 5, 1997 which is incorporated by reference.~~]The Department adopts Subsection 404(h)(4) of the Compilation of the Social Security Laws in effect January 11, 1999, which is incorporated by reference. The Department shall not count as income any payments that are prohibited under other federal laws from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The following definitions apply to this section:

(a) A "a bona fide loan" is a loan that has been contracted in good faith without fraud or deceit and genuinely endorsed in writing for repayment.

(b) "Unearned income" means cash received for which the individual performs no service.

(c) "Quarter" means any three month period that includes January through March, April through June, July through September or October through December.

(3) Bona fide loans are not countable income.

(4) Support and maintenance assistance provided in-kind by a non-profit organization certified by the Department of Human Services is not countable income.

(5) The value of food stamp assistance is not countable income.

(6) SSI and State Supplemental Payments are income for children receiving Child, Family, Newborn, or Newborn Plus Medicaid.

(7) $30 is deducted from rental income if that income is consistent with community standards. Additional deductions are allowed if the client can prove greater expenses. The following expenses in excess of $30 may be allowed:

(a) taxes and attorney fees needed to make the income available;

(b) upkeep and repair costs necessary to maintain the current value of the property. This includes utility costs.

(c) only the interest can be deducted on a loan or mortgage made for upkeep or repair;

(d) if meals are provided to a boarder, the value of a one-person food stamp allotment.

(8) Cash gifts that do not exceed $30 a quarter per person in the assistance unit are not countable income. A cash gift may be divided equally among all members of the assistance unit.

(9) Deferred income is countable income when it is received by the client if receipt can be reasonably anticipated.

(10) The value of special circumstance items is not countable income if the items are paid for by donors.

(11) Home energy assistance is not countable income.

(12) All money received from an insurance settlement for destroyed exempt property is counted unless the income is used to purchase replacement property. If income received exceeds the money needed to replace the property, the difference is countable income.

(13) SSA reimbursements of Medicare premiums are not countable income.

(14) Payments from trust funds are countable income if the payments are not available on demand.

(15) FEP, Working Toward Employment Program payments, and Refugee Cash Assistance are not countable income.

(16) Only the portion of a Veteran's Administration check to which the client is legally entitled is countable income.

(17) When the entitlement amount of a check differs from the payment amount, the entitlement amount is countable income unless the deduction is involuntary.

(18) Deposits to joint checking or savings accounts are countable income, even if the deposits are made by a non-household member. Clients who dispute ownership of deposits to joint checking or savings accounts shall be given an opportunity to prove that the deposits do not represent income to them. Funds that are successfully disputed are not countable income.

(19) The income of an alien's sponsor is not countable income.

(20) The interest earned from a sales contract on either or both the lump sum and installment payments is countable unearned income when it is received or made available to the client.

(21) Interest accrued on an Individual Development Account as defined in Sections 404-416 of Pub. L. No.105-285 efective October 27, 1998 shall not count as income.

R414-304-[~~4~~]5. A, B and D Medicaid and A, B and D Institutional Medicaid Earned Income Provisions.

(1) The Department adopts 42 CFR 435.725 through 435.832, 1998 ed., and 20 CFR 416.1110 through 416.1112, 1999 ed., which are incorporated by reference. The department adopts Subsection 1612(b)(4)(A) and (B) of the Compilation of the Social Security Laws, in effect January 1, 1999, which is incorporated by reference.

(2) The Department shall allow SSI recipients, who have a plan for achieving self support approved by the Social Security Administration, to set aside income that allows them to purchase work-related equipment or meet self support goals. This income shall be excluded and may include earned and unearned income.

(3) Expenses relating to the fulfillment of a plan to achieve self-support shall not be allowed as deductions from income.

(4) For A, B and D Medicaid, earned income used to compute a needs-based grant is not countable.

(5) For A, B and D Institutional Medicaid, $125 shall be deducted from earned income before contribution towards cost of care is determined.

(6) For A, B and D Institutional Medicaid impairment-related work expenses shall be allowed as an earned income deduction.

(7) Capital gains shall be included in the gross income from self-employment.

(8) To determine countable net income from self-employment, the state shall allow a 40 percent flat rate exclusion off the gross self-employment income as a deduction for business expenses for A, B, or D category programs that use a percentage if the federal poverty guideline as an eligibility income limit. For self-employed individuals who have actual allowable business expenses greater than the 40 percent flat rate exclusion amount, if the individual provides verification of the actual expenses, the self-employment net profit amount will be calculated using the same deductions that are allowed under federal income tax rules.

(9) To determine countable net income from self-employment, the state shall allow the cost of doing business to be deducted from the gross income for A, B, or D category programs that do not use a percentage of the federal poverty guideline as an eligibility income limit. However, no deductions shall be allowed for the following business expenses:

(a) transportation to and from work;
(b) payments on the principal for business resources;
(c) net losses from previous tax years;
(d) taxes;
(e) money set aside for retirement;
(f) work-related personal expenses;
(g) depreciation.

(10) Net losses of self-employment from the current tax year may be deducted from other earned income.

(11) Earned income paid by the U.S. Census Bureau to temporary census takers shall be excluded for any A, B, or D category programs that use a percentage of the federal poverty guideline as an eligibility income limit.

R414-304-[5]6. Family Medicaid and Family Institutional Medicaid Earned Income Provisions.

(1) The Department adopts 42 CFR 435.725 through 435.832, 1998 ed. and 45 CFR 233.20(a)(6)(iii) through (iv), 233.20(a)(6)(v)(BA), 233.20(a)(6)(vi) through (vii), and 233.20(a)(11), 1999 ed., which are incorporated by reference.

(2) The following definitions apply to this section:

(a) "Full-time student" means a person enrolled for the number of hours defined by the particular institution as fulfilling full-time requirements.

(b) "Part-time student" means a person who is enrolled for at least one-half the number of hours or periods considered by the institution to be customary to complete the course of study within the minimum time period. If no schedule is set by the school, the course of study must be no less than an average of two class periods or two hours a day, whichever is less.

(c) "School attendance" means enrollment in a public or private elementary or secondary school, a university or college, vocational or technical school or the Job Corps, for the express purpose of gaining skills that will lead to gainful employment.

(d) "Full-time employment" means an average of 100 or more hours of work a month or an average of 23 hours a week.

(e) "Aid to Families with Dependent Children" (AFDC) means a state plan for aid that was in effect on June 16, 1996.

(f) "1931 Family Medicaid" means a medical assistance program that uses the AFDC eligibility criteria in effect on June 16, 1996 along with any subsequent amendments in the State Plan, except that 1931 Family Medicaid eligibility for recipients of TANF cash assistance follows the eligibility criteria of the Family Employment Program.

(g) "Temporary Assistance to Needy Families" (TANF) means a grant program providing financial assistance to eligible families with dependent children. It is also referred to as Family Employment Program (FEP).

(3) The income of a dependent child is not countable income if the child is:

(a) in school or training full-time;

(b) in school or training part-time, if employed less than 100 hours a month;

(c) in JTPA.

(4) For Family Medicaid the 30 and 1/3 deduction is allowed if the wage earner has received a TANF financial payment or 1931 Family Medicaid in one of the four previous months and this disregard has not been exhausted.

(5) To determine countable net income from self-employment, the state shall allow a 40 percent flat rate exclusion off the gross self-employment income as a deduction for business expenses for 1931 Medicaid and for Family Medicaid programs that use a percentage of the federal poverty guideline as an eligibility income limit. For self-employed individuals who have actual allowable business expenses greater than the 40 percent flat rate exclusion amount, if the individual provides verification of the actual expenses, the self-employment net profit amount will be calculated using the same deductions that are allowed under federal income tax rules.

(6) To determine countable net income from self-employment, the state shall allow the cost of doing business to be deducted from the gross income for Family Medicaid categories that do not use a percentage of the federal poverty guideline as an eligibility income limit. However, items such as depreciation, personal business and entertainment expenses, personal transportation, purchase of capital equipment, and payments on the principal of loans for capital assets or durable goods, are not business expenses.

(7) For Family Medicaid, the Department shall deduct child care costs from the earned income of clients working 100 hours or more in a calendar month. A maximum of up to $200.00 per child under age 2 and $175.00 per child age 2 and older may be deducted. A maximum of up to $160.00 per child under age 2 and $140.00 per child age 2 and older a month may be deducted from the earned income of clients working less than 100 hours in a calendar month.

(8) For Family Institutional Medicaid, the Department shall deduct child care costs from the earned income of clients working 100 hours or more in a calendar month. A maximum of up to $160 a month per child may be deducted. A maximum of up to $130 a month shall be deducted from the earned income of clients working less than 100 hours in a calendar month.

(9) Earned income paid by the U.S. Census Bureau to temporary census takers shall be excluded for any family Medicaid programs that use a percentage of the federal poverty guideline as an eligibility income limit, and for determining eligibility for 1931 Family Medicaid.

(10) Under 1931 Family Medicaid, for households that pass the 185% gross income test, if net income does not exceed the applicable BMS, the household shall be eligible for 1931 Family Medicaid. No health insurance premiums or medical bills shall be deducted from gross income to determine net income for 1931 Family Medicaid.

(11) For Family Medicaid recipients who otherwise meet 1931 Family Medicaid criteria, who lose eligibility [~~for FEP cash assistance~~]because of earned income that does not exceed 185% of the federal poverty guideline, the state shall disregard earned income of the specified relative for six months [~~after the FEP assistance ends~~]to determine eligibility for 1931 Family Medicaid. Before the end of the sixth month, the state shall conduct a review of the household's earned income. If the earned income exceeds 185% of the federal poverty guideline, the household will be eligible to receive Transitional Medicaid following the provisions of R414-303 as long as it meets all other criteria.

After the first six months of disregarding earned income, if the average monthly earned income of the household does not exceed 185% of the federal poverty guideline for a household of the same size, the state shall continue to disregard earned income for an additional six months to determine eligibility for 1931 Family

Medicaid. In the twelfth month of receiving such income disregard, if the household continues to have earned income[~~ and the household has a dependent child living in the home~~], the household will be eligible to receive Transitional Medicaid following the provisions of R414-303 as long as it meets all other criteria.

R414-304-[6]7. A, B and D Medicaid and Family Medicaid Income Deductions.

(1) The Department adopts 42 CFR 435.831, 1998 ed., which is incorporated by reference.

(2) The Department shall allow health insurance premiums providing coverage for anyone in the family or the BMS as deductions in the month of payment. The entire payment shall be allowed as a deduction and will not be prorated. The Department shall not allow health insurance premiums as a deduction for determining eligibility for the poverty-related medical assistance programs or 1931 Family Medicaid.

(3) Medicare premiums shall not be allowed as deductions if the state reimburses the client.

(4) Medical expenses shall be allowed as deductions only if the expenses meet all of the following conditions:

(a) The medical service was received by the client, client's spouse, parent of an unemancipated client or unemancipated sibling of an unemancipated client, a deceased spouse or a deceased dependent child.

(b) The medical bill shall not be paid by Medicaid or a third party.

(c) The medical bill remains unpaid or was paid during the month of application or at anytime in the three months immediately preceding the month of application. The date the medical service was provided on an unpaid expense does not matter.

(5) A medical expense shall not be allowed as a deduction more than once.

(6) A medical expense allowed as a deduction must be for a medically necessary service. The Department of Health shall be responsible for deciding if services are not medically necessary.

(7) The Department shall not allow as a medical expense, co-payments required under the State Medicaid Plan that are owed or paid by the client to receive Medicaid-covered services.

(8) For poverty-related medical assistance, an individual or household shall be ineligible if countable income exceeds the applicable income limit. Medical costs are not allowable deductions for determining eligibility for poverty-related medical assistance programs. No spenddown shall be allowed to meet the income limit for poverty-related medical assistance programs.

(9) As a condition of eligibility, clients must certify on Form 1049B that medical expenses in the benefit month are expected to exceed the spenddown amount. The client must do this when spenddown starts, at each review, and when the client chooses a different spenddown option. If medical expenses are less than or equal to the spenddown, the client shall not be eligible for that month. The client may elect to use allowable medical expenses the client still owes from previous months to reduce the spenddown so that expected medical expenses for the benefit month exceed the remaining spenddown owed.

(10) Pre-paid medical expenses shall not be allowed as deductions.

(11) The Department elects not to set limits on the amount of medical expenses that can be deducted.

(12) Clients may choose to meet their spenddown obligation by incurring medical expenses or by paying a corresponding amount to the Department.

(13) For A, B and D Medicaid institutional costs shall be allowed as deductions if the services are medically necessary. The Department of Health shall be responsible for deciding if services for institutional care are not medically necessary.

(14) No one shall be required to pay a spenddown of less than $1.

(15) Medicaid covered medical costs incurred in a current benefit month cannot be used to meet spenddown when the client is enrolled in an HMO. Bills for mental health services incurred in a benefit month cannot be used to meet spenddown if the client will be eligible for Medicaid and lives in a county which has a single mental health provider under contract with Medicaid to provide services to all Medicaid clients who live in that county. Bills for mental health services received in a retroactive or application month that the client has fully-paid during that time can be used to meet spenddown as long as the services were not provided by the mental health provider in the client's county of residence which is under contract with Medicaid to provide services to all Medicaid clients.

R414-304-8. Medicaid Work Incentive Program Income Deductions.

(1) The Department shall allow the provisions found in R414-304 (1) through (3) and (14).

(2) The Department shall allow the following deductions from income in determining net income that is compared to 250% of the federal poverty guideline:

(a) $20 from unearned income. If there is less than $20 in unearned income, deduct the balance of the $20 from earned income;

(b) $65 plus one have the remainder of earned income.

(3) For the Medicaid Work Incentive Program, an individual or household shall be ineligible if countable income exceeds the applicable income limit. Health insurance premiums and medical costs are not allowed as deductions from income before comparing countable income to the applicable limit.

(4) Health insurance premiums paid by the Medicaid Work Incentive Program individual to purchase health insurance for themselves or other family members in the household shall be allowed as a deduction from income before determining the buy-in premium.

(5) An eligible individual may meet the buy-in premium with cash.

R414-304-[7]9. A, B, and D Institutional Medicaid and Family Institutional Medicaid Income Deductions.

(1) The Department adopts 42 CFR 435.725 and 435.726, 1998 ed., which are incorporated by reference. The Department adopts Subsection 1902(r)(1) and 1924 of the Compilation of the Social Security Laws, in effect January 1, 1999, which are incorporated by reference.

(2) The following definitions apply to this section:

(a) "Family member" means a son, daughter, parent, or sibling of the client or the client's spouse who lives with the spouse.

(b) "Dependent" means earning less than $2,000 a year, not being claimed as a dependent by any other individual, and receiving

more than half of one's annual support from the client or the client's spouse.

(3) Health insurance premiums:

(a) For institutionalized and waiver eligible clients, the Department shall allow health insurance premiums only for the institutionalized or waiver eligible client and only if paid with the institutionalized or waiver eligible client's funds. Health insurance premiums shall be allowed as a deduction in the month due. The payment shall not be pro-rated.

(b) The Department shall allow the portion of a combined premium, attributable to the institutionalized or waiver-eligible client, as a deduction if the combined premium includes a spouse or dependent family member and is paid from the funds of the institutionalized or waiver eligible client.

(4) Medicare premiums shall not be allowed as deductions if the state pays the premium or reimburses the client.

(5) Medical expenses shall be allowed as deductions only if the expenses meet all of the following conditions:

(a) the medical service was received by the client;

(b) the unpaid medical bill shall not be paid by Medicaid or a third party;

(c) the paid medical bill can be allowed only in the month paid. No portion of any paid bill can be allowed after the month of payment.

(6) A medical expense shall not be allowed as a deduction more than once.

(7) A medical expense allowed as a deduction must be for a medically necessary service. The Department of Health shall be responsible for deciding if services are not medically necessary.

(8) Pre-paid medical expenses shall not be allowed as deductions.

(9) The Department shall not allow as a medical expense, co-payments required under the State Medicaid Plan that are owed or paid by a client to receive Medicaid-covered services.

(10) The Department elects not to set limits on the amount of medical expenses that can be deducted.

(11) Institutionalized clients are to contribute all countable income remaining after allowable deductions to the institution as their contribution to the cost of their care.

(12) The personal needs allowance shall be equal to $45.

(13) Except for an individual eligible for the Personal Assistance Waiver, an individual receiving assistance under the terms of a Home and Community-Based Services Waiver shall be eligible to receive a deduction for a non-institutionalized, non-waiver-eligible spouse and dependent family member as if that individual were institutionalized.

(14) Income received by the spouse or dependent family member shall be counted in calculating the deduction if that type of income is countable to determine Medicaid eligibility. No income disregards shall be allowed. Certain needs-based income and state supplemental payments shall not be counted in calculating the deduction. Tribal income shall be counted.

(15) If the income of a spouse or dependent family member is not reported, no deduction shall be allowed for the spouse or dependent family member.

(16) A client shall not be eligible for Medicaid coverage if medical costs are not at least equal to the contribution required towards the cost of care.

(17) To determine a deduction for a community spouse, the standard utility allowance for households with heating costs shall be equal to $150. For households without heating costs, actual utility costs shall be used. The maximum allowance for a telephone bill is $20. Clients shall not be required to verify utility costs more than once in a certification period.

(18) Medicaid covered medical costs incurred in a current benefit month cannot be used to meet spenddown when the client is enrolled in an HMO. Bills for mental health services incurred in a benefit month cannot be used to meet spenddown if the client will be eligible for Medicaid and lives in a county which has a single mental health provider under contract with Medicaid to provide services to all Medicaid clients who live in that county. Bills for mental health services received in a retroactive or application month that the client has fully-paid during that time can be used to meet spenddown as long as the services were not provided by the mental health provider in the client's county of residence which is under contract with Medicaid to provide services to all Medicaid clients.

R414-304-[8]10. Budgeting.

(1) The Department adopts 42 CFR 435.601 and 435.640, 1998 ed., which are incorporated by reference. The Department adopts 45 CFR 233.20(a)(3)(iii), 233.31, and 233.33, 1998 ed., which are incorporated by reference.

(2) The following definitions apply to this section:

(a) "Best estimate" means that income is calculated for the upcoming certification period based on current information about income being received, expected income deductions, and household size.

(b) "Prospective eligibility" means that eligibility is determined each month for the immediately following month based on a best estimate of income.

(c) "Prospective budgeting" is the process of calculating income and determining eligibility and spenddown for future months based on the best estimate of income, deductions, and household size.

(d) "Income averaging" means using a history of past income and expected changes, and averaging it over a determined period of time that is representative of future monthly income.

(e) "Income anticipating" means using current facts regarding rate of pay and number of working hours to anticipate future monthly income.

(f) "Income annualizing" means using total income earned during one or more past years, or a shorter applicable time period, and anticipating any future changes, to estimate the average annual income. That estimated annual income is then divided by 12 to determine the household's average monthly income.

(g) "Factoring" means that a monthly amount shall be determined to take into account the months of pay where an individual receives a fifth paycheck when paid weekly or a third paycheck when paid every other week. Weekly income shall be factored by multiplying the weekly amount by 4.3 to obtain a monthly amount. Income paid every other week shall be factored by 2.15 to obtain a monthly amount.

(h) "Reportable income changes" are those that cause income to change by more than $25. All income changes must be reported for an institutionalized individual.

(3) The Department shall do prospective budgeting on a monthly basis.

(4) A best estimate of income based on the best available information shall be an accurate reflection of client income in that month.

(5) The Department shall use the best estimate of income to be received or made available to the client in a month to determine eligibility and spenddown.

(6) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing.

(7) The Department shall count income in the following manner:

(a) For QMB, SLMB, QI, Medicaid Work Incentive Program, and A, B, D, and Institutional Medicaid income shall be counted as it is received. Income that is received weekly or every other week shall not be factored.

(b) For Family Medicaid programs, income that is received weekly or every other week shall be factored.

(8) Lump sums are income in the month received. Any amount of a lump sum remaining after the end of the month of receipt is a resource. Lump sum payments can be earned or unearned income.

(9) Income paid out under a contract shall be prorated to determine the countable income for each month. Only the prorated amount shall be used to determine spenddown or eligibility for a month. If the income will be received in fewer months than the contract covers, the income shall be prorated over the period of the contract. If received in more months than the contract covers, the income shall be prorated over the period of time in which the money will be received.

(10) To determine the average monthly income for farm and self-employment income, the Department shall determine the annual income earned during one or more past years, or other applicable time period, and factor in any current changes in expected income for future months. Less than one year's worth of income may be used if this income has recently begun, or a change occurs making past information unrepresentative of future income. The monthly average income shall be adjusted during the year when information about changes or expected changes is received by the Department.

(11) Student income received other than monthly shall be prorated to determine the monthly countable income. This is done by dividing the total amount by the number of calendar months classes are in session.

(12) Income from Indian trust accounts not exempt by federal law shall be prorated to determine the monthly countable income when the income varies from month to month, or it is received less often than monthly. This is done by dividing the total amount by the number of months it covers.

(13) Eligibility for retroactive assistance shall be based on the income received in the month for which retroactive coverage is sought. When income is being prorated or annualized, then the monthly countable income determined using this method shall be used for retroactive benefit months, except when the income was not being received during, and was not intended to cover, the retroactive months.

R414-304-[~~9~~]11. Income Standards.

(1) The Department adopts Sections 1902(a)(10)(E), 1902(l), 1902(m), 1903(f) and 1905(p) of the Compilation of the Social Security Laws, in effect January 1, 1999, which are incorporated by reference.

(2) The Aged and Disabled poverty-related Medicaid income standard shall be calculated as 100% of the federal non-farm poverty guideline. If an Aged or Disabled person's income exceeds this amount the current Medicaid Income Standards (BMS) shall apply[~~.~~] unless the disabled individual or a disabled aged individual has earned income. In this case follow the income standards for the Medicaid Work Incentive Program.

(3) The income standard for the Medicaid Work Incentive Program shall be equal to 250% of the federal poverty guideline for a family of the size involved. If income exceeds this amount the current Medicaid Income Standards (BMS) shall apply. The Department shall charge a premium equal to 20% of the countable income of the Medicaid Work Incentive Program eligible individual, or the eligible individual and eligible spouse, when this income exceeds 100% of the federal poverty guideline for the number of eligible individuals. When the eligible individual is a minor child, the Department shall charge a premium equal to 20% of the child's countable income when this income exceeds 100% of the federal poverty guideline for a one person household.

([~~3~~]4) The income limit for pregnant women, and children under one year of age, shall be equal to 133% of the federal poverty guideline for a family of the size involved. If income exceeds this amount, the current Medicaid Income Standards (BMS) shall apply.

([~~4~~]5) The current Medicaid income standards (BMS) are as follows:

TABLE

Household Size	Medicaid Income Standard (BMS)
1	382
2	468
3	583
4	683
5	777
6	857
7	897
8	938
9	982
10	1,023
11	1,066
12	1,108
13	1,150
14	1,192
15	1,236
16	1,277
17	1,320
18	1,364

R414-304-[~~10~~]12. A, B and D Medicaid, QMB, SLMB, and QI Filing Unit.

(1) The Department adopts 42 CFR 435.601 and 435.602, 1998 ed., which are incorporated by reference. The Department adopts Subsections 1902(l)(1), (2), and (3), 1902(m)(1) and (2), and 1905(p) of the Compilation of the Social Security Laws, in effect January 1, 1999, which are incorporated by reference.

(2) The following individuals shall be counted in the BMS for A, B and D Medicaid:

(a) the client;

(b) a spouse who lives in the same home, if the spouse is eligible for A, B, or D Medicaid, and is included in the coverage;

(c) a spouse who lives in the same home, if the spouse has deemable income above the allocation for a spouse.

(3) The following individuals shall be counted in the household size for A or D poverty-related Medicaid:

(a) the client;

(b) a spouse who lives in the same home, if the spouse is aged, blind, or disabled, regardless of the type of income the spouse receives, or whether the spouse is included in the coverage;

(c) a spouse who lives in the same home, if the spouse is not aged, blind or disabled, but has deemable income above the allocation for a spouse.

(4) The following individuals shall be counted in the household size for a QMB, SLMB, or QI case:

(a) the client;

(b) a spouse living in the same home who receives Part A Medicare or is Aged, Blind, or Disabled, regardless of whether the spouse has any deemable income or whether the spouse is included in the coverage;

(c) a spouse living in the same home who does not receive Part A Medicare and is not Aged, Blind, or Disabled, if the spouse has deemable income above the allocation for a spouse.

(5) The following individuals shall be counted in the household size for the Medicaid Work Incentive Program:

(a) the client;

(b) a spouse living in the same home;

(c) parents living with a minor child;

(d) children under age 18

(e) children age 18, 19, or 20 if they are in school full-time,

([~~5~~]6) Eligibility for A, B and D Medicaid and the spenddown, if any; A and D poverty-related Medicaid; and QMB, SLMB, and QI programs shall be based on the income of the following individuals:

(a) the client;

(b) parents living with the minor client;

(c) a spouse who is living with the client. Income of the spouse is counted based on R414-304–2.

(7) Eligibility for the Medicaid Work Incentive Program shall be based on income of the following individuals:

(a) the client;

(b) parents living with the minor client;

(c) a spouse who is living with the client.

([~~6~~]8) If a person is "included" in the BMS, it means that family member shall be counted as part of the household and his or her income and resources shall be counted to determine eligibility for the household, whether or not that family member receives medical assistance.

([~~7~~]9) If a person is "included" in the household size, it means that family member shall be counted as part of the household to determine what income limit applies, regardless of whether that family member's income will be counted or whether that family member will receive medical assistance.

R414-304-[~~11~~]13. Family Medicaid Filing Unit.

(1) The Department adopts 42 CFR 435.601 and 435.602, 45 CFR 206.10(a)(1)(iii), 233.20(a)(1) and 233.20(a)(3)(vi), 1998 ed., which are incorporated by reference.

(2) Except for determinations under 1931 Family Medicaid, any unemancipated minor child may be excluded from the Medicaid coverage group at the request of the specified relative responsible for the children. An excluded child shall be considered an ineligible child and shall not be counted as part of the household size for deciding what income limit will be applicable to the family. Income and resources of an excluded child shall not be considered when determining eligibility or spenddown.

(3) The Department shall not use a grandparent's income to determine eligibility or spenddown for a minor child, and the grandparent shall not be counted in the household size. A cash contribution from the grandparents received by the minor child or parent of the minor child is countable income.

(4) Except for determinations under 1931 Family Medicaid, if anyone in the household is pregnant, the unborn child shall be included in the household size. If a medical authority confirms that the pregnant woman will have more than one child, all of the unborn children shall be included in the household size.

(5) If a child is voluntarily placed in foster care and is in the custody of a state agency, the parents shall be included in the household size.

(6) Parents who have relinquished their parental rights shall not be included in the household size.

(7) If a court order places a child in the custody of the state, and the child is temporarily placed in an institution, the parents shall not be included in the household size.

(8) If a person is "included" in the household size, it means that family member shall be counted as part of the household and his or her income and resources shall be counted to determine eligibility for the household, whether or not that family member receives medical assistance. The household size determines which BMS level or, in the case of poverty-related programs, which poverty guideline level will apply to determine eligibility for the client or family.

R414-304-[~~12~~]14. A, B and D Institutional and Waiver Medicaid and Family Institutional Medicaid Filing Unit.

(1) For A, B, and D institutional, and home and community-based waiver Medicaid, the Department shall not use income of the client's parents or the client's spouse to determine eligibility and spenddown.

(2) For Family institutional, and home and community-based waiver Medicaid programs, the Department adopts 45 CFR 206.10(a)(1)(vii), 1998 ed., which is incorporated by reference.

(3) The Department shall base eligibility and spenddown on the income of the client and the sponsor of an alien who is subject to deeming according to the rules described in 20 CFR 416.1166a, 1998 ed., which is incorporated by reference.

KEY: financial disclosure, income, budgeting
[~~March 13,~~]2001 26-18-1
Notice of Continuation February 6, 1998

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-305
Resources

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23754
FILED: 05/15/2001, 09:01
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 4733 of the Balanced Budget Act of 1997 created a new categorically needy eligibility group to allow states to provide Medicaid to disabled working individuals who would not qualify because of high earnings. The Legislature appropriated $1,621,100 for the State to do this. The Department proposes to establish the Medicaid Work Incentive Program with the appropriated funds.

SUMMARY OF THE RULE OR CHANGE: The resource limit for these individuals will be $15,000. There will be some additional resource exclusions for the Medicaid Work Incentive Program, including exclusion of a second vehicle if another household member uses it to go to work, the exclusion of retirement plans or accounts, and the exclusion of the individual's contributions to other accounts and interest on the accounts.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-1-5 and 26-18-1

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: Department of Health could incur a cost of $500,000 that will be offset by the buy-in premium amounts collected. The State could benefit financially through increased tax collection revenue.
❖LOCAL GOVERNMENTS: This rule does not apply to local governments, so there would be no fiscal impact.
❖OTHER PERSONS: People with disabilities who are working and currently paying a Medicaid spenddown will save money, as the Medicaid buy-in premium will be less than what they are paying now.
COMPLIANCE COSTS FOR AFFECTED PERSONS: There would not be a fiscal impact on affected persons other than those described in aggregate anticipated cost or savings to State Budget, Local Government, and Other Persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule implements the Medicaid Work Incentive Program. More disabled adults will be allowed to work, without fear of losing Medicaid eligibility. Both individuals and businesses will be positively impacted. Rod L. Betit

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Health
Health Care Financing,
Coverage and Reimbursement Policy
Cannon Health Building
288 North 1460 West
PO Box 143102
Salt Lake City, UT 84114-3102, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Linda Asa at the above address, by phone at (801) 538-7091, by FAX at (801) 538-6952, or by Internet E-mail at lasa@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 07/02/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 07/03/2001

AUTHORIZED BY: Rod L. Betit, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-305. Resources.
R414-305-1. A, B and D Medicaid and A, B and D Institutional Medicaid Resource Provisions.

(1) The Department adopts 42 CFR 435.735, 435.840 through 435.845, 1997 ed., and 20 CFR 416.1201 through 416.1202 and 416.1204 through 416.1266, 1998 ed., which are incorporated by reference. The Department adopts Subsections 1613(a)(4) and 1902(k) of the Compilation of the Social Security Laws, 1993 ed., which is incorporated by reference. The Department adopts 1917(d) and (e)[~~ of the Compilation of the Social Security Laws, in effect January 1, 1998. The Department adopts~~], 404(h)(4) and 1613(a)(13) of the Complilation of the Social Security Laws in effect January 1, 1999, [~~Pub. L. No. 105-306(7)(b) and (c)~~]which [~~is~~]are incorporated by reference. The Department shall not count as an available resource any assets that are prohibited under other federal laws from being counted as a resource to determine eligibility for federally-funded medical assistance programs.

(2) The definitions in R414-1 and R414-301 apply to this rule, in addition:

(a) "Burial plot" means a burial space and any item related to repositories customarily used for the remains of any deceased member of the household. This includes caskets, concrete vaults, urns, crypts, grave markers and the cost of opening and closing a grave site.

(b) "Sanction" means a period of time during which a person is not eligible for Medicaid services for institutional care or services provided under a Home and Community Based waiver due to a transfer of assets for less than fair market value.

(c) "Transfer" in regard to assets means a person has disposed of assets for less than fair market value.

(3) A resource is available when the client owns it or has the legal right to sell or dispose of the resource for the client's own benefit.

(4) Except for the Medicaid Work Incentive Program, [~~T~~]the resource limit is $2,000 for a one person household, $3,000 for a two member household and $25 for each additional household member.

(5) For an individual who meets the criteria for the Medicaid Work Incentive Program, the resource limit is $15,000. This limit applies whether the household size is one or more than one.

([~~5~~]6) The Department bases Medicaid eligibility on all available resources owned by the client. Eligibility cannot be granted based upon the client's intent to or action of disposing of non-liquid resources.

([~~6~~]7) Any resource or the interest from a resource, which is held within the rules of the Uniform Gift to Minors Act is not countable. Any money from the resource which is given to the child as unearned income is countable.

([~~7~~]8) The resources of a ward that are controlled by a legal guardian are counted as the ward's resources.

([~~8~~]9) Lump sum payments received on a sales contract for the sale of an exempt home are not counted if the entire proceeds are committed to replacement of the property sold within 30 days and the purchase is completed within 90 days. The individual shall receive one extension of 90 days, if[~~If~~] more than 90 days is needed to complete the actual purchase[~~, the director may grant one extension~~]. Proceeds is defined as all payments made on the principal of the contract. Proceeds does not include interest earned on the principal.

([~~9~~]10) If a resource is potentially available, but a legal impediment to making it available exists, it is not a countable resource until it can be made available. The applicant or recipient must take appropriate steps to make the resource available unless one of the following conditions exist:

(a) Reasonable action would not be successful in making the resource available.

(b) The probable cost of making the resource available exceeds its value.

(1[~~0~~]1) Water rights attached to the home and the lot on which the home sits are exempt providing it is the client's principal place of residence.

(1[~~1~~]2) For an institutionalized individual, a home or life estate is not considered an exempt resource. Therefore, a home which is transferred to a trust becomes a countable resource or constitutes a transfer of a resource. A home or life estate so transferred could continue to be excluded under the provisions of Section 1924 of the Compilation of the Social Security Laws, [~~1993 ed., U.S. Government Printing Office, Washington D.C. as amended by OBRA '93~~]in effect January 1, 1999.

(1[~~2~~]3) For A, B and D Medicaid the Department shall not count up to $6,000 of equity value of non-business property used to produce goods or services essential to home use daily activities.

(1[~~3~~]4) For A, B and D Institutional Medicaid where the resources are determined to exceed the limits for Medicaid, eligibility shall not be given conditioned upon disposition of resources as described in 20 CFR 416.1240, [~~1991~~]2000 ed.

(1[~~4~~]5) A previously unreported resource may be retroactively designated for burial and thereby exempted effective the first day of the month in which it was designated for burial or intended for burial. However, it cannot be exempted retroactively prior to November 1982 or earlier than 2 years prior to the date of application. Such resources shall be treated as funds set aside for burial.

(1[~~5~~]6) One vehicle is exempt if it is used at least four times per calendar year to obtain necessary medical treatment.

(1[~~6~~]7) The Department allows SSI recipients, who have a plan for achieving self support approved by the Social Security Administration, to set aside resources that allow them to purchase work-related equipment or meet self support goals. These resources are excluded.

(1[~~7~~]8) An irrevocable burial trust is not counted as a resource. However, if the owner is institutionalized or on home and community based waiver Medicaid, the value of the trust, which exceeds $7,000, is considered a transferred resource.

(19) Business resources required for employment or self-employment are not counted.

(20) The Department shall exclude as a resource the contributions made by an individual into and the interest accrued on an Individual Development Account as defined in Sections 404-416 of Pub. L. No. 105-285 effective October 27, 1998.

(21) Additional resource exclusions for the Medicaid Work Incentive Program.

(a) For the Medicaid Work Incentive Program, the Department shall exclude the following additional resources of the eligible individual:

(i) Retirement funds held in an employer or union pension plan, retirement plan or account, including 401(k) plans, or an Individual Retirement Account, even if such funds are available to the individual.

(ii) A second vehicle when it is used by a spouse or child of the eligible individual living in the houehold to get to work.

(b) After qualifying for the Medicaid Work Incentive Program, these resources will continue to be excluded throughout the lifetime of the individual, even if the individual ceases to have earned income or no longer meets the criteria for the Work Incentive Program.

([~~10~~]22) Life estates.

(a) For non-institutional Medicaid life estates shall be counted as resources only when a market exists for the sale of the life estate as established by knowledgeable sources.

(b) For Institutional Medicaid, life estates are countable resources even if no market exists for the sale of the life estate.

(c) The client may dispute the value of the life estate by verifying the property value to be less than the established value or by submitting proof based on the age and life expectancy of the life estate owner that the value of the life estate is lower. The value of a life estate shall be based upon the age of the client and the current market value of the property.

(d) The following table lists the life estate figure corresponding to the client's age. This figure is used to establish the value of a life estate:

TABLE

Age	Life Estate Figure
0	.97188
1	.98988
2	.99017
3	.99008

4	.98981
5	.98938
6	.98884
7	.98822
8	.98748
9	.98663
10	.98565
11	.98453
12	.98329
13	.98198
14	.98066
15	.97937
16	.97815
17	.97700
18	.97590
19	.97480
20	.97365
21	.97245
22	.97120
23	.96986
24	.96841
25	.96678
26	.96495
27	.96290
28	.96062
29	.95813
30	.95543
31	.95254
32	.94942
33	.94608
34	.94250
35	.93868
36	.93460
37	.93026
38	.92567
39	.92083
40	.91571
41	.91030
42	.90457
43	.89855
44	.89221
45	.88558
46	.87863
47	.87137
48	.86374
49	.85578
50	.84743
51	.83674
52	.82969
53	.82028
54	.81054
55	.80046
56	.79006
57	.77931
58	.76822
59	.75675
60	.74491
61	.73267
62	.72002
63	.70696
64	.69352
65	.67970
66	.66551
67	.65098
68	.63610
69	.62086
70	.60522
71	.58914
72	.57261
73	.55571
74	.53862
75	.52149
76	.50441
77	.48742
78	.47049
79	.45357
80	.43659
81	.41967
82	.40295
83	.38642
84	.36998
85	.35359
86	.33764
87	.32262
88	.30859
89	.29526
90	.28221
91	.26955
92	.25771
93	.24692
94	.23728
95	.22887
96	.22181
97	.21550
98	.21000
99	.20486
100	.19975
101	.19532
102	.19054
103	.18437
104	.17856
105	.16962
106	.15488
107	.13409
108	.10068
109	.04545

R414-305-2. Family Medicaid and Family Institutional Medicaid Resource Provisions.

1. The Department adopts 45 CFR 206.10(a)(vii), 233.20(a)(3), and 233.51(b)(2), 1997 ed., which are incorporated by reference. The Department adopts Subsection 1902(k) of the Compilation of the Social Security Laws, 1993 ed., which is incorporated by reference. The Department adopts 1917(d) and (e)[~~of the Compilation of the Social Security Laws, in effect January 1, 1998. The Department adopts~~], Subsection 404(h) and 1613(a)(13) of the Compilation of the Social Security Laws in effect January 1, 1999,[~~Pub. L. No. 105-33(4735) and Pub. L. No. 105-306(7)(b) and (c)~~] which are incorporated by reference. The Department shall not cout as an available resource any assets that are prohibited under other federal laws from being counted as a resource to determine eligibility for federally-funded medical assistance programs.

(2) A resource is available when the client owns it or has the legal right to sell or dispose of the resource for the client's own benefit.

(3) The resource limit is $2,000 for a one person household, $3,000 for a two member household and $25 for each additional household member.

(4) Except for the exclusion for a vehicle, the methodology for treatment of resources is the same for all medically needy and categorically needy individuals.

(5) Medicaid eligibility is based on all available resources owned by the client. Eligibility cannot be granted based upon the client's intent to or action of disposing of non-liquid resources.

(6) The resources of a sanctioned household member are counted.

(7) The resources of a ward which are controlled by a legal guardian are counted as the ward's resources.

(8) If a resource is potentially available, but a legal impediment to making it available exists, it is not countable until it can be made available. The applicant or recipient must take appropriate steps to make the resource available unless one of the following conditions exist:

(a) Reasonable action would not be successful in making the resource available.

(b) The probable cost of making the resource available exceeds its value.

(9) Except for determining countable resources for 1931 Family Medicaid, the maximum exemption for the equity of one car is $1,500.

(10) Maintenance items essential for day-to-day living are not countable resources.

(11) Life estates are not countable resources if the life estate is the principal residence of the applicant or recipient. If the life estate is not the principle residence see Subsection R414-305-1([~~18~~]22).

(12) The resources of an ineligible child are not counted.

(13) The value of the lot on which the home stands is not counted if the lot does not exceed the average size of residential lots for the community in which it is located. The value of the property in excess of an average size lot is a countable resource.

(14) Water rights attached to a home and lot are not counted.

(15) Any resource, or interest from a resource, which is held within the rules of the Uniform Gift to Minors Act is not countable. Any money from a resource which is given to the child as unearned income is countable.

(16) Lump sum payments received on a sales contract for the sale of an exempt home are not counted if the entire proceeds are committed to replacement of the property sold within 30 days and the purchase is completed within 90 days. The individual shall receive one extension of 90 days, if[~~If~~] more than 90 days is needed to complete the actual purchase[~~, the director may grant one extension~~]. Proceeds is defined as all payments made on the principal of the contract. Proceeds does not include interest earned on the principal.

(17) Retroactive benefits received from the Social Security Administration and the Railroad Retirement Board are not counted for the first 6 months after receipt.

(18) A $1,500 burial and funeral fund exemption is allowed for each eligible household member. Burial and funeral agreements include burial trusts, funeral plans, and funds set aside expressly for the purposes of burial.

(19) The resources of an alien's sponsor are not considered available to the alien.

(20) Business resources required for employment or self employment are not counted.

(21) For 1931 Family Medicaid households, the state shall either disregard the equity value of one vehicle that [~~is used to provide transportation for the household and~~]meets the definition of a "passenger vehicle" as defined in 26-18-2(6)[~~. If the vehicle does not meet the definition of a "passenger vehicle" as defined in 26-18-2(6), the state shall disregard~~] or $1500 of the equity of one vehicle, whichever provides the greatest disregard for the household[~~used to provide transportation for the household~~].

(22) For eligibility under Family-related Mewdicaid programs, retirement funds held in an employer or union pension plan, retirement plan or account including 401(k) plans and Individual Retirement Accounts of a disabled parent or disabled spouse who is not included in the coverage shall be excluded from countable resources.

(23) The Department shall exclude from resources the contributions made by an individual and the interest accrued on funds held in an Individual Development account as defined in Sections 404-416 of Pub. L. No. 105-285 effective October 27, 1998.

R414-305-3. Spousal Impoverishment Resource Rules for Married Institutionalized Individuals.

1. The Department adopts Section 1924 of the Compilation of the Social Security Laws, in effect January 1, [~~1998~~]1999, which is incorporated by reference.

(2) The resource limit is $2,000.

(3) The Department shall determine the joint owned resources of married couples as available to each other. One half of the joint owned resources shall count towards the institutional client's resource eligibility determination.

(4) When a client is unable to comply with spousal impoverishment rules and claims undue hardship because of an uncooperative spouse or because the spouse cannot be located, assignment of support rights shall be done by signing the Form 048.

(5) "Undue hardship" in regard to counting a spouse's resources as available to the institutionalized client means:

(a) The client completes the Form 048.

(b) The client will not be able to get the medical care needed without Medicaid.

(c) The client is at risk of death or permanent disability without institutional care.

(6) The client may be eligible for Medicaid without regard to the spouse's resources if both of the following conditions are met:

(a) The spouse cannot be located or will not provide information needed to determine eligibility.

(b) The client signs the Form 048.

(7) The assessed spousal share of resources shall not be less than the minimum amount nor more than the maximum amount mandated by section 1924(f) of the Compilation of the Social Security Laws in effect January 1, 1998.

(8) Any resource owned by the community spouse in excess of the assessed spousal share is counted to determine the institutionalized client's initial Medicaid eligibility.

(9) A protected period, after eligibility is established, of up to 90 days is allowed for an institutionalized client to transfer resources to the community spouse.

(10) After eligibility is established for the institutionalized client, those resources held in the name of the community spouse will not be considered available to the institutionalized client.

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R414-305-6. Transfer of Resources for Institutional Medicaid.

(1) The Department adopts Subsection 1917(c) of the Compilation of the Social Security Laws, in effect January 1, [~~1998~~]1999, which is incorporated by reference.

(2) The average private-pay rate for nursing home care in Utah is $3,118 per month.

(3) To determine if a resource is transferred for the sole benefit of a spouse, disabled or blind child, or disabled individual,

a binding written agreement must be in place which establishes that the resource transferred can only be used to benefit the spouse, disabled child, or disabled individual, and is actuarially sound. The written agreement must specify the payment amounts and schedule. Any provisions in such agreement that would benefit another person at any time nullifies the sole benefit provision except for exempt trusts established under section 1917(d) of the Compilation of the Social Security Laws, January 1, [~~1998~~]1999 ed., that provide for repayment of the state Medicaid agency or provide for a pooled trust to retain a portion of the remainder.

(4) No sanction is imposed when the total value of a whole life insurance policy is irrevocably assigned to the state; and the recipient is the owner of and the insured in the policy; and no further premium payments are necessary for the policy to remain in effect. At the time of the client's death, the state shall distribute the benefits of the policy as follows:

(a) Up to $7,000 can be distributed to cover burial and funeral expenses. The total value of this distribution plus the value of any irrevocable burial trusts and/or the burial and funeral funds for the client can not exceed $7,000.

(b) An amount to the state that is not more than the total amount of previously unreimbursed medical assistance correctly paid on behalf of the client.

(c) Any amount remaining after payments are made as defined in a. and b. will be made to a beneficiary named by the client.

(5) Clients that claim an undue hardship as a result of a transfer of resources must meet both of the following conditions:

(a) The client has exhausted all reasonable legal means to regain possession of the transferred resource. It is considered unreasonable to require the client to take action if a knowledgeable source confirms that it is doubtful those efforts will succeed. It unreasonable to require the client to take action more costly than the value of the resource.

(b) The client is at risk of death or permanent disability if not admitted to a medical institution or Waiver service. This decision will be based upon the client's medical condition and the financial situation of the client. Income of the client, client's spouse, and parents of an unemancipated client shall be used to decide if the financial situation creates undue hardship.

(6) After Institutional Medicaid eligibility is determined, the client's spouse, not living in the institution, may transfer any resource to any person without impacting the Medicaid eligibility of the institutionalized spouse.

(7) The portion of an irrevocable burial trust that exceeds $7,000 is considered a transfer of resources. The value of any fully paid burial plot, as defined in R414-305-1(2)(a), shall be deducted from such burial trust first before determining the amount transferred.

(8) If more than one transfer has occurred and the sanction periods would overlap, the sanctions will be applied consecutively, so that they do not overlap. A sanction begins on the first day of the month in which the resource was transferred unless a previous sanction is in effect, in which case the sanction begins on the first day of the month immediately following the month the previous sanction ends. If resources were transferred before August 11, 1993, applicable sanction periods for those transfers may overlap.

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R414-305-8. QMB, SLMB, and QI Resource Provisions.

(1) The Department adopts Subsection 1905(p) of the Compilation of the Social Security Laws, [~~1993~~]1999 ed., which is incorporated by reference.

(2) The resource limit is the same for all medically needy individuals.

(3) The QMB, SLMB, and QI resource limit is $4,000 for an individual and $6,000 for a couple.

KEY: medicaid
[~~March 13,~~]2001 26-18
Notice of Continuation February 6, 1998

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Human Resource Management, Administration
R477-1
Definitions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23770
FILED: 05/15/2001, 16:29
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Existing definitions are amended or new definitions are added to accommodate amendments to other sections of the rules on Human Resource Management.

SUMMARY OF THE RULE OR CHANGE: Amendments to this section can be grouped into three categories: classification, discipline, and general human resources. Amendments in this rule related to classification include the following definitions: Subsection R477-1-1(26), Classification Study: a new definition recognizing a legitimate role for agencies in classification studies. Subsection R477-1-1(29), Contract Agency: a new definition for a term that is added to Rule R477-4, classification. Subsection R477-1-1(68), Job: amendment to this definition is technical and nonsubstantive. Subsection R477-1-1(72), Job Description: amendments to this definition are important to establish Department of Human Resource Management (DHRM) control over the new approach to the classification system. Subsection R477-1-1(87), Position Description: a new definition for a new term in the classification system. The creation of this document is the responsibility of agencies. Subsection R477-1-1(98), Reclassification: amendments incorporate many of the important changes to the classification system.

Amendments to this rule related to discipline include the following definitions: Subsection R477-1-1(31), Corrective Action: amendments to this definition focus corrective action strictly on job-related substandard performance. Subsection R477-1-1(33), Demotion: amendments no longer require a mandatory salary reduction with a demotion. Subsection

R477-1-1(78), Misfeasance: the amended definition is more precise and based on accepted legal definition for the same term. Subsection R477-1-1(79), Nonfeasance: the amended definition is more precise and based on accepted legal definition for the same term.
Amendments to this rule that have general Human Resource impact include the following definitions: Subsection R477-1-1(38), DHRM Approved Recruitment and Selection System: amendments are nonsubstantive and reflect changes to the recruitment process currently being implemented by DHRM. Subsection R477-1-1(46), "Escalator" Principle: nonsubstantive clarification. Subsections R477-1-1(97), Reassignment, and R477-1-1(114), Transfer: amendments to these two definitions are substantial and will have significant impact on the management of the human resource system statewide. They are driven by the judgement of the Utah Court of Appeals in Draughn v. Department of Financial Institutions et al., February 19, 1999. One part of the judgement restricts management from moving an employee to a position of lower salary range without due process. Thus management initiated reassignments can only be to positions with the same salary range unless permitted by federal or state law. A transfer on the other hand may be to a position with a lower salary range because the employee volunteers to the change. The use of these new terms are primarily in Rule R477-5, Filling Positions (Section R477-5-6, Transfer and Reassignment) and Rule R477-7 Compensation (Subsection R477-7-4(6) - Reassignment).
(**DAR Note:** The proposed amendment to R477-4 is under DAR No. 23772, the proposed amendment to R477-5 is under DAR No. 23773, and the proposed amendment to R477-7 is under DAR No. 23774 all in this *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: No cost impact is anticipated with the amendments to these definitions. The classification system will be simplified with more discretion given to agencies. This should produce savings in time and effort by agency Human Resources staff. This will be offset somewhat by the restrictions placed on management in the movement of employees since HR staff will likely be consulted more frequently in those situations.
❖LOCAL GOVERNMENTS: No cost or savings because this rule only impacts the executive branch of state government.
❖OTHER PERSONS: No cost or savings because this rule only impacts the executive branch of state government.
COMPLIANCE COSTS FOR AFFECTED PERSONS: None because executive branch agencies should not have to increase staff or fees to implement this rule amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by 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. Section 67-19-15 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 saving on to businesses through fees.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Human Resource Management
Administration
2120 State Office Building
Salt Lake City, UT 84114, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Conroy Whipple at the above address, by phone at (801) 538-3067, by FAX at (801) 538-3081, or by Internet E-mail at pedhrm.cwhipple@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 07/02/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 07/03/2001

AUTHORIZED BY: Conroy Whipple, Legislation and Planning Coordinator

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R477. Human Resource Management, Administration.
R477-1. Definitions.
R477-1-1. Definitions.

The following definitions apply throughout these rules unless otherwise indicated within the text of each rule.

(1) Abandonment of Position: A discretionary act of termination resulting from an employee's unexcused absence from work or failure to come to work for three consecutive days when the employee is capable, but does not properly notify his supervisor.

(2) Active Duty: Full-time active military or reserve duty; a term used for veteran's preference adjustments. It does not include active or inactive duty for training or initial active duty for training.

(3) Actual Hours Worked: Time spent performing duties and responsibilities associated with the employee's job assignments. This time is calculated in increments of 15 minutes or more for purposes of overtime accrual, and shall not include "on-call," holiday leave, or any other leave time taken off during the work period.

(4) Administrative Leave: Leave with pay granted to an employee at management discretion that is not charged against the employee's leave accounts.

(5) Administrative Adjustment: A DHRM approved change of a position from one job to another job or salary range change for administrative purposes that is not based on a change of duties and responsibilities.

(6) Administrative Salary Decrease: A salary decrease of one or more pay steps based on non-disciplinary administrative reasons determined by an agency executive director or commissioner.

(7) Administrative Salary Increase: A salary increase of one or more pay steps based on special circumstances determined by an agency executive director or commissioner.

(8) Agency: Any department, division, institution, office, commission, board, committee, or other entity of state government.

(9) Agency Head: The chief executive officer of each agency or their designated appointee.

(10) 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.

(11) Appeal: A formal request to a higher level review for consideration of an unacceptable grievance decision.

(12) Appointing Authority: The officer, board, commission, person or group of persons authorized to make appointments in their agencies.

(13) Assignment: Appointment of an employee to a position.

(14) "At will" Employee: An individual appointed to work for no specified period of time or one who has not acquired career service status and may be terminated at any time without just cause.

(15) Bumping: A procedure that may be applied in a reduction-in-force action (RIF). It allows employees with higher retention points to bump other employees with lower retention points who are in the same categories of work identified in the work force adjustment plan, as long as employees meet the eligibility criteria outlined in interchangeability of skills.

(16) Career Exempt Employee: An employee appointed to a position exempt from career service in state employment and who serves at the pleasure of the appointing authority.

(17) Career Exempt Position: A position in state service exempted by law from provisions of competitive career service, as prescribed in 67-19-15 and in R477-2-1(1).

(18) Career Mobility: A time-limited assignment of an employee to another position of equal or higher salary for purposes of professional growth or fulfillment of specific organizational needs.

(19) Career Service Employee: An employee who has successfully completed a probationary period in a career service position.

(20) Career Service Status: Status granted to employees who successfully completes a probationary period for competitive career service positions.

(21) Category of Work: Jobs, work units, or other definable categories of work within departments, divisions, institutions, offices, commissions, boards or committees that are designated by the agency head as the Category of Work to be eliminated through a reduction-in-force. These are subject to review by the Executive Director, DHRM.

(22) Certifying: The act of verifying the qualifications and availability of individuals on the hiring list. The number of individuals certified shall be based on standards and procedures established by the Department of Human Resource Management.

(23) Change of Workload: A change in the work requirements or a need to eliminate or create particular positions in an agency caused by legislative action, financial circumstances, or administrative reorganization.

(24) Classification Grievance: The approved procedure by which a career service employee may grieve a formal [~~DHRM~~]classification decision regarding the classification of the employee's position.

(25) Classified Service: Positions that are subject to the classification and compensation provisions stipulated in Section 67-19-12 of the Utah Code Annotated.

(26) Classification Study: A Classification review conducted by DHRM or an approved contract agency, under the rules outlined in R477-4-3. A study may include single or multiple job or position reviews.

([~~26~~]27) Compensatory Time: Time off that is provided to an employee in lieu of monetary overtime compensation.

([~~27~~]28) Constant Review: A period of formal review of an employee, not to exceed six months, resulting from substandard performance or behavior, as defined by Utah law and contained in these rules. Removal from constant review requires a formal evaluation.

(29) Contract Agency: An agency with authority to perform specific HR functions as outlined in a formal delegation agreement with DHRM under authority of section 67-19-7.

([~~28~~]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 shall not accrue benefits.

([~~29~~]31) Corrective Action: A written administrative action to address substandard performance or behavior of an employee as described in R477-10-2. Corrective action includes a period of constant review.

([~~30~~]32) Demeaning Behavior: Any behavior which lowers the status, dignity or standing of any other individual.

([~~31~~]33) Demotion: [~~A disciplinary~~]An action resulting in a salary reduction on the current salary range or the movement of an incumbent from one job or position to another job or position having a lower salary range, [~~including~~]which may include a reduction in salary.[~~If this action is taken for a limited time period it shall only be within the current salary range.~~]

([~~32~~]34) Department: The Department of Human Resource Management.

([~~33~~]35) Derisive Behavior: Any behavior which insults, taunts, or otherwise belittles or shows contempt for another individual.

([~~34~~]36) Designated Hiring Rule: A rule promulgated by DHRM that defines which individuals on a certification are eligible for appointment to a career service position.

([~~35~~]37) DHRM: The Department of Human Resource Management.

([~~36~~]38) DHRM Approved Recruitment and Selection System: The state's recruitment and selection system, which includes:

(a) continuous recruitment of all positions;

(b) a centralized and automated computer database of resumes and related information administered by the Department of Human Resource Management;

(c) decentralized access to the database based on delegation agreements.

([~~37~~]39) Disability: Disability shall have the same definition found in the Americans With Disabilities Act (ADA) of 1990, 42 USC 12101 (1994); Equal Employment Opportunity Commission regulation, 29 CFR 1630 (1993); including exclusions and modifications.

([~~38~~]40) Disciplinary Action: Action taken by management under the rules outlined in R477-11.

([~~39~~]41) Discrimination: Unlawful action against an employee or applicant based on race, religion, national origin, color, sex, age, disability, protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation, or any other non-merit factor, as specified by law.

([~~40~~]42) Dismissal: A separation from state employment for cause.

([~~41~~]43) Drug-Free Workplace Act: A 1988 congressional act, 34 CFR 85 (1993), requiring a drug-free workplace certification by state agencies that receive federal grants or contracts.

([~~42~~]44) Employee Personnel Files: For purposes of Titles 67-18 and 67-19, the files maintained by DHRM and agencies as required by R477-2-5. This does not include employee information maintained by supervisors.

([~~43~~]45) Employment Eligibility Certification: A requirement of the Immigration Reform and Control Act of 1986, 8 USC 1324 (1988) that employers verify the identity and eligibility of individuals for employment in the United States.

([~~44~~]46) "Escalator" Principle: Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), returning veterans are entitled to return back onto their seniority escalator at the point they would have occupied had they not left state employment.

([~~45~~]47) Equal Employment Opportunity (EEO): Non-discrimination in all facets of employment by eliminating patterns and practices of illegal discrimination.

([~~46~~]48) 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 hours actually worked, plus additional hours paid but not worked, exceed an employee's normal work period.

([~~47~~]49) Executive Director: The executive director of the Department of Human Resource Management.

([~~48~~]50) Fair Employment Opportunity and Practice: Assures fair treatment of applicants and employees in all aspects of human resource administration without regard to age, disability, national origin, political or religious affiliation, race, sex, or any non-merit factor.

([~~49~~]51) Fitness For Duty Evaluation: Evaluation, assessment or study by a licensed professional to determine if an individual is able to meet the performance or conduct standards required by the position held, or is a direct threat to the safety of self or others.

([~~50~~]52) FLSA: Fair Labor Standards Act. The federal statute that governs overtime. See 29 USC 201 (1996).

([~~51~~]53) FLSA Exempt: Employees who are exempt from the Fair Labor Standards Act.

([~~52~~]54) FLSA Non-Exempt: Employees who are not exempt from the Fair Labor Standards Act.

([~~53~~]55) Full Time Equivalent (FTE): The budgetary equivalent of one full time position filled full time for one year.

([~~54~~]56) Furlough: A temporary leave of absence from duty without pay for budgetary reasons or lack of work.

([~~55~~]57) Grievance: A career service employee's claim or charge of the existence of injustice or oppression, including dismissal from employment resulting from an act, occurrence, omission, condition, discriminatory practice or unfair employment practice not including position classification or schedule assignment.

([~~56~~]58) Grievance Procedures: The statutory process of grievances and appeals as set forth in Sections 67-19a-101 through 67-19a-408 and the rules promulgated by the Career Service Review Board.

([~~57~~]59) Gross Compensation: Employee's total earnings, taxable and untaxable, as shown on the employee's paycheck stub.

([~~58~~]60) Hiring List: A list of qualified and interested applicants who are eligible to be considered for appointment or conditional appointment to a specific position.

([~~59~~]61) Hostile Work Environment: A work environment or work related situation where an individual suffers physical or emotional stress due to the unwelcome behavior of another individual which is motivated by race, religion, national origin, color, sex, age, disability or protected activity under the anti-discrimination statutes.

([~~60~~]62) HRE: Human Resource Enterprise; the state human resource management information system.

([~~61~~]63) Immediate Supervisor: The employee or officer who exercises direct authority over an employee and who appraises the employee's performance.

([~~62~~]64) Incompetence: Inadequacy or unsuitability in performance of assigned duties and responsibilities.

([~~63~~]65) Inefficiency: Wastefulness of government resources including time, energy, money, or staff resources or failure to maintain the required level of performance.

([~~64~~]66) Interchangeability of Skills: Employees are considered to have interchangeable skills only for those classes of positions they have previously held successfully in Utah state government employment or for those classes of positions which they have successfully supervised and for which they satisfy job requirements.

([~~65~~]67) Intern: An individual in a college degree program assigned to work in an activity where on-the-job training is accepted.

([~~66~~]68) Job: A group of positions similar in duties performed, in degree of supervision exercised or required, in requirements of training, experience, or skill and other characteristics. The same, salary range and test standards are applied to each position in the group.

([~~67~~]69) Job Series: Two or more jobs in the same functional area having the same job class title, but distinguished and defined by increasingly difficult levels of duties and responsibilities and requirements.

([~~68~~]70) Job Proficiency Rating: An average of the last three annual performance evaluation ratings used in reduction in force proceedings.

([~~69~~]71) Job Requirements: Skill requirements defined a the job level.

([~~70~~]72) Job Description: A document containing the duties, distinguishing characteristics, knowledge, skills, and other requirements for a job.

([~~71~~]73) Job Identification Number: A unique number assigned to a job by DHRM.

([~~72~~]74) Legislative Salary Adjustment: A legislatively approved salary increase for a specific category of employees based on criteria determined by the Legislature.

([~~73~~]75) Malfeasance: Intentional wrongdoing, deliberate violation of law or standard, or mismanagement of responsibilities.

([~~74~~]76) Market Comparability Adjustment: Legislatively approved reallocation of a salary range for a job based on a compensation survey conducted by DHRM.

([~~75~~]77) Merit Increase: A legislatively approved and funded salary increase for employees to recognize and reward successful performance.

([~~76~~]78) Misfeasance: [~~Performance of a lawful action in an illegal or improper manner~~]The improper or unlawful performance of an act that is lawful or proper.

([~~77~~]79) Nonfeasance: [~~Omission or failure to do what ought to be done.~~]Failure to perform either a official duty or legal requirement.

([~~78~~]80) Performance Evaluation: A formal, periodic evaluation of an employee's work performance.

([~~79~~]81) Performance Evaluation Date: The date when an employee's performance evaluation shall be conducted. An evaluation shall be conducted at least once during the probationary period and no less than once annually thereafter consistent with the common review date.

([~~80~~]82) 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.

([~~81~~]83) 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.

([~~82~~]84) 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.

([~~83~~]85) Personnel Adjudicatory Proceedings: The informal appeals procedure contained in Title 63, Chapter 46b, for all human resource policies and practices not covered by the state employees grievance procedure promulgated by the Career Service Review Board, or the classification appeals procedure.

([~~84~~]86) Position: A unique set of duties and responsibilities identified by DHRM authorized job and position management numbers.

(87) Position Description: A document that describes the detailed tasks performed, as well as the knowledge, skills, abilities, and other requirements of a specific position.

([~~85~~]88) Position Management Report: A document that lists an agency's authorized positions including job identification numbers, salaries, and schedules. The list includes occupied or vacant positions and full or part-time positions.

([~~86~~]89) Position Sharing: A situation where two employees share the duties and responsibilities of one full-time career service position. Salary, retirement service credits and leave benefits for position sharing employees are pro-rated according to the number of hours worked. To be eligible for benefits, position sharing employees must work at least 50% of a full-time equivalent.

([~~87~~]90) 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.

([~~88~~]91) Productivity Step Adjustment: A management authorized salary increase of one to four steps. Management and employees agree to the adjustment for employees who accept an increased workload resulting from FTE reductions and agency base budget reduction.

([~~89~~]92) Promotion: A management initiated action moving an employee from a position in one job to a position in another job having a higher maximum salary step.

([~~90~~]93) Protected Activity: Opposition to discrimination or participation in proceedings covered by the anti-discrimination statutes. Harassment based on protected activity can constitute unlawful retaliation.

([~~91~~]94) Reappointment: Return to work of an employee from the reappointment register. Accrued annual leave, converted sick leave, compensatory time and excess hours in their former position were cashed out at termination.

([~~92~~]95) Reappointment Register: A register of career service employees who have been separated in a reduction in force because of inadequate funds, change of workload or lack of work. It also includes career service employees who accepted exempt positions without a break in service and who were not retained, unless discharged for cause, and those employees who by the Career Service Review Board's decision are placed on the reappointment register.

([~~93~~]96) Reasonable Suspicion: Knowledge sufficient to induce an ordinary, reasonable and prudent person to arrive at a conclusion of thought or belief based on factual, non-subjective and substantiated observations or reported circumstances. Factual situations verified through personal visual observation of behavior or actions, or substantiated by a reliable witness.

([~~94~~]97) Reassignment: [~~Movement of~~]A management initiated action moving an employee from his current job or position to a job or position of an equal[~~ or lower~~] salary range for administrative, corrective action or other reasons not included in the definition of demotion, transfer or reclassification. Management may also move an employee to a job or position with a lower salary range when permitted by applicable Federal or state law, including, but not limited to the American Disabilities Act. A reassignment may be to one or more of the following:

A. a different job or position;

B. a different organizational unit; or

C. a different work location.

([~~95~~]98) Reclassification: A DHRM or an approved contract agency[~~approved~~] reallocation of a single position or multiple positions from one job to another job to reflect management initiated changes in duties and responsibilities as determined [~~through a DHRM~~]by a classification study[~~review~~].

([~~96~~]99) Reduction in Force: (RIF) Abolishment of positions resulting in the termination of staff. RIFs can occur due to inadequate funds, a change of workload, or a lack of work.

([~~97~~]100) Reemployment: Return to work of an employee who terminated state employment to join the uniformed services covered under USERRA. Accrued annual leave, converted sick leave, compensatory time and excess hours may have been cashed out at termination.

([~~98~~]101) Rehire: Return to work of a former career service employee who terminated state employment. Accrued annual leave, converted sick leave, compensatory time and excess hours in their former position were cashed out at termination.

([~~99~~]102) Retaliation: An adverse employment action taken against an employee who has engaged in a protected act. The adverse action must have a causal link.

([~~100~~]103) Requisition: An electronic document used for Utah Skill Match search and tracking purposes that includes specific information for a particular position.

([~~101~~]104) Return from LWOP: A return to work from any leave without pay status. Accrued annual leave, converted sick leave, compensatory time and excess hours may have been cashed out before the leave without pay period began.

([~~102~~]105) Ridiculing Behavior: Any behavior specifically performed to cause humiliation or to mock, taunt or tease another individual.

([~~103~~]106) RIF'd Employee: An employee who is placed on the reappointment register as a result of a reduction in force.

([~~104~~]107) Safety Sensitive Position: A position approved by DHRM that includes the performance of functions:

(a) directly related to law enforcement; or

(b) involving direct access or having control over direct access to controlled substance; or

(c) directly impacting the safety or welfare of the general public.

(d) which require an employee to carry or have access to firearms.

([~~105~~]108) Salary Range: The segment of an approved pay plan assigned to a job.

([~~106~~]109) Schedule: The determination of whether a position meets criteria stipulated in the Utah Code Annotated to be career service (Schedule B) or career service exempt (Schedule A).

([~~107~~]110) Serious Health Condition: An illness, injury, impairment, physical or mental condition that involves:

(a) In-patient care in a hospital, hospice, or residential medical care facility;

(b) Continuing treatment by a health care provider.

([~~108~~]111) Sexual Harassment:

(a) A form of unlawful discrimination of a sexual nature which is unwelcome and pervasive, demeaning, ridiculing, derisive or coercive and results in a hostile, abusive or intimidating work environment.

(i) Level One: sex role stereotyping

(ii) Level Two: targeted gender harassment/discrimination

(iii) Level Three: targeted or individual harassment

(iv) Level Four: criminal touching of another's body parts or taking indecent liberties with another.

(b) Any quid pro quo behavior which requires an employee to submit to sexual conduct in return for increased employment benefits or under threat of adverse employment repercussions.

([~~109~~]112) Tangible Employment Action: Any significant change in employment status e.g. hiring, firing, promotion, failure to promote, demotion, undesirable assignment, a decision causing a significant change in benefits, compensation decisions, and work assignment. Tangible employment action does not include insignificant changes in employment status such as a change in job title without a change in salary, benefits or duties.

([~~110~~]113) Temporary Transitional Assignment: An assignment on a temporary basis to a position or duties of lesser responsibility and salary range to accommodate an injury or illness or to provide a temporary reasonable accommodation.

([~~111~~]114) Transfer: A [~~V~~]voluntary [~~assignment~~]movement of an employee[~~- within an agency or between agencies~~] from one job or position to another job or[~~another~~] position[~~- with the same maximum salary step and~~] for which the employee qualifies[~~, including a change of work location or organizational unit~~]. A transfer may be to one or more of the following:

a job or position with the same salary range;

a job or position with a lower salary range;

a different work location;

a different organizational unit.

([~~112~~]115) Underfill: DHRM authorization for an agency to fill a position at a lower salary range within the same job series.

([~~113~~]116) 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, or any other category of persons designated by the President in time of war or emergency. Service in Uniformed Services includes: voluntary or involuntary duty, including active duty; active duty for training; initial active duty for training; inactive duty training; full-time National Guard duty; absence from work for an examination to determine fitness for any of the above types of duty.

([~~114~~]117) Unlawful Harassment: Any behavior or conduct of an unlawful nature based on race, religion, national origin, color, sex, age, disability or protected activity under the anti-discrimination statutes that is unwelcome, pervasive, demeaning, derisive or coercive and results in a hostile, abusive or intimidating work environment or tangible employment action.

([~~115~~]118) USERRA: Uniformed Services Employment and Reemployment Rights Act of 1994 (P.L. 103-353), requires state governments to re-employ eligible veterans who left state employment to enter the uniformed services and who return to work within a specified time period after military discharge. Employees covered under USERRA are in a leave without pay status from their state position.

([~~116~~]119) 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.

([~~117~~]120) Volunteer: Any person who donates services to the state or its subdivisions without pay or other compensation except actual and reasonable expenses incurred, as approved by the supervising agency.

([~~118~~]121) Volunteer Experience Credit: Credit given in meeting job requirements to participants who gain experience through unpaid or uncompensated volunteer work with the state, its subdivisions or other public and private organizations.

KEY: personnel management, rules and procedures, definitions*

[~~July 5, 2000~~]July 3, 2001 **67-19-6**

Notice of Continuation July 1, 1997

Human Resource Management, Administration
R477-2
Administration

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23771
FILED: 05/15/2001, 16:29
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments to this rule remove the requirement to keep a record of persons who gain access to personnel and payroll files and provide additional protection to the records of undercover law enforcement employees.

SUMMARY OF THE RULE OR CHANGE: In Subsection R477-2-5(6), language is removed that requires an agency to maintain a record of all persons who gain access to personnel and payroll files. This is regarded as an unnecessary task that produces no meaningful benefit or protection. In Subsection R477-2-5(7), employees who want the state to verify their employment must initiate the process with a written request. This is designed to provide protection to law enforcement undercover employees. In Subsection R477-2-5(9), language is removed that identifies the official record during disciplinary proceedings. This requirement is built into amendments to Rule R477-11, Discipline.
(**DAR Note:** The proposed amendment to R477-11 in under DAR No. 23777 in this *Bulletin*.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-19-6, 67-19-6.4, and 67-19-18; and Subsection 63-2-204(5)

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: This amendment will have minimal fiscal impact on agencies. Some large agencies may experience some time savings for clerical staff.
❖LOCAL GOVERNMENTS: No cost or savings because this rule only impacts the executive branch of state government.
❖OTHER PERSONS: No cost or savings because this rule only impacts the executive branch of state government.
COMPLIANCE COSTS FOR AFFECTED PERSONS: Agencies will not need to assign additional resources to comply with these amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by 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. Section 67-19-15 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 saving on to businesses through fees.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Human Resource Management
Administration
2120 State Office Building
Salt Lake City, UT 84114, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Conroy Whipple at the above address, by phone at (801) 538-3067, by FAX at (801) 538-3081, or by Internet E-mail at pedhrm.cwhipple@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 07/02/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 07/03/2001

AUTHORIZED BY: Conroy Whipple, Legislation and Planning Coordinator

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R477. Human Resource Management, Administration.
R477-2. Administration.

. . . . . .

R477-2-3. Fair Employment Practice.

All state personnel actions must provide equal employment opportunity for all individuals.

(1) Employment actions including appointment, tenure or term, condition or privilege of employment shall be based on the ability to perform the essential duties, functions, and responsibilities assigned to a particular position.

(2) Employment actions shall not be based on race, religion, national origin, color, sex, age, disability, protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation or any other non-job related factor, nor shall any person be subjected to unlawful harassment by a state employee.

(3) Any employee who alleges that they have been illegally discriminated against, may submit a claim to the agency head.

(a) If the employee does not agree with the decision of the agency head, the employee may file a complaint with the Utah Anti-Discrimination and Labor Division.

(b) No state official shall impede any employee from the timely filing of a discrimination complaint in accordance with state and federal requirements.

(4) Employees are protected from employment discrimination under the following laws:

(a) The Age Discrimination in Employment Act of 1967, 29 USC 621, as implemented by 29 CFR 1625([~~1994~~]1999). This act prohibits discrimination on the basis of age for individuals forty years and over.

(b) The Vocational Rehabilitation Act of 1973, 29 USC 701, as implemented by 34 CFR 361([~~1994~~]1999). This act prohibits discrimination on the basis of disability status under any program

or activity that receives federal financial assistance. Employers with federal contracts or subcontracts greater than $10,000.00 must have an affirmative action plan to accommodate qualified individuals with disabilities for employment and advancement. All of an employer's operations and facilities must comply with Section 503 as long as any of the operations or facilities are included in federal contract work. Section 504 incorporates the employment provisions of Title I of the Americans With Disabilities Act of 1990.

(c) The Equal Pay Act of 1963, 29 USC 206(d), as implemented by 29 CFR 1620([~~1994~~]1999). This act prohibits discrimination on the basis of sex.

(d) Title VII of the Civil Rights Act of 1964 as amended, 42 USC 2000e. This act prohibits discrimination on the basis of sex, race, color, national origin, religion, or disability.

(e) The Americans with Disabilities Act of 1990, 42 USC 12201. This act prohibits discrimination against qualified individuals with disabilities in recruitment, selection, benefits and all other aspects of employment.

(f) Uniformed Services Employment and Reemployment Act of 1994, 38 USC 4301 (USERRA). This act requires a state to reemploy eligible veterans who left state employment for military service and return to work within specified time periods defined by USERRA.

R477-2-4. Grievance Procedure for Discrimination.

The following rules outline the grievance procedure and the specific requirements of the major laws:

(1) Age Discrimination in Employment Act of 1967.

(a) An aggrieved individual may bypass the state's grievance procedure and file directly with the Equal Employment Opportunity Commission (EEOC) or the Utah Anti-Discrimination and Labor Division (UALD).

(b) Employees shall report the alleged discriminatory act within one of the following time periods:

(i) 180 days after the occurrence to EEOC, or

(ii) 300 days after the occurrence to EEOC if the matter has been presented to UALD for proceedings under an applicable state law, or

(iii) to the EEOC 30 days after the individual receives notice of termination of any state proceedings.

(c) The Utah Anti-Discrimination and Labor Division of the Labor Commission is authorized by the Equal Employment Opportunity Commission to act on charges of employment discrimination. Employees must file charges within thirty days following an act of discrimination.

(2) Section 503 of The Rehabilitation Act of 1973, as implemented by 34 CFR 361([~~1993~~]1999).

(a) An aggrieved individual may bypass the state's grievance mechanism and file a complaint with the granting federal agency or the Office of Federal Contract Compliance Programs (OFCCP) within 180 days of the discriminatory event.

(b) If dissatisfied with the outcome of the state's grievance mechanism, an individual may also file a complaint with the OFCCP within 180 days of the discriminatory event.

(3) Section 504 of the Rehabilitation Act of 1973.

(a) An aggrieved individual may bypass the state's grievance mechanism and file a complaint with the granting federal agency. If unsatisfied with the outcome of the state's grievance mechanism, an individual may also file a complaint with EEOC. A charge of discrimination should be filed within 180 days of the discriminatory event.

(b) Under the 1978 amendments to the Rehabilitation Act, the procedures for enforcing Section 504 are the same as for Title VII of the Civil Rights Act of 1964.

(4) The Equal Pay Act of 1963 - The enforcement provisions of the Fair Labor Standards Act apply for an equal pay claim. The following rules apply:

(a) Sex discrimination in the payment of unequal wage rates is a continuous violation, and employees have a right to sue each payday that the discrimination persists.

(b) Employees are not required to exhaust any administrative procedures prior to filing an action.

(c) Employees alleging an equal pay claim may file directly with the Equal Employment Opportunity Commission.

(d) Employees do not have the right to file a court action when the Equal Employment Opportunity Commission initiates a court proceeding on the employee's behalf to either enjoin an employer or to obtain recovery of an employee's unpaid wages.

(e) Employees must file suit within two years from the last date of harm, unless the employer committed a willful violation of the law, in which case, they have three years.

(5) Title VII of the Civil Rights Act of 1964.

(a) An aggrieved individual may bypass the state's grievance mechanism and file directly with the EEOC.

(b) Time lines for filing a complaint are the same as for the Age Discrimination Act in R477-2-4.(1).

(6) Americans with Disabilities Act (ADA) of 1990.

(a) An aggrieved individual may bypass the state's grievance procedure and file directly with the EEOC or with the Utah Anti-Discrimination and Labor Division.

(b) Time lines for filing a complaint are the same as for the Age Discrimination Act in R477-2-4.(1).

(7) Uniformed Service Employment and Re-employment Act of 1994 (USERRA).

(a) State statutes of limitations shall not apply to any proceedings under USERRA.

(b) An action may be initiated only by a person claiming rights or benefits, not by an employer.

(c) The United States Department of Labor, Veterans Employment and Training Service is authorized to act on charges of employment discrimination under USERRA.

(i) Prior to filing an action with the Veterans Employment and Training Service, an individual shall exhaust state administrative procedures.

(ii) If unsatisfied with the outcome of the State's grievance mechanism, an individual may file an administrative complaint.

(d) A person who receives notice from the Veterans Employment and Training Service of an unsuccessful attempt to resolve a complaint may request that the complaint be referred to the Attorney General of the United. States. The U.S. Attorney General is entitled to appear on behalf of, act as attorney for, and commence action for relief in an appropriate U.S. District Court.

(e) An individual may commence an action for relief if that person:

(i) has chosen not to file a complaint through the Veterans Employment and Training Service;

(ii) has chosen not to request that the complaint be referred to the U.S. Attorney General;

(iii) has been refused representation by the U.S. Attorney General.

R477-2-5. Records.

(1) DHRM shall maintain a computerized file for each employee that contains the following, as appropriate:

(a) Performance ratings;

(b) Records of actions affecting employee salary, current classification, title and salary range, salary history, and other personal data, status or standing.

(2) Agencies shall maintain the following records in each employee's personnel file:

(a) Applications for employment, Employment Eligibility Certification record, Form I-9, and other documents required by Immigration and Naturalization Service (INS) Regulations, under the Immigration Reform and Control Act of 1986, employee signed overtime agreement, personnel action records, notices of corrective or disciplinary actions, new employee orientation form, benefits notification forms, performance evaluation records, termination records.

(b) References to or copies of transcripts of academic, professional, or training certification or preparation.

(c) Copies of items recorded in the DHRM computerized file and other materials required by agency management to be placed in the personnel file. The agency personnel file shall be considered a supplement to the DHRM computerized file and shall be subject to the rules governing personnel files.

(d) Leave and time records.

(e) Copies of any documents affecting the employee's conduct, status or salary. The agency shall inform employees of any changes in their records based on conduct, status or salary no later than when changes are entered into the file.

(3) Employees have the right to review their personnel file, upon request, in DHRM or the agency, as governed by law and as provided through agency policy.

(a) Employees may correct, amend, or challenge any information in the DHRM computerized or agency personnel file, through the following process:

(i) The employee shall request in writing that changes occur.

(ii) The employing agency shall be given an opportunity to respond.

(iii) Disputes over information that are not resolved between the employing agency and the employee, shall be decided in writing by the Executive Director, DHRM. DHRM shall maintain a record of the employee's letter; the agency's response; and the DHRM Executive Director's decision.

(4) When a disciplinary action is rescinded or disapproved upon appeal, forms, documents and records pertaining to the case shall be removed from the personnel file.

(a) When the record in question is on microfilm, a seal will be placed on the record and a suitable notice placed on the carton or envelope. This notice shall indicate the limits of the sealed section and the authority for the action.

(5) Upon employee termination, DHRM and agencies shall retain computerized records for thirty years. Agency hard copy records shall be retained by the agency for a minimum of two years, then transferred to the State Record Center by State Archives Division to be retained for 65 years.

(6) Information classified as private in both DHRM and agency personnel and payroll files shall be available only to the following people:

(a) the employee;

(b) users authorized by[~~law determined in writing by~~] the [~~DHRM~~]Executive Director [~~to~~]who have a legitimate "need-to-know";

(c) individuals who have the employee's written consent.[~~A record of persons reviewing personnel files shall be maintained together with the reasons for access to the files.~~]

(7) Utah is an open records state, according to Chapter 2, Title 63, the Government Records Access and Management Act. Employment verification requests shall be in writing and initiated by the employee. The following information concerning current or former state employees, volunteers, independent contractors, and members of advisory boards or commissions shall be given to the public upon written request where appropriate with the exception of undercover law enforcement personnel:

(a) the employee's name;

(b) gross compensation;

(c) salary range;

(d) contract fees;

(e) the nature of employer-paid benefits;

(f) the basis for and the amount of any compensation in addition to salary, including expense reimbursement;

(g) job title;

(h) performance plan;

(i) education and training background as it relates to qualifying the individual for the position;

(j) previous work experience as it relates to qualifying the individual for the position;

(k) date of first and last employment in state government;

(l) the final disposition of any appeal action by the Career Service Review Board;

(m) the final disposition of any disciplinary action;

(n) work location;

(o) a work telephone number;

(p) city and county of residence, excluding street address;

(q) honors and awards as they relate to state government employment;

(r) number of hours worked per pay period;

(s) gender;

(t) other records as approved by the State Records Committee.

(8) When an employee transfers from one state agency to another, the former agency shall transfer the employee's original file to the new agency. The file shall contain a record of all actions that have affected the employee's status and standing.

(9) [~~The record the Department and agency hold including other private, protected or controlled records referenced in the agency personnel file shall be considered the official record during any disciplinary proceedings.~~]An employee may request a copy of any documentary evidence used for disciplinary purposes in any formal hearing regardless of the documents source, prior to such use. This shall not apply to documentary evidence used for rebuttal.

(10) Employee medical information obtained orally or documented in separate confidential files is considered private or controlled information. Communication must adhere to the Government Records Access and Management Act, Section 63-2-101. Employees who violate confidentiality are subject to state

disciplinary procedures and may be personally liable for slander or libel.

(11) In compliance with the Government Records Access and Management Act, only information classified as "public" or "private" which can be determined to be related to and necessary for the disposition of a long term disability or unemployment insurance determination shall be approved for release on a need to know basis. The agency human resource manager or authorized manager in DHRM shall make the determination.

(12) Employees may verbally request the release of information for personal use; or authorize in writing the release of their performance records for use by an outside agent based on a need to know authorization. "Private" data shall only be released, except to the employee, after a written request has been evaluated and approved.

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KEY: administrative responsibility, confidentiality of information, fair employment practices, public information
[~~July 5, 2000~~]July 3, 2001 **63-2-204(5)**
Notice of Continuation July 1, 1997 **67-19-6**
67-19-6.4
67-19-18

Human Resource Management, Administration
R477-4
Classification

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23772
FILED: 05/15/2001, 16:29
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Implement two important changes to the state classification system.

SUMMARY OF THE RULE OR CHANGE: Section R477-4-3, Assignment of Duties: This is a new section affirming management role to assign work to employees in order to achieve organizational objectives. Section R477-4-4, Position Classification Review: Amendments to this section give classification responsibility to certain agencies under contract. This delegation is limited and controlled by Department of Human Resource Management (DHRM) who still has ultimate responsibility for the classification system. DHRM also controls the contracts by statute.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-19-6 and 67-19-12

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: These amendments will impose additional work on agencies who choose to accept classification responsibility. However, it is not anticipated that additional resources will be needed. Agencies will make the choice to participate with the understanding that they must do so within existing resources.
❖LOCAL GOVERNMENTS: No cost or savings because this rule only impacts the executive branch of state government.
❖OTHER PERSONS: No cost or savings because this rule only impacts the executive branch of state government.
COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance cost to agencies since they are not compelled to participate in these changes to the classification system. Agencies will participate with the understanding that they must do so within the limits of their resources.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by 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. Section 67-19-15 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 saving on to businesses through fees.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Human Resource Management
Administration
2120 State Office Building
Salt Lake City, UT 84114, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Conroy Whipple at the above address, by phone at (801) 538-3067, by FAX at (801) 538-3081, or by Internet E-mail at pedhrm.cwhipple@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 07/02/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 07/03/2001

AUTHORIZED BY: Conroy Whipple, Legislation and Planning Coordinator

R477. Human Resource Management, Administration.
R477-4. Classification.

. . . . . .

R477-4-3. Assignment of Duties.

Management may assign, modify, or remove any employee task or responsibility in order to accomplish reorganization,

improve business practices or process, or for any other reason deemed appropriate by the department administration.

R477-4-[3]4. Position Classification Review.

(1) A classification review[~~of a position~~] may be conducted under the following circumstances:

(a) As part of a scheduled study.

(b) At the request of the agency, with the approval of the Executive Director, DHRM.

(c) As part of a classification grievance review.

(2) DHRM or an approved contract agency shall determine if there are significant changes in the duties of a position to warrant a review.

(3) When an agency is reorganized or[~~a~~] positions are redesigned, no classification reviews shall be conducted during a three months settling period unless otherwise determined necessary by DHRM or an approved contract agency.

(4) The Executive Director, DHRM, or designee shall make final classification decisions unless overturned by a hearing officer or court.

R477-4-[4]5. Position Classification Grievances.

(1) A career service employee may grieve classification decisions involving the duties and responsibilities of their own position.

(a) This rule refers to grievances concerning the assignment of individual positions to appropriate jobs. The assignment of salary ranges is not included in this rule.

(b) Career service employees who grieve a classification decision must complete the job classification grievance form. The form must be received by DHRM within 10 working days of receiving notice of the decision from DHRM; otherwise the grievance will not be processed.

(2) The position classification grievance process is as follows:

(a) Grievances must be submitted to DHRM on a currently approved grievance form.

(b) The Executive Director, DHRM, shall assign the grievance to a classification panel of three or more impartial persons who are trained in the state's classification procedures.

(c) The classification panel may[~~:~~]:

(i) Access previous fact finding reviews, classification decisions, and reports;

(ii) Request new or additional fact finding interviews;

(iii) Consider new or additional information.

(d) The classification panel shall determine whether the assigned classification was appropriate. The panel shall follow the appropriate statutes, rules, and procedures which were current at the time the decision was made. The panel shall report its findings and recommendations to the Executive Director, DHRM. The Executive Director, DHRM, shall make a decision and notify the grievant and the agency representative of the decision.

(e) The grievant may grieve the Executive Director's decision to an impartial classification hearing officer contracted by the state. The grievance must be received by DHRM within 10 working days of the employee receiving notice of the panel decision.

(g) The hearing officer shall review the classification and make the final decision.

KEY: administrative procedure, grievances, job descriptions, position classifications

[~~July 5, 2000~~]July 3, 2001 **67-19-6**

Notice of Continuation July 1, 1997 **67-19-12**

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Human Resource Management, Administration

R477-5

Filling Positions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 23773

FILED: 05/15/2001, 16:29

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Implement policy changes required by judgement of the Utah Court of Appeals in Draughn v. Department of Financial Institutions et al., 1999.

SUMMARY OF THE RULE OR CHANGE: Section R477-5-6, Transfer and Reassignment: Amendments to this section will no longer allow the reassignment of an employee to a position with a lower salary range without a defensible administrative reason such as reasonable accommodation under federal or state law.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Agency human resource offices may experience additional work as a result of this policy change, at least until managers are comfortable with these new requirements. Management will likely seek more advice and consulting help from these offices when faced with the movement of employees for administrative, accommodation or disciplinary reasons.

❖LOCAL GOVERNMENTS: No cost or savings because this rule only impacts the executive branch of state government.

❖OTHER PERSONS: No cost or savings because this rule only impacts the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Agencies of the executive branch will likely see increased demands on their time to assist management with the implications of this change. This should not result in the need for additional resources or costs to the agency.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by 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. Section 67-19-15 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 saving on to businesses through fees.

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2120 State Office Building
Salt Lake City, UT 84114, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Conroy Whipple at the above address, by phone at (801) 538-3067, by FAX at (801) 538-3081, or by Internet E-mail at pedhrm.cwhipple@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 07/02/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 07/03/2001

AUTHORIZED BY: Conroy Whipple, Legislation and Planning Coordinator

R477. Human Resource Management, Administration.
R477-5. Filling Positions.

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R477-5-6. Transfer and Reassignment.

(1) Jobs or p[~~P~~]ositions may be filled by reassigning an employee without a reduction in pay[~~, within the agency or across agencies with approval of the respective agency heads~~] for administrative reasons[~~, such as budget constraints~~], or corrective action pursuant to R477-10-2,[~~, or the need to move persons to positions that better utilize their skills~~].

(2) The agency that receives a transfer or reassignment of an employee shall verify his career status and that the employee meets the job requirements for the position.

(a) An employee with a disability who is otherwise qualified may be eligible for transfer or reassignment to a vacant job or position within the agency as a reasonable accommodation measure[~~, unless it creates an undue hardship on the agency~~].

(3) Payroll actions involving transfer or reassignment shall only be allowed at the beginning of a payroll period.

(4) 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.

(5) 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.

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R477-5-17. Underfill.

(1) Underfill shall only be used in circumstances that meet the following conditions:

(a) The position is in the same classification series, as reflected on the position management report. Positions shall be underfilled only until the employee satisfactorily meets the job requirements of the next higher level position as determined by management.

(b) There must be discernible and documented differences between levels in career ladders.

KEY: employment, fair employment practices, hiring practices
[~~July 5, 2000~~]July 3, 2001 67-19-6
Notice of Continuation July 1, 1997

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Human Resource Management, Administration
R477-7
Compensation

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23774
FILED: 05/15/2001, 16:29
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments to this rule implement additional requirements stemming from the judgement of the Utah Court of Appeals in the Draughn v. Department of Financial Institutions et al., and a substantial change in the policy for incentive awards.

SUMMARY OF THE RULE OR CHANGE: Subsection R477-7-4(6), Reassignment: Amendments remove the ability of management to reassign an employee to a position with a lower salary range unless permitted by state or federal law in defined situations. Subsection R477-7-4(7), Transfer: This amendment removes the restriction on receiving a salary increase contingent with a transfer. Rule amendments this year and in the past two to three years give agencies considerable discretion in compensation and classification. This has created an environment in which this restriction no longer makes sense. Section R477-7-5, Incentive Awards: Two important changes are made to the incentive award system. First, the term "bonus" will no longer be used. It will be reserved for specific programs identified by the Division of Finance. An example this year is the bonuses given to longevity employees by the legislature. Secondly, the maximum limits for cash incentive awards are doubled from $2,000 for each award to $4,000, and from $4,000 total for a fiscal year to $8,000. This is part of an overall attempt to give agencies more flexibility to remain competitive in the job market. It is one tool to help attract and retain valuable employees.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 67-19-15.1(4); and Sections 67-19-6 and 67-19-12

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: In calendar 2000, the total spent in the state for employee incentive awards was $4,751,933. It is impossible to predict how agencies will respond to these extended limits. It is not anticipated that the amount spent will double just because the limits have doubled. A realistic estimate may be about a 10% increase or about $500,000.
❖LOCAL GOVERNMENTS: No cost or savings because this rule only impacts the executive branch of state government.
❖OTHER PERSONS: No cost or savings because this rule only impacts the executive branch of state government.
COMPLIANCE COSTS FOR AFFECTED PERSONS: No compliance costs are anticipated. Agencies will continue to control how much they allocate to incentive awards within the limits set by Department of Human Resource Management (DHRM) policy.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by 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. Section 67-19-15 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 saving on to businesses through fees.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Human Resource Management
Administration
2120 State Office Building
Salt Lake City, UT 84114, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
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THIS RULE MAY BECOME EFFECTIVE ON: 07/03/2001

AUTHORIZED BY: Conroy Whipple, Legislation and Planning Coordinator

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R477. Human Resource Management, Administration.
R477-7. Compensation.

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R477-7-4. Salary.

(1) Merit increases - The following are applicable if merit increases are authorized and funded by the legislature:

(a) Employees, who are not on a longevity step, who receive a successful or higher rating on their performance evaluations and who have been in a paid status by the state for at least six months shall receive a maximum merit increase of one salary step at the beginning of the first pay period of the new fiscal year.

(b) Employees designated as schedule AJ are not eligible for a merit step increase. Merit increases for employees in schedule AL, AM, or AS are not mandatory unless they are receiving benefits, and the increase is approved in agency policy.

(2) Highest Level Performer

(a) Employees designated by the agency as a highest level performer consistent with subsection R477-10-1(2) shall receive, as determined by the agency head, either:

(i) a salary step increase, or;

(ii) a bonus; or

(iii) administrative leave; or

(iv) other appropriate recognition as determined by the agency.

(b) Employees on a longevity step are not eligible for a salary step increase but may receive a bonus, administrative leave or other appropriate recognition as determined by the agency.

(3) Promotions and Reclassifications

(a) Employees promoted or reclassified to a position with a salary range exceeding the employee's current salary range maximum by one salary step shall receive a salary increase of a minimum of one salary step and a maximum of four salary steps. Employees who are promoted or reclassified to a position with a salary range exceeding the employee's current salary range maximum by two or more salary steps shall receive a salary increase of a minimum of two salary steps and a maximum of four salary steps.

(i) Employees[~~, with the exception of those in longevity,~~] may not be placed higher than the [~~highest~~]maximum salary step or lower than the [~~beginning~~]minimum salary step in the new salary range. Placement of employees in longevity shall be consistent with subsection R477-7-4(4)3.

(ii) Employees who remain in longevity status after a promotion or reclassification shall retain their salary by being placed on the corresponding longevity step.

(b) To be eligible for a promotion, an employee shall:

(i) meet the job requirements/skills specified in the job description and position specific criteria as determined by the agency for the position unless the promotion is to a career service exempt position;

(c) Employees who have their positions reclassified to a job with a lower salary range shall retain their current salary. The employee shall be placed on the corresponding longevity step if their salary exceeds the maximum of the new salary range.

(4) Longevity

(a) An employee shall receive a longevity increase of 2.75 percent when:

(i) They have been in state service for eight years or more. They may accrue years of service in more than one agency, and such service is not required to be continuous.

(ii) They have been at the maximum salary step in the current salary range for at least one year and received a performance

appraisal rating of successful or higher within the 12 month period preceding the longevity increase.

(b) Employees on a longevity step shall be eligible for the same across-the-board pay plan adjustments authorized for all other employee pay plans.

(c) Employees on a longevity step shall only be eligible for additional step increases every three years. To be eligible, employees must receive a performance appraisal rating of successful or higher within the 12 month period preceding the longevity increase.

(d) Employees on a longevity step who are reclassified to a lower salary range, shall retain their salary.

(e) Employees on a longevity step who are promoted or reclassified to a higher salary range shall only receive an increase if their current salary step is less than the highest salary step of their new range.

(e) Agency heads or time-limited exempt employees identified in R477-5-11 are not eligible for the longevity program.

(5) Administrative Adjustment

(a) Employees who have had their position allocated by DHRM from one job to another job or salary range for administrative purposes, shall not receive an adjustment in salary.

(b) Implementation of new job descriptions as an administrative adjustment shall not result in a salary increase unless the employee is below the minimum step of the new range.

(6) Reassignment

(a) [~~Management may adjust the salary of an employee to one or more lower steps when the employee is reassigned to a position with a salary range with a lower maximum step~~]When permitted, by federal or state law, including but not limited to the American with Disability Act, management may lower the salary of an employee one or more steps when the employee is reassigned to a job or position with a salary range having a lower maximum step.

(7) Transfer

Employees who transfer from one job or position to another job or position[~~with the same salary range~~] may[~~not~~] be offered salary increases effective the same date as the transfer.

(8) Demotions

Employees demoted consistent with R477-11-2 shall receive a salary reduction of one or more salary steps as determined by the agency head or designee. The agency head or designee may move an employee to a position with a lower salary range concurrent with the salary reduction.

(9) Payroll actions

Payroll actions shall be effective on the first day of a payroll period with the exception of new hires, rehires, and terminations.

(10) Productivity step adjustment

Agency management may establish policies to reward employees who assume additional workloads which result from the elimination of a position for at least one year with a salary increase of up to four salary steps. Employees at the top salary step of their salary range or in longevity shall be given a one time lump sum bonus award of 2.75% of their annual salary.

(a) To implement this program, agencies shall apply the following criteria:

(i) Either the employees or management can make the suggestion;

(ii) Employees and management agree;

(iii) The agency head approves;

(iv) A written program policy achieves increased productivity through labor/management collaboration;

(v) The agency human resource representative approves;

(vi) The position will be abolished from the position authorization plan for a minimum of one year;

(vii) Staff receives additional duties which are substantially above a normal full workload;

(viii) The same or higher level of service or productivity is achieved without accruing additional overtime hours;

(ix) The total dollar increase, including benefits, awarded to the workgroup as a result of the additional salary steps does not exceed 50 percent of the savings generated by eliminating the position;

(11) Administrative Salary Increase

The executive director or commissioner authorizes and approves Administrative Salary increases under the following parameters:

(a) Employees shall receive one or more steps up to the maximum of their 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 executive director or commissioner;

(iii) Supported by issues such as: special agency conditions or problems, equity issues, or other unique situations or considerations in the agency.

(d) The executive director or commissioner is the final authority for salary actions authorized within these guidelines. The executive director or commissioner or designee shall answer any challenge or grievance resulting from an Administrative Salary Increase.

(e) Administrative salary increases may be given during the probationary period. These increases alone do not constitute successful completion of probation or the granting of career service status.

(12) Administrative Salary Decrease

The executive director or commissioner authorizes and approves administrative salary decreases for non-disciplinary reasons according to the following:

(a) Employees shall receive a one or more step decrease not to exceed the minimum of their salary range.

(b) Justification for administrative salary decreases shall be:

(i) in writing;

(ii) approved by the executive director or commissioner;

(iii) supported by issues such as; previous written agreements between the agency and employees to include career mobility; reasonable accommodation, special agency conditions or problems, equity issues, or other unique situations or considerations in the agency.

(c) The executive director or commissioner is the final authority for salary actions within these guidelines. The executive director or commissioner or designee shall answer any challenge or grievance resulting from an administrative salary decrease.

R477-7-5. Incentive Awards.

Only agencies with[~~a~~] written and published incentive award polic[~~y~~]ies may reward employees with cash incentive awards, and non-cash incentive awards[~~ and bonuses~~]. Policies shall be consistent with standards established in these rules and with [~~DAS~~]Department of Administrative Services, Division of Finance rules and procedures.

(1) Cash Incentive Awards

Agencies may reward employees or groups of employees who propose workable cost saving measures and other worthy acts with a cash incentive award.

(a) Individual awards shall not exceed $[~~2,000~~]4,000 per occurrence and $[~~4,000~~]8,000 in a fiscal year.

(b) Awards of $100 or more must be documented, evaluated, and approved by the agency. A copy shall also be maintained in the agency's individual employee file.[~~ These incentive awards are subject to post audit by DHRM.~~]

(2) Non-Cash Incentive Awards

Agency heads may recognize employees or groups of employees with non-cash incentive awards.

(a) Individual non-cash incentive awards shall not exceed a value of $50 per occurrence and $200 for each fiscal year.

(b) Non-cash incentive awards may not include cash [~~equivelants~~]equivalents such as gift certificates or tickets for admission.[

~~(3) Bonus Awards~~

~~Agency heads may authorize bonus awards for individual or group productivity accomplishments. Each award shall not exceed $2,000. Awards are subject to post audit by DHRM.~~]

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KEY: salaries, employee benefit plans*, insurance, personnel management

[~~July 5, 2000~~]July 3, 2001	**67-19-6**
Notice of Continuation July 1, 1997	**67-19-12**
	67-19-15.1(4)

Human Resource Management, Administration

R477-8

Working Conditions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 23775

FILED: 05/15/2001, 16:29

RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: There are several reasons for amending this rule. They include: implementation of Section 67-19-12.9 enacted by the 2001 legislature in H.B. 68, Annual Leave Conversion for State Employees; implementation of a new policy on the use of leave benefits with Long-Term Disability; establishment of travel policy; and the clarification of a variety of issues concerning leave policies for state employees. Many of the clarifications are nonsubstantive one-word changes.

SUMMARY OF THE RULE OR CHANGE: Subsection R477-8-6(4)(e), Overtime: Amendments clarify that only top level deputy or division directors do not receive compensation for authorized overtime. Subsection R477-8-6(8)(f)(v), Commuting and Travel Time: New language is intended to give agencies guidance for granting compensatory time when employees travel. This is consistent with the Fair Labor Standards Act. Subsection R477-8-7(1)(e), Holiday Leave: Amendments clarify standing policy that an employee must be in a paid status prior to a holiday in order to receive paid holiday leave. Subsection R477-8-7(1)(f), Holiday Leave: New language places long standing policy in rule that the Personal Preference Day given to state employees in Subsection 67-13-2(1)(d) shall be the first eight hours of annual leave in a calendar year. Subsection R477-8-7(3)(e), Annual Leave: Subsection R477-8-7(3)(e) implements the requirements of H.B. 68, Annual Leave Conversion for State Employees, which enacted Section 67-19-12.9. Subsection R477-8-7(4)(e), Sick Leave: Amendments are a minor change in policy on the documentation of the need for sick leave. Agencies may now define acceptable evidence of the need for leave. Subsection R477-8-7(5), Converted Sick Leave: Amendments to this subsection accomplish two things: first, the eligibility for conversion of sick leave is clarified, and second, the policy for cash out of converted sick leave is amended. An employee who terminates before the end of the calendar year may now convert eligible hours of sick leave to converted sick leave. Subsections R477-8-7(6)(d), and R477-8-7(6)(e): The procedure for identifying sick leave hours that are to be used for the purchase of health care benefit in retirement is simplified. Subsection R477-8-7(8), Long Term Disability: Amendment is a complete revision of the state policy on the use of leave benefits while an employee is on Long Term Disability (LTD). Instead of allowing an employee to use leave benefits to supplement the LTD benefit, an employee will be given cash for all leave balances with the exception of sick leave that may be used for health insurance at retirement. The employee may also elect to save converted sick leave balances until retirement. Subsection R477-8-7(11)(d): Leave without pay for disability reasons may be granted only by the agency head. This is a change in policy. Previously, the rule was silent about who had this authority.

(**DAR Note:** H.B. 68 can be found at 2001 Utah Laws 339 and was effective April 30, 2001.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-19-6, 63-13-2, 67-19-6.7, 67-19-12.5, and 67-19-12.9

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: The legislative fiscal note for the implementation of H.B. 68, Annual Leave Conversion for State Employees estimated a fiscal impact on agencies of about $950,000. The change in policy for converting sick

leave at termination will have a fiscal impact of about $75,000.

❖LOCAL GOVERNMENTS: No cost or savings because this rule only impacts the executive branch of state government.

❖OTHER PERSONS: No cost or savings because this rule only impacts the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division of Finance and other agencies will be required to adopt procedures for converting annual leave to a 401(k) account and to account for sick leave and converted sick leave for employees on LTD. It is not anticipated that additional resources will be required however.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by 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. Section 67-19-15 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 saving on to businesses through fees.

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AUTHORIZED BY: Conroy Whipple, Legislation and Planning Coordinator

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R477. Human Resource Management, Administration.
R477-8. Working Conditions.

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R477-8-6. Overtime.

The state's policy for overtime is adopted and incorporated from the Fair Labor Standards Act, 29 CFR Parts 500 to 899(1996).

(1) Management may direct an employee to work overtime. Each agency shall develop internal rules and procedures to ensure overtime usage is efficient and economical. These policies and procedures shall include:

(a) Prior supervisory approval for all overtime worked;

(b) Recordkeeping guidelines for all overtime worked;

(c) Verification that there are sufficient funds in the budget to compensate for overtime worked.

(2) Overtime compensation standards are identified for each job title in HRE as either FLSA non-exempt, or FLSA exempt.

(a) Employees may appeal their FLSA designation to their agency human resource office and DHRM concurrently. Further appeals must be filed directly with the United States Department of Labor, Wage and Hour Division. The provisions of Sections 67-19-31 and 67-19a-301 and Title 63, Chapter 46b shall not apply for FLSA appeals purposes.

(3) FLSA non-exempt employees may not work more than 40 hours a week without management approval. They shall receive overtime when they actually work more than 40 hours a week. Leave and holiday time taken within the work period shall not count as hours worked when calculating overtime accruing. Hours worked over two or more weeks shall not be averaged out with the exception of certain types of law enforcement, fire protection, and correctional employees.

(a) FLSA non-exempt employees shall sign a prior overtime agreement authorizing management to compensate them for overtime worked by actual payment or time off at time and one-half.

(b) FLSA non-exempt employees may receive compensatory time for overtime, up to a maximum of 80 hours. Only with prior approval of the Executive Director, may compensatory time accrue up to 240 hours for regular employees or up to 480 hours for peace/correctional officers, emergency or seasonal employees. Once employees reach the maximum, they shall be paid for additional overtime on the pay day for the period in which it was earned.

(4) FLSA exempt employees may not work more than 80 hours in a pay period without management approval. They shall accrue compensatory time when they actually work 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 FLSA exempt employees who work overtime by giving them time off. For each hour of overtime worked, an FLSA exempt employee shall accrue an hour of compensatory time. Compensatory hours earned in excess of a base of 80 shall be paid down to 80.

(a) Agencies shall establish in written policy a uniform overtime year and communicate it to employees. If an agency fails to establish a uniform overtime year, the Executive Director and the Director of Finance, Department of Administrative Services, will determine the date for the agency at the end of one of the following pay periods: Five, Ten, Fifteen, Twenty, or the last pay period of the calendar year.

(b) Any compensatory time earned by FLSA exempt employees is not an entitlement, a benefit, nor a vested right.

(c) Any compensatory time earned by FLSA exempt employees shall lapse at the end of an agency's annual overtime year.

(d) Any compensatory time earned by FLSA exempt employees shall lapse when they transfer to another agency, terminate, retire or otherwise do not return to work before the end of the overtime year.

(e) The agency director may approve overtime for non-career service deputy and division[~~ and deputy~~] directors, but overtime shall not be compensated with actual payment.

(5) Law enforcement/correctional officers

(a) To be considered for overtime compensation under this rule, a law enforcement or correctional officer must meet the following criteria:

(i) be a uniformed or plainclothes sworn officer;

(ii) be empowered by statute or local ordinance to enforce laws designed to maintain public peace and order, to protect life and property from accident or willful injury, and to prevent and detect crimes; and

(iii) have the power to arrest.

(b) Law enforcement or correctional officers designated FLSA non-exempt and covered under this rule shall accrue overtime when they work more than 171 hours in 28 consecutive days. An agency may select a work period of 86 hours within a 14-day period for law enforcement employees, but all changes shall conform to the following:

(i) The Fair Labor Standards Act, Section 207(k);

(ii) The State's payroll period;

(iii) The approval of the Executive Director.

(c) Fire protection employees shall accrue overtime when they work more than 212 hours in 28 consecutive days.

(d) The work period selection becomes permanent when scheduled and may not be changed to evade overtime compensation rules.

(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 endanger public health, safety or property.

(b) Compensatory time balances are paid down to zero when FLSA non-exempt employees transfer from one agency to a different agency.

(7) Time Reporting

(a) FLSA non-exempt employees must complete and sign a State approved biweekly time sheet. Time sheets developed by the agency shall have the same elements of the State approved time sheet and be approved by the Department of Administrative Services, Division of Finance.

(b) FLSA exempt employees who work more than 80 hours in a work period must record their total hours worked, and/or the compensatory time used on their biweekly time sheet. All hours must be recorded in order to claim overtime. Completion of the time sheet is at agency discretion when no overtime is worked during the work period.

(8) Hours Worked: FLSA non-exempt employees shall be compensated for all hours they are permitted to work. Hours worked shall be accounted for as long as the state permits employees to work on its behalf, regardless of the reason for the work. Employees who work unauthorized overtime may be subject to disciplinary actions.

(a) All time that FLSA non-exempt employees are required to wait for an assignment while on duty, before reporting to duty, or before performing their activities is counted towards hours worked.

(b) Time spent waiting after being relieved from duty is not counted as hours worked if one or more of the following conditions apply:

(i) The employee arrives voluntarily before their scheduled shift and waits before starting duties;

(ii) The employee is completely relieved from duty and allowed to leave the job;

(iii) The employee is relieved until a definite specified time;

(iv) The relief period is long enough for the employee to use as the employee sees fit.

(c) On-call time: Employees required by agency management to be available for on-call work shall be compensated for on-call time at a rate of 1 hour for every 12 hours the employee is on-call.

(i) Time is considered "on-call time" when the employee has freedom of movement in personal matters as long as he/she is available for call to duty.

(ii) An employee must be directed by his supervisor, either verbally or in writing, that he is on call for a specified time period. Carrying a beeper or cell phone shall not constitute on call time without a specific directive from a supervisor.

(iii) The employee shall record the hours spent in on call status on his time sheet in order to be paid.

(d) Stand-by time: Employees restricted to "stand-by" at a specified location ready for work must be paid full time or overtime, as appropriate. Workers must be paid for stand-by time if they are required to stand by their posts ready for duty, even during lunch periods, equipment breakdowns, or other temporary work shut-downs.

(e) The meal periods of guards, police, and other public safety or correctional officers and firefighters who are on duty more than 24 consecutive hours must be counted as working time, unless an express agreement excludes the time.

(f) Commuting and Travel Time:

(i) Normal commuting time from home to work and back shall not count towards hours worked.

(ii) Time employees spend traveling from one job site to another during the normal work schedule shall count towards hours worked.

(iii) Time employees spend traveling on a special one day assignment shall count towards hours worked except meal time and ordinary home to work travel.

(iv) 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.

(v) 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.

(g) Excess Hours: Employees may use excess hours the same way as annual leave.

(i) Agency management shall approve excess hours before the work is performed.

(ii) Agency management may deny the use of any leave time, other than holiday leave, that results in an employee accruing excess hours.

(iii) Employees on schedule AB may not accumulate more than 80 excess hours.

(iv) Agency management may pay out excess hours under one of the following:

(A) Paid off automatically in the same pay period accrued;

(B) All hours accrued above 40;

(C) All hours accrued above 80.

(D) Employees on schedule AB shall only be paid for excess hours at retirement or termination.

R477-8-7. Leave.

All employees who regularly work 40 hours or more per pay period, except Schedule AJ or other temporary workers, are eligible for leave benefits. Employees receive leave benefits in proportion to the number of hours they are scheduled to work. Employees shall use leave in no less than quarter hour increments.

(1) Holiday Leave

(a) The following dates are designated legal holidays:

(i) New Years Day -- January 1

(ii) Dr. Martin Luther King Jr. Day -- third Monday of January

(iii) Washington and Lincoln Day -- third Monday of February

(iv) Memorial Day -- last Monday of May

(v) Independence Day -- July 4

(vi) Pioneer Day -- July 24

(vii) Labor Day -- first Monday of September

(viii) Columbus Day -- second Monday of October

(ix) Veterans' Day -- November 11

(x) Thanksgiving Day -- fourth Thursday of November

(xi) Christmas Day -- December 25

(xii) The Governor may also designate any other day a legal holiday.

(b) If a holiday falls on a Sunday, the following Monday shall be observed as a holiday. If a holiday falls on a Saturday, the preceding Friday shall be observed as a holiday.

(c) If an employee is required to work on an observed holiday, the employee shall receive appropriate holiday leave, or shall receive compensation for the excess hours worked.

(d) The following employees are eligible to receive holiday leave:

(i) Full-time employees shall accrue eight hours of paid holiday leave on holidays;

(ii) Part-time career service employees and partners in a job-shared position who work 40 hours or more per pay period shall receive holiday leave in proportion to the hours they normally work in a pay period;

(iii) Employees working flex-time, as defined in R477-8-2, shall receive a maximum of 88 hours of holiday leave in each calendar year. If the holiday falls on a regularly scheduled day off, flex-time employees shall receive an equivalent work day off, not to exceed eight hours or shall receive compensation for the excess hours at the later date.

(e) [~~In order to receive paid holiday leave, an employee must be in a paid status in the pay period in which the holiday falls as provided in R477-8-7(1)(a).~~]In order to receive paid holiday leave the employee shall be in a paid status in the pay period in which the holiday falls as listed in R477-8-7-(1)(a), and not be terminated or in a Leave Without Pay status prior to the holiday.

(f) The first eight hours of annual leave used by an employee in the calendar leave year shall be the employees personal preference day.

(2) Conditions of leave

(a) Eligible employees who work 40 or more hours per pay period shall accrue annual and sick leave in proportion to the time [~~worked~~]paid. They shall also receive funeral, holiday, and paid military leave in proportion to the time [~~worked~~]paid. Employees excluded from these are "at will" employees identified in R477-5-11.

(b) Seasonal, temporary, or part-time employees working less than 40 hours per pay period are not eligible for paid leave.

(c) Accrual rates for sick and annual leave are determined on the Annual and Sick Leave Accrual table available through DHRM.

(d) An employee may not [~~receive~~]use annual, sick, excess or holiday leave before he has accrued it.

(e) Employees transferring from one agency of State service to another are entitled to transfer all accrued annual, sick, and converted sick leave to the new agency.

(f) Employees on paid leave shall continue to accrue annual and sick leave.

(g) Employees terminating or retiring from State service shall be cashed out in a lump sum for all annual leave and converted sick leave effective through the last day actually worked. Leave cannot be accrued after the last day worked. No leave-on-leave may accrue or be paid on the cashed out annual leave.

(h) Contributions to benefits may not be paid on cashed out leave, other than FICA tax, except as it applies to converted sick leave in R477-8-7(5)(b) and the Retirement Benefit in R477-8-7(6).

(3) Annual Leave

(a) Employees eligible for annual leave shall accrue leave based on the following years of State service:

(i) Zero through five years -- four hours per pay period.

(ii) Beginning of sixth year through ten years -- five hours per pay period.

(iii) Beginning of eleventh year through twenty years -- six hours per pay period.

(iv) Beginning of the twenty first year or more - seven hours per pay period.

(b) The accrual rate for employees hired on or after July 1, 1995 shall be based on all State employment in which the employee was eligible to accrue leave.

(c) Eligible employees may begin to use annual leave time after completing the equivalent of two full pay periods of employment.

(d) Agency management shall allow every employee the option to use annual leave each year for at least the amount accrued in the year. However, annual leave granted shall be approved in advance by management.

(e) An employee may elect to convert unused annual leave to a 401(k) or 457 deferred compensation program sponsored by the Utah State Retirement Board.

(i) The election to convert may only be made after the end of the last pay period of the leave year as determined by the Division of Finance.

(ii) The conversion shall be in whole hour increments.

(iii) An employee may convert up to 20 hours or $250 in value, whichever is less.

(iv) Only hours accrued in excess of 320 hours after the end of the last pay period of the leave year are eligible for conversion.

(v) The value of the converted leave may not cause the contribution to the 401(k) or 457 account to exceed the maximum authorized by the Internal Revenue Code.

([~~e~~]f) Any unused accrued annual leave time in excess of 320 hours shall be forfeited at the beginning of the first full pay period of each calendar year.

([~~f~~]g) Department deputy directors and division directors appointed to career service exempt status positions shall be eligible for the maximum annual leave accrual rate upon their date of hire.

(i) They shall not be eligible for any transfer of leave from other jurisdictions.

(ii) Other provisions of leave shall apply as defined in R477-8-7(3).

(4) Sick Leave

(a) Employees shall accrue sick leave with pay at the rate of four hours each pay period. Sick leave shall accrue without limit.

(b) Employees may begin to use accrued sick leave after completing the equivalent of at least two full pay periods of employment.

(c) Sick leave shall be granted for preventive health and dental care, maternity/paternity and adoption care, or for absence from duty because of illness, injury or temporary disability of a spouse or dependents living in the employee's home. Exceptions may be granted for other unique medical situations.

(d) Employees shall arrange for a telephone report to supervisors at the beginning of the scheduled work day they are absent because of illness or injury. Management may require reports for serious illnesses or injuries.

(e) Any application for a grant of sick leave to cover an absence which exceeds four successive working days shall be supported by administratively acceptable evidence[~~ such as a medical certificate~~]. If there is reason to believe that an employee is abusing sick leave, a supervisor may require an employee to produce evidence[~~a doctor's certificate of illness~~] regardless of the number of [~~days on sick leave~~]sick hours used.

(f) Any absence for illness beyond the accrued sick leave credit may continue under the following provisions: an approved leave-without-pay status, not to exceed 12 months, an approved Family Medical Leave Status, or in an annual or other accrued leave status.

(g) After filing a termination notice, employees must support sick leave requests with a doctor's certificate.

(h) Employees separating from State service may not receive compensation for accrued unused sick leave unless they are retiring. However, employees who are rehired within 12 months of separation to a position which receives sick leave benefits shall have their previously accrued unused sick leave credit reinstated.

(i) Employees who are rehired within 12 months of separation to a position which receives sick leave benefits shall have their previously accrued unused sick leave credit reinstated.

(ii) Employees who retire from state service and are then rehired may not reinstate their unused sick leave credit.

(5) Converted Sick Leave

As an incentive to reduce sick leave abuse, an employee may convert sick leave hours[~~employees may convert a portion of unused sick leave~~] to converted sick leave after the end of any calendar year in which he is eligible.

(a) [~~An employee is eligible to convert sick leave when, at the start of the first pay period of a calendar year, he has a balance of 144 hours of unused sick leave.~~]To be eligible, an employee must have a minimum of 144 hours in his sick leave account at the beginning of the first pay period of the calendar year.

(i) [~~After the minimum requirement of 144 hours is met in any previous calendar year, all hours in excess of 64 in the current calendar year~~]At the end of the last pay period of a calendar year in which an employee is eligible, all unused hours accrued that year in excess of 64 shall be converted to converted sick leave[~~ at the end of the last pay period~~] unless the employee designates otherwise.

(ii) [~~Forty hours of sick leave are eligible for conversion each year. The number converted shall be the difference between the 40 eligible and any actually used during the calendar year~~]Upon termination, an eligible employee may convert any unused hours accrued in the current calendar leave year in excess of 64 to converted sick. In the event the employee has the maximum accrued in converted sick these hours will be added to his annual leave account balance.

(iii) The maximum hours of converted sick leave an employee may accrue is 320.

(b) Converted sick leave may be used as annual leave, regular sick leave, or as paid-up health and life insurance at the time of retirement for employees under age 65. If an employee is 65 years of age or older at the time of retirement, converted sick leave may be used to purchase a medicare supplement.

(i) Payment for health and life insurance is the responsibility of the employing agency.

(ii) The purchase rate shall be eight hours of converted sick leave for the state paid portion of the premium for one month's coverage for health and life insurance.

(iii) The participation rate on premium payments for health and life insurance shall be the same as the participation rate for current employees on the same plan.

(6) Retirement Benefit

Employees may be offered a retirement benefit program, according to Section 67-19-14(2).

(a) This program is optional for each department. However, any decision whether or not to participate shall be agency-wide and shall be consistent through an entire fiscal year.

(i) If an agency decides to withdraw for the next fiscal year after initially deciding to participate, the agency must notify all employees at least 60 days before the new fiscal year begins.

(ii) The employing department shall provide the same health and life insurance benefits as provided to current employees for five years or until the employee reaches the age eligible for Medicare, whichever comes first.

(A) Health insurance provided shall be the same coverage carried by the employee at the time of retirement, i.e., family, two-party, or single. If the employee has no health coverage in place upon retirement, none shall be offered or provided.

(B) Life insurance provided shall be the minimum authorized coverage provided for all State employees.

(C) The participation rate on premium payments shall be the same as the participation rate for current employees on the same plan.

(b) Employee participation in any part of this incentive program shall be voluntary, but the decision to participate shall be made at retirement.

(c) An employee may elect to receive a cash payment, or transfer to an approved 401(k) or 457(k)account, up to 25 percent of his accrued unused sick leave at his current rate of pay.

(d) After the election for cash out is made, [~~the employee may use remaining accrued sick leave above 480 hours to purchase~~

~~health insurance, life insurance and Medicare supplement for himself and health insurance and Medicare supplement for a spouse.~~]480 hours shall be deducted from the employees remaining sick leave balance.

(e) The employee may use remaining sick leave hours to participate in the following incentive program.

(i) [~~The employee must have a minimum balance of 480 hours in his accrued sick leave account after the cash out in R477-8-7(6)(c) in order to participate in this part of the incentive program.~~

~~(ii)~~]The employee may purchase PEHP health insurance, or a state approved program, and life insurance coverage for himself until he reaches the age eligible for Medicare.

(A) Health insurance shall be the same coverage carried by the employee at the time of retirement, i.e., family, two-party, or single.

(B) Life insurance provided shall be the minimum authorized coverage provided for all State employees.

(C) The purchase rate shall be eight hours of sick leave for the state paid portion of one month's premium.

(D) The participation rate on premium payments shall be the same as the participation rate for current employees on the same plan.

([~~iii~~]ii) After the employee reaches the age eligible for Medicare, he may purchase PEHP Preferred Care health insurance, or a state approved cost equivalent program for a spouse until the spouse reaches the age eligible for Medicare.

(A) The purchase rate shall be eight hours of sick leave for one month's premium.

([~~iv~~]iii) When the employee reaches the age eligible for Medicare, he may purchase a high option Medicare supplement policy for himself at the rate of eight hours of sick leave for one month's premium.

([~~v~~]iv) When the spouse reaches the age eligible for Medicare, the employee may purchase a high option Medicare supplement policy for the spouse at the rate of eight hours of sick leave for one month's premium.

(7) Workers Compensation Leave

(a) An employee may use accrued leave benefits to supplement the workers compensation benefit.

(i) The combination of leave benefit and workers compensation benefit shall not exceed the employees gross salary. Leave benefits shall only be used in increments of one hour in making up any difference.

(ii) The use of accrued leave to supplement the worker compensation benefit shall be terminated if:

(A) the employee is declared medically stable by licensed medical authority; or

(B) the workers compensation fund terminates the benefit; or

(C) the employee has been absent from work for one year; or

(D) the employee refuses to accept appropriate employment offered by the state; or

(E) the employee receives Long Term Disability or Social Security Disability benefits.

(iii) The employee shall refund to the state any accrued leave paid which exceeds the employees gross salary for the period for which the benefit was received.

(b) Employees will continue to accrue state paid benefits while receiving a workers compensation time loss benefit for up to one year.

(c) Employees who file fraudulent workers compensation claims shall be disciplined according to the provisions of R477-11.

(8) Long Term Disability Leave

[~~(a) Employees who are determined eligible for the Long Term Disability Program (LTD) shall be granted up to one year of medical leave, if warranted by a medical condition.~~

~~(i) The one year medical leave begins on the last day the employee worked due to the disability. During this period and until LTD benefits begin, employees may use any accrued leave. Annual leave may be used after the employee uses all available sick and converted sick leave.~~

~~(ii) If the employee is unable to return to work and has not used all available annual leave, he shall be paid for the annual leave when the termination action is processed.~~

~~(iii) Employees determined eligible for Long Term Disability benefits, after a three month waiting period, will be eligible for health insurance benefits beginning two months after the last day worked. The health insurance benefit will continue for up to twenty-two months or until they are eligible for medicare/ medicaid, whichever occurs first.~~

~~(iv) Conditions for return from leave without pay shall include:~~

~~(A) If an employee is able to return to normal duties within one year of the last day worked, the agency shall place the employee in his previously held position or similar position in a comparable salary range.~~

~~(B) If an employee is unable to perform the essential functions of the job because of a permanent disability, the obligation to place the employee in the same position shall be set aside. The employing unit shall place the employee in the best available, vacant position for which he is qualified, if able to perform the job with or without reasonable accommodation. If the employing unit does not have an available position, the agency shall then attempt to place the individual. The new position shall be consistent with the employee's qualifications and capabilities.~~

~~(I) For the first year, every effort shall be made to find a position as close to the salary range and function as the original position.~~

~~(II) The agency Executive Director may extend the timeline for return to work beyond one year if the employee's illness or injury resulted in disability prohibiting the employee from performing the essential functions of the job, as defined by ADA.~~

~~(b) An employee may use accrued leave benefits to supplement the long term disability benefit.~~

~~(i) The combination of leave benefit and long term disability benefit shall not exceed the employees gross salary. Leave benefits shall only be used in increments of one hour in making up any difference.~~

~~(ii) The use of accrued leave to supplement the long term disability benefit shall be terminated if:~~

~~(A) the employee is declared medically stable by licensed medical authority; or~~

~~(B) The Public Employee Health Plan terminates the benefit; or~~

~~(C) the employee has been absent from work for one year; or~~

~~(D) the employee refuses to accept appropriate employment offered by the state; or~~

~~(E) the employee receives Social Security Disability benefits.~~

~~(iii) The employee shall refund to the state any accrued leave paid which exceeds the employees gross salary for the period for which the benefit was received.~~

~~(c) Employees will continue to accrue state paid benefits while receiving a long term disability benefit for up to one year.~~

~~(d) Employees who file fraudulent long term disability claims shall be disciplined according to the provisions of R477-11.~~]

(a) Employees who are determined eligible for the Long Term Disability Program (LTD) shall be granted up to one year of medical leave, if warranted by a medical condition.

(i) The one-year medical leave begins on the last day the employee worked. LTD requires a three-month waiting period before benefit payments begin. During this period, employees may use available sick and converted sick leave. When those balances are exhausted, employees may use other leave balances available.

(ii) Employees determined eligible for Long Term Disability benefits, after the three-month waiting period, shall be eligible for health insurance benefits beginning two months after the last day worked. The health insurance benefit shall continue without premium payment for up to twenty-two months or until they are eligible for Medicare/Medicaid, whichever occurs first. After twenty-two months, the health insurance may be continued,with premiums being paid by LTD in accordance with their policy and practice.

Upon approval of the LTD claim:

(A) Bi-weekly salary payments that the employee may be receiving shall cease. If the employee received any salary payments after the three-month waiting period, the LTD benefit shall be offset by the amount received.

(B) The employee shall be paid for remaining balances of annual leave, compensatory hours and excess hours in a lump sum payment. This payment shall be made at the time LTD is approved unless the employee requests in writing to receive it upon termination from state employment. No reduction of the LTD payment shall be made to offset this payment. If the employee returns to work prior to one year after the last day worked, the employee has the option of buying back annual leave.

(C) An employee with a converted sick leave balance at the time of LTD eligibility shall have the option to receive a lump-sum payout of all or part of the balance or to keep the balance intact to pay for health and life insurance upon retirement. The payout shall be at the rate at the time of LTD eligibility.

(D) An employee who retires from state government directly from LTD may be eligible for up to five years health and life insurance as provided in Subsection 67-19-14(2)(b)(ii).

(E) Unused sick leave balance shall remain intact until the employee retires. At retirement, the employee shall be eligible for the cash payout and the purchase of health and life insurance as provided in Subsection 67-19-14(2)(c)(i).

(b) Employees shall continue to accrue service credit for retirement purposes while receiving long-term disability benefits.

(c) Conditions for return from leave without pay shall include:

(i) If an employee is able to return to work within one year of the last day worked, the agency shall place the employee in his previously held position or similar position in a comparable salary range.

(ii) If an employee is unable to perform the essential functions of the position because of a permanent disability, the obligation to place the employee in the same or similar position shall be set aside. The employing unit shall place the employee in the best available, vacant position for which he is qualified, if able to perform the essential functions of the position with or without reasonable accommodation. If the employing unit does not have an available position, the agency shall then attempt to place the individual. The new position shall be consistent with the employee's qualifications and capabilities.

(iii) For the first year, every effort shall be made to find a position as close to the salary range and function as the original position.

(iv) The agency Executive Director may extend the medical leave beyond one year if the employee's illness or injury results in disability prohibiting the employee from performing the essential functions of the position, as defined by ADA.

(e) Employees who file fraudulent long term disability claims shall be disciplined according to the provisions of R477-11.

(9) Funeral Leave

Employees may receive a maximum of twenty four hours funeral leave per occurrence with pay at management's discretion to attend the funeral of a member of the immediate family. Funeral leave may not be charged against accrued sick or annual leave.

(a) The "immediate family" means-- wife, husband, children, daughter-in-law, son-in-law, parents, grandchildren, mother-in-law, father-in-law, brother-in-law, sister-in-law, grandparents, spouse's grandparents, step-children, and step-parents, brothers and sisters, step-brothers and step-sisters of the employee.

(10) Military Leave

One day of military leave is the equivalent of 8 hours.

(a) Employees who are members of the National Guard or Military Reserves are entitled to military leave not to exceed fifteen days per calendar year without loss of pay, annual leave or sick leave. Employees shall be on official military orders and may not claim salary for non-working days spent in military training or for traditional weekend training.

(b) Officers and employees of the state shall be granted military leave without pay for the period of active service or duty, including travel time, Section 39-3-1.

(c) Employees are required to give notice of active military service as soon as they are notified.

(d) Upon termination from active military service, under honorable conditions, employees shall be placed in their original position or one of like seniority, status and pay. The cumulative length of time allowed for re-employment may not exceed five years. Employees are entitled to re-employment rights and benefits including increased pension and leave accrual. Persons entering military leave may elect to have payment for annual leave deferred. In order to be reemployed, employees shall present evidence of military service and leave without pay status, and:

(i) For service less than thirty-one days, return at the beginning of the next regularly scheduled work period on the first full day after release from service taking into account safe travel home plus an eight-hour rest period, or:

(ii) For service of more than thirty-one days but less than 181 days, submit an application for reemployment within fourteen days of release from service, or

(iii) For service of more than 180 days, submit an application for reemployment within ninety days of release from service.

(11) Leave of Absence Without Pay

Employees may be granted continuous leave of absence without pay for up to 12 months. Employees shall apply in writing to agency management for approval. If absence is due to FMLA, workers compensation or long-term disability, R477-8-9 or R477-8-7(7) applies.

(a) Medical leave without pay may be granted for no more than twelve months. Medical leave may be approved if a registered health practitioner certifies that an employee is temporarily disabled.

(b) Agency management may approve leave without pay for employees even though annual or sick leave balances exist. Employees may take up to ten consecutive working days of leave without pay without affecting the leave accrual rate.

(i) Employees who receive no compensation for a complete pay period shall be responsible for payment of state provided benefit premiums, unless they are covered by the provisions under the federal Family and Medical Leave Act, in R477-8-9.

(c) Employees who return to work on or before the expiration of leave without pay, shall be placed in a position with comparable pay and seniority to their previously held position, provided the same or comparable level of duties can be performed with or without reasonable accommodation. The employee shall also be entitled to previously accrued annual and sick leave.

(d) Leave without pay for non-disability reasons may be granted only when there is an expectation that the employee will return to work.

(e) Health insurance benefits shall continue for employees on leave without pay because of work-related injuries or illnesses. Except as provided under the family and medical leave provisions, employees on leave without pay must personally continue the premiums to receive health insurance benefits.

(12) Jury Leave

(a) Employees are entitled to a leave of absence with full pay when, in obedience to a subpoena or direction by proper authority, they are required to:

(i) Appear as a witness as part of their position for the federal government, the State of Utah, or a political subdivision of the state, or

(ii) Serve as a witness in a grievance hearing as provided in Section 67-19-31 and Title 67, Chapter 19a.

(iii) Serve on a jury

(b) Employees choosing to use annual leave while on jury duty shall be entitled to keep jurors fees; otherwise, jurors fees received shall be returned to agency payroll clerks for deposit with the State Treasurer. The fees shall be deposited as a refund of expenditure in the low org. where the salary is recorded.

(c) Employees who are absent in order to litigate in matters unrelated to their position shall take leave as annual or as leave without pay.

(13) Administrative Leave

(a) Administrative leave may be granted consistent with agency policy for the following reasons:

(i) corrective action;

(ii) personal decision-making prior to discipline;

(iii) suspension with pay-- during removal from job site--pending hearing on charges;

(iv) during management decision situations that benefit the organization;

(v) incentive awards in lieu of cash;

(vi) when no work is available due to unavoidable conditions or influences;

(vii) removal from adverse or hostile work environment situations pending management corrective action;

(viii) educational assistance;

(ix) employee assistance and fitness for duty evaluations.

(b) Agency head or designee may grant paid administrative leave for no more than ten consecutive working days per occurrence. Other conditions of administrative leave are:

(i) Administrative leave in excess of 10 consecutive working days per occurrence may be granted by written approval of the agency head.

(ii) Administrative leave taken must be documented in the employee's leave record.

(14) Disaster Relief Volunteer Leave

(a) An employee may be granted an aggregate of 15 working days or 120 work hours in any 12 month period to participate in disaster relief services for the American Red Cross. To request this leave an employee must be a certified disaster relief volunteer; and file a written request with the employing agency. The request shall include:

(i) a copy of a written request for the employee's services from an official of the American Red Cross;

(ii) the anticipated duration of the absence;

(iii) the type of service the employee is to provide for the American Red Cross; and

(iv) the nature and location of the disaster where the employee's services will be provided.

(15) Furlough

(a) 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:

(i) Employees accrue annual and sick leave.

(ii) Full payment of all fringe benefits continue at agency's expense.

(iii) Employees shall return to their positions.

(iv) Furlough is applied equitably, e.g., to all persons in a given class, all program staff, or all staff in an organization.

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R477-8-10. 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 in a dual employment status, regardless of the schedule of any of the secondary position(s) the employee may be in, shall be coded as schedule TL.

(2)[-] An employee may work in up to 4 different positions in state government.

(3)[-] An employee's benefits status for any secondary position(s), regardless of schedule of any of the positions, shall be the same as the primary position.

(4)[-] An employee's FLSA status (exempt or non-exempt) for any secondary position(s) shall be the same as the primary position.

(5)[:] Leave accrual shall be based on all hours worked in all positions, and may not exceed the maximum amount allowed in the primary position.

(6)[:] 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.

(7)[:] As a condition of dual employment, the Overtime/Comp selection shall be as overtime paid regardless of FLSA status. An employee may not accrue comp hours while in dual employment status.

(8)[:] 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.

(9)[:] 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.

(10)[:] Secondary positions may not interfere with the efficient performance of the employee's primary position or create a conflict of interest. An employee in dual employment status shall comply with conditions outlined in R477-9-2(1).

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KEY: compensatory time, disability insurance, leave, vacations
[~~July 5, 2000~~]July 3, 2001 **63-13-2**
Notice of Continuation July 1, 1997 **67-19-6**
67-19-6.7
67-19-12.5
67-19-12-9

Human Resource Management, Administration
R477-10
Employee Development

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23776
FILED: 05/15/2001, 16:29
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments to this rule make changes to the policy on corrective action and education assistance and implement the provisions of H.B. 340, Public Safety Officer Education Requirements, Section 67-19-12.4.

SUMMARY OF THE RULE OR CHANGE: Subsection R477-10-2(1), Corrective Action: An employee on corrective action will now have the right to submit written comment. Subsection R477-10-5(1)(d), Education Assistance: The maximum education assistance an employee may receive in a year without agency head approval is raised from $2,500 to $3,500. Subsection R477-10-5(3), Education Assistance: This new subsection implements Subsection 67-19-12.4, enacted by H.B. 340, Public Safety Officer Education Requirements. (**DAR Note:** H.B. 340 can be found at 2001 Utah Laws 231 and was effective April 30, 2001.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-19-6 and 67-19-12.4

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: The education assistance program is discretionary for agencies. We do not anticipate that agencies will spend a larger proportion of their budget under these new guidelines than in previous years. However, the legislature estimated a fiscal impact of $266,000 to implement H.B. 340.
❖LOCAL GOVERNMENTS: No cost or savings because this rule only impacts the executive branch of state government.
❖OTHER PERSONS: No cost or savings because this rule only impacts the executive branch of state government.
COMPLIANCE COSTS FOR AFFECTED PERSONS: No additional resources will be necessary to comply with these amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by 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. Section 67-19-15 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 saving on to businesses through fees.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Human Resource Management
Administration
2120 State Office Building
Salt Lake City, UT 84114, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Conroy Whipple at the above address, by phone at (801) 538-3067, by FAX at (801) 538-3081, or by Internet E-mail at pedhrm.cwhipple@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 07/02/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 07/03/2001

AUTHORIZED BY: Conroy Whipple, Legislation and Planning Coordinator

R477. Human Resource Management, Administration.
R477-10. Employee Development.

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R477-10-2. Corrective Action[s].

When an employee's performance does not meet established standards due to failure to maintain skills, incompetency, or inefficiency, agency management shall take appropriate, documented, and clearly labeled corrective action in accordance with the following rules:

(1) The supervisor shall discuss the substandard performance with the employee to discover the reasons[~~ for poor performance~~] and to develop an appropriate written corrective action plan. The employee shall sign the written corrective action plan to certify that he has reviewed it. Refusal to sign the corrective action shall constitute insubordination subject to discipline. An employee shall have the right to submit written comment to accompany the corrective action plan.

(a) Corrective actions shall include one or more of the following:

(i) Closer supervision

(ii) Training

(iii) Referral for personal counseling by an agency head's approved designee

(iv) Reassignment

(v) Use of appropriate leave

(vi) Career counseling and out-placement

(vii) Period of constant review

(viii) Opportunity for remediation

(ix) Written warnings

(2) The supervisor shall designate an appropriate corrective action period and shall provide frequent evaluation of the employee's progress.

(3) If, after reasonable effort, the corrective actions taken do not result in improved performance that is satisfactory,the employee shall be disciplined according to R477-11. The written record of the corrective action shall satisfy the requirement of Section 67-19-18(1).

(4) DHRM shall provide assistance to agency management upon request.

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R477-10-5. Education Assistance.

State agencies may assist employees in their educational goals by granting employees administrative leave to attend classes and/or a subsidy of educational expenses.

(1) Prior to granting education assistance, agencies shall establish policies which shall include the following conditions:

(a) The educational program will provide a benefit to the state.

(b) The employee shall successfully complete the required course work or the educational requirements of a program.

(c) The employee shall agree to repay any assistance received if the employee voluntarily terminates within 12 months of completing educational work.

(d) Education assistance shall not exceed [~~$2,500~~]$3,500 per employee in any one fiscal year unless approved in advance by the agency head.

(2) Agency management shall be responsible for determining the taxable/non-taxable status of educational assistance reimbursements.

(3) Agencies may offer educational assistance to law enforcement and correctional officers consistent with section 67-19-12.4 and with these criteria:

(a) The program shall comply with R477-10-5(1) and R477-10-5(2).

(b) The program shall be published and available to all qualified employees. To qualify:

(i) The employee's job duties shall satisfy the conditions of subsection 67-19-12.4 (1).

(ii) The employee shall have completed probation.

(iii) The employee shall maintain a grade point average of at least 3.0 or equivalent from an accredited college or university.

(c) The program may provide additional compensation for employees who complete a higher degree on or after April 30, 2001 in a subject area directly related to the employee's duties. If this policy is adopted, then:

(i) Two steps shall be given for an associate's degree.

(ii) Two steps shall be given for a bachelor's degree.

(iii) Two steps shall be given for a master's degree.

KEY: educational tuition, employee performance evaluation, employee productivity, training programs
[~~July 5, 2000~~]July 3, 2001 **67-19-6**
Notice of Continuation July 1, 1997 **67-19-12.4**

◆ ◆

Human Resource Management, Administration
R477-11
Discipline

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23777
FILED: 05/15/2001, 16:29
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments to this rule establish new guidelines for managers when disciplining employees and when conducting predisciplinary hearings.

SUMMARY OF THE RULE OR CHANGE: Subsection R477-11-1(2), Disciplinary Action: Amendments clarify the responsibility of management to inform employees of proposed discipline and

the reasons. Subsection R477-11-1(3)(e), Disciplinary Action: This subsection is moved to the end of the rule at Section R477-11-3, Discretionary Factors, it becomes a separate section that has application for all of this rule and not just Subsection R477-11-1(1). Subsection R477-11-2(2)(c) through Subsection R477-11-2(2)(e): New language in these paragraphs and subparagraphs set procedures for conducting predismissal or demotion hearings. It also replaces language governing record keeping eliminated from Subsection R477-2-5(9).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-19-6 and 67-19-18; and Title 63, Chapter 2

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: There will be no additional costs associated with the implementation of these amendments. These changes simply clarify two employee rights in the disciplinary process and transfer language removed from Subsection R477-2-5(9) to this rule. Neither of these adjustments require agencies to change their disciplinary processes in any dramatic way.
❖LOCAL GOVERNMENTS: No cost or savings because this rule only impacts the executive branch of state government.
❖OTHER PERSONS: No cost or savings because this rule only impacts the executive branch of state government.
COMPLIANCE COSTS FOR AFFECTED PERSONS: No additional resources will be needed to comply with these amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by 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. Section 67-19-15 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 saving on to businesses through fees.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Human Resource Management
Administration
2120 State Office Building
Salt Lake City, UT 84114, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Conroy Whipple at the above address, by phone at (801) 538-3067, by FAX at (801) 538-3081, or by Internet E-mail at pedhrm.cwhipple@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 07/02/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 07/03/2001

AUTHORIZED BY: Conroy Whipple, Legislation and Planning Coordinator

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R477. Human Resource Management, Administration.
R477-11. Discipline.
R477-11-1. Disciplinary Action.

(1) Agency management may discipline any employee for any of the following causes or reasons:

(a) noncompliance with these rules, agency or other applicable policies, including but not limited to safety policies, agency professional standards and workplace policies;

(b) work performance that is inefficient or incompetent;

(c) failure to maintain skills and adequate performance levels;

(d) insubordination or disloyalty to the orders of a superior;

(e) misfeasance, malfeasance, nonfeasance or failure to advance the good of the public service;

(f) any incident involving intimidation, physical harm or threats of physical harm against co-workers, management, or the public;

(g) no longer meets the requirements of the position.

(2) All disciplinary actions of career service employees shall be governed by principles of due process and Title 67, Chapter 19a. In all such cases, except as provided under Subsection 67-19-18(4), the disciplinary process shall include all of the following:

(a) The agency representative notifies the employee in writing of the proposed discipline and the underlying reasons supporting the intended action.

(b) The employee's reply must be received within five working days in order to have the agency representative consider the reply before discipline is imposed.

(c) If an employee waives the right to respond or does not reply within the time frame established by the agency representative or within five days, whichever is longer, discipline may be imposed in accordance with these rules.

(3) After a career service employee has been informed of the reasons for the proposed discipline and has been given an opportunity to respond and be responded to, the agency representative may discipline that employee, or any non-career service employee not subject to the same procedural rights, by imposing one or more of the following:

(a) Written reprimand

(b) Suspension without pay up to 30 calendar days per incident requiring discipline

(c) Demotion of any employee through one of the following methods:

(i) An employee may be moved from a position in one job to a position in another job having a lower maximum[~~entrance~~] salary range[~~if the duties of the position have been reduced for disciplinary reasons~~].

(ii) A demotion within the employee's current pay range may be accomplished by lowering the employee's salary rate back on the range, as determined by the agency head or designee.

(d) Dismissal

(i) An agency head shall dismiss or demote a career service employee only in accordance with the provision's of Subsection 67-19-18(5) and R477-11-2.[

~~(e) When deciding the specific type and severity of the discipline to administer to any employee, the agency representative may consider the following factors:~~
~~(i) Consistent application of rules and standards~~
~~(ii) Prior knowledge of rules and standards~~
~~(iii) The severity of the infraction~~
~~(iv) The repeated nature of violations~~
~~(v) Prior disciplinary/corrective actions~~
~~(vi) Previous oral warnings, written warnings and discussions~~
~~(vii) The employee's past work record~~
~~(viii) The effect on agency operations~~
~~(ix) The potential of the violations for causing damage to persons or property.~~]

(4) If an agency determines that a career service employee endangers or threatens the peace and safety of others or poses a grave threat to the public service or is charged with aggravated or repeated misconduct, the agency may impose the following actions, as provided by subsection 67-19-18-(4), pending an investigation and determination of facts:

(a) Paid administrative leave

(b) Temporary reassignment to another position or work location at the same rate of pay

(5) At the time disciplinary action is imposed, the employee shall be notified in writing of the discipline, the reasons for the discipline, the effective date and length of the discipline.

(6) Disciplinary actions are subject to the grievance and appeals procedure as provided by law for career service employees only. The employee and the agency representative may agree in writing to waive or extend any grievance step, or the time limits specified for any grievance step.

R477-11-2. Dismissal or Demotion.

An employee may be dismissed or demoted for cause as explained under R477-10-2 and R477-11-1, and through the process outlined in this rule.

(1) An agency head or appointing officer may dismiss or demote a non-career service status employee without right of appeal by providing written notification to the employee specifying the reasons for the dismissal or demotion and the effective date.

(2) No 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 R137-1-13 and Title 67, Chapter 19a and the following procedures:

(a) The agency head or designee shall notify the employee in writing of the specific reasons for the proposed dismissal or demotion.

(b) The employee shall have up to five working days to reply. The employee must reply within five working days for the agency representative to consider the reply before discipline is imposed.

(c) The employee shall have an opportunity to be heard by the agency head or designee. The hearing before the department head or designee shall be strictly limited to the specific reasons raised in the notice of intent to demote or dismiss.

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 Chapter 63-2 the Governmental Access and Records Management Act.

(d) [~~Following a hearing, if the agency head finds adequate cause or reason, an employee may be dismissed or demoted.~~]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 suspend an employee with pay pending the administrative appeal to the agency head.

R477-11-3. Discretionary Factors.

(1) When deciding the specific type and severity of discipline, the agency head or representative may consider the following factors:

(a) Consistent application of rules and standards

(b) Prior knowledge of rules and standards

(c) The severity of the infraction

(d) The repeated nature of violations

(e) Prior disciplinary/corrective actions

(f) Previous oral warnings, written warnings and discussions

(g) The employee's past work record

(h) The effect on agency operations

(i) The potential of the violations for causing damage to persons or property.

KEY: discipline of employees, dismissal of employees, grievances, government hearings

[~~July 5, 2000~~]July 3, 2001	**67-19-6**
Notice of Continuation July 1, 1997	**67-19-18**
	63-2

Human Resource Management, Administration
R477-14
Substance Abuse and Drug-Free Workplace

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23778
FILED: 05/15/2001, 16:29
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments are designed to: distinguish more precisely between safety-sensitive positions and non-safety-sensitive

positions for testing standards, and clarify disciplinary options for management.

SUMMARY OF THE RULE OR CHANGE: Subsection R477-14-1(3), Rules Governing a Drug-free Workplace: Language within Subsection R477-14-1(3) is rearranged to clarify which standards apply to safety-sensitive positions and which apply to non-safety-sensitive positions. For safety-sensitive positions, the federal standards will apply. Section R477-14-2, Management Action: New language to Section R477-14-2 strengthens management's hand in disciplining employees who violate the drug free workplace rules and provides for the employee to pay for any rehabilitation that is required in the discipline. This is consistent with Section 67-19-38.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-19-6, 67-19-18, 67-19-37, and 67-19-38

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: These amendments clarify the standards to employ for drug and alcohol tests of certain employees and place language from the code into rule. Neither of these require agencies to adjust procedures or testing programs and have no fiscal impact.
❖LOCAL GOVERNMENTS: No cost or savings because this rule only impacts the executive branch of state government.
❖OTHER PERSONS: No cost or savings because this rule only impacts the executive branch of state government.
COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no policy changes in these amendments and thus no compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by 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. Section 67-19-15 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 saving on to businesses through fees.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Human Resource Management
Administration
2120 State Office Building
Salt Lake City, UT 84114, or
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DIRECT QUESTIONS REGARDING THIS RULE TO:
Conroy Whipple at the above address, by phone at (801) 538-3067, by FAX at (801) 538-3081, or by Internet E-mail at pedhrm.cwhipple@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 07/02/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 07/03/2001

AUTHORIZED BY: Conroy Whipple, Legislation and Planning Coordinator

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R477. Human Resource Management, Administration.
R477-14. Substance Abuse and Drug-Free Workplace.
R477-14-1. Rules Governing a Drug-Free Workplace.

(1) This rule implements the federal Drug-Free Workplace Act of 1988, Omnibus Transportational Employee Testing Act of 1991, 49 USC 2505; 49 USC 2701; and 49 USC 3102, and Section 67-19-36 authorizing drug and alcohol testing, in order to:

(a) Provide a safe and productive work environment that is free from the effect of unlawful use, distribution, dispensing, manufacture, and possession of controlled substances or alcohol use during work hours. See the Federal Controlled Substance Act, 41 USC 701.

(b) Identify, correct and remove the effects of drug and alcohol abuse on job performance.

(c) Assure the protection and safety of employees and the public.

(2) State employees may not unlawfully manufacture, dispense, possess, distribute or use any controlled substance or alcohol during working hours, on state property or while operating a state vehicle at any time or other vehicle while on duty except where legally permissible.

(a) Employees shall follow R477-14-1(2) outside of work if any violations directly affect the eligibility of state agencies to receive federal grants or to qualify for federal contracts of $25,000 or more.

(3) When, during work hours, there is reasonable suspicion that an employee is using or is impaired through the use of a controlled substance or alcohol unlawfully, an employee may be required to submit to medically accepted testing procedures to determine whether the employee is using a controlled substance or alcohol in violation of federal or state law.

(a) All drug or alcohol testing shall be conducted by a federally certified or licensed physician or clinic, or testing service approved by DHRM.

(b) Drug and alcohol tests with positive results or a possible false positive result shall require a confirmation test.

(c) For employees in non-safety sensitive positions [~~T~~]the State of Utah will use the same cut off levels for positive drug [~~and alcohol~~]tests as the federal government. This rule incorporates by reference the requirements of 49CFR40.29(1999), Laboratory Analysis Procedures[~~;~~].[~~49CFR382.107(1999), Definitions, 49CFR382.201(1999), Alcohol Concentration and 49CFR382.505(1999), Other Alcohol Related Conduct.~~]

(d) For employees in non-safety sensitive positions, the State of Utah will use a blood alcohol concentration level .08 as the cut off for a positive alcohol test.

(e) For employees in safety sensitive positons, the State of Utah will use the same cut off levels for positive drug and alcohol tests as the federal government. This rule incorporates by reference the requirements of 42CFR40.29(1999), Laboratory Analysis Procedures, 49CFR382.107 (1999), Definitions, 49CFR382.201(1999), Alcohol Concentration and 49CFR382.505 (1999), Other Alcohol Related Conduct.

([~~d~~]f) Management may take corrective or disciplinary action if:

(i) There is a positive confirmation test for controlled substances;

(ii) Results of a confirmation test for alcohol meets or exceeds the established alcohol concentration cutoff level.

(iii) Management determines an employee is unable to perform his assigned job tasks, even when the results of a confirmation test for alcohol shows less than the established alcohol concentration cutoff level.

(4) Employees in safety sensitive positions, as approved by DHRM, are subject to drug or alcohol testing without justification of reasonable suspicion or critical incident. Random drug testing of employees in safety sensitive positions shall be conducted by the employing agency as authorized by the Executive Director in DHRM.

(a) Employees in safety sensitive positions whose confirmation test for alcohol results are .02 or greater, when tested before, during, or immediately after performing safety sensitive functions, must be removed from performing safety sensitive duties for 8 hours, or until another test is administered and the result is less than .02.

(b) Employees in safety sensitive positions whose confirmation test for alcohol results are .04 or greater when tested before, during or after performing safety sensitive duties, may be subject to corrective action or discipline.

(5) Agencies with employees in positions requiring a commercial driver license shall administer testing and prohibition requirements and conduct training on these requirements as outlined in the current DHRM Drug and Alcohol Testing Manual.

(6) The agency's Human Resource Office or authorized official shall keep a separate, private record of drug or alcohol test results. The employee's official personnel file shall only contain a document making reference to the existence of the drug or alcohol test record.

R477-14-2. Management Action.

(1) Pursuant to R477-10, R477-11 and R477-14-2, supervisors and managers who receive notice of a workplace violation of these rules shall take immediate action.

(2) Management may take disciplinary action which may include termination.

(3) An employee who refuses to submit to drug or alcohol testing may be subject to disciplinary action which may include termination. See Section 67-19-33.

(4) An employee who substitutes, adulterates, or otherwise tampers with[~~attempts to substitute or adulterate~~] a drug or alcohol testing sample or attempts to do so is subject to disciplinary action which may include termination.

(5) Management may also take disciplinary action against employees who manufacture, dispense, possess, use, sell or distribute controlled substances or use alcohol, per R477-11, under the following conditions:

(a) If the employee's action directly affects the eligibility of the agency to receive grants or contracts in excess of $25,000.00.

(b) If the employee's action puts employees, clients, customers, patients or co-workers at physical risk.

(6) An employee who has a confirmed positive test for use of a controlled substance or alcohol in violation of these rules may be [~~offered the option of~~]required to participate[~~ing~~] at his expense in a rehabilitation program, as provided for in section 67-19-38.(3)[~~; in lieu of disciplinary action. This option is at agency discretion. If the employee accepts the offer tendered by management to participate in such a program in lieu of disciplinary action,~~]. If this is required, the following shall apply:

(a) An employee participating in a rehabilitation program shall be granted accrued leave or leave without pay for inpatient treatment.

(b) The employee must sign a release to allow the transmittal of verbal or written compliance reports between the state agency and the inpatient or outpatient rehabilitation program provider.

(c) All communication shall be classified as private in accordance with Title 63, Chapter 2.

(d) An employee may be required to continue participation in an outpatient rehabilitation program prescribed by a licensed practitioner on the employee's own time and expense.

(e) An employee, upon successful completion of a rehabilitation program shall be reinstated to work in his previously held position, or a position with a comparable or lower salary range.

(7) An employee who fails to complete the prescribed treatment without a valid reason shall be subject to disciplinary action.

(8) An employee who has a confirmed positive test for use of a controlled substance or alcohol is subject to follow up testing.

(9) An employee who is convicted under federal or state criminal statute which regulates manufacturing, distributing, dispensing, possessing selling or using a controlled substance for a violation occurring in the workplace shall notify the agency head of the conviction no later than 5 calendar days after the conviction.

(a) The agency head shall notify the federal grantor or agency for which a contract is being performed within ten calendar days of receiving notice from:

(i) the judicial system,

(ii) other sources,

(iii) an employee performing work under the grant or contract who has been convicted of a controlled substance violation in the workplace.

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KEY: personnel management, drug/alcohol education, drug abuse, discipline of employees

[~~July 5, 2000~~]July 3, 2001	**67-19-6**
Notice of Continuation December 27, 1996	**67-19-18**
	67-19-34
	67-19-38

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Human Resource Management, Administration

R477-15

Unlawful Harassment Policy and Procedure

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23779
FILED: 05/15/2001, 16:29
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Place procedures in rule that will help the state to establish an affirmative defense in unlawful harassment grievances.

SUMMARY OF THE RULE OR CHANGE: Section R477-15-4, Complaint Procedure: Amendments modify the complaint process for unlawful harassment situations to more fully reflect Title VII of the Civil Rights Act.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-19-6 and 67-19-18

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: These amendments are designed to avoid legal costs in the future. It is impossible to predict what the savings may be.
❖LOCAL GOVERNMENTS: No cost or savings because this rule only impacts the executive branch of state government.
❖OTHER PERSONS: No cost or savings because this rule only impacts the executive branch of state government.
COMPLIANCE COSTS FOR AFFECTED PERSONS: No additional compliance burden is placed on agencies with these amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by 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. Section 67-19-15 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 saving on to businesses through fees.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Human Resource Management
Administration
2120 State Office Building
Salt Lake City, UT 84114, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Conroy Whipple at the above address, by phone at (801) 538-3067, by FAX at (801) 538-3081, or by Internet E-mail at pedhrm.cwhipple@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 07/02/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 07/03/2001

AUTHORIZED BY: Conroy Whipple, Legislation and Planning Coordinator

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R477. Human Resource Management, Administration.
R477-15. Unlawful Harassment Policy and Procedure.

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R477-15-4. Complaint Procedure.

Individuals affected by unlawful harassment may file complaints and engage in an administrative process free from bias, collusion, intimidation or retaliation.

(1) Individuals who feel they are being subjected to unlawful harassment should do the following:

(a) [~~continue to report to work,~~]document the occurrence;

(b) [~~verbalize disapproval of the action to the perpetrator and demand that it cease,~~]continue to report to work;

(c) [~~document the occurrence,~~]identify a witness if applicable;

([~~d~~]2) An employee may[~~identify a witness.~~] file an oral or written complaint of unlawful harassment with their immediate supervisor, any other supervisor within their direct chain of command, the Agency or Department's Human Resource Office or the Department of Human Resource Management.

(3) [~~A complaint of unlawful harassment may be submitted in accordance with an agency's approved complaint procedure, directly to DHRM or the Anti-Discrimination and Labor Division (UALD) or the Equal Employment Opportunity Commission.~~]Any compliant of unlawful harassment shall be acted upon following receipt of the complaint

(a) Complaints may be submitted by any individual, witness, volunteer or other employee.

(b) Complaints may be made through either verbal or written notification and shall be handled in compliance with confidentiality guidelines.

(c) Any supervisor who has knowledge of unlawful harassment shall take immediate, appropriate action and document the actions.[

~~(3) Any complaint of unlawful harassment must be acted upon following receipt of the complaint.~~]

(4) If an immediate investigation by the agency is not warranted, a meeting shall be held with the complainant, the supervisor or manager of the appropriate division, and others as appropriate to communicate the findings and management's resolution of the complaint.

. . . . . .

KEY: administrative procedures, hostile work environment*
[~~July 5, 2000~~]July 3, 2001 **67-19-6**
Notice of Continuation July 1, 1997 **67-19-18**
Governor's Executive Order on Sexual Harassment, March 17, 1993

Human Services, Substance Abuse
R544-4
Utah Standards for Approval of Alcohol and Drug Educational Programs for Court-Referred DUI Offenders

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23732
FILED: 05/07/2001, 08:24
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To require all programs to have the same level of confidentiality for their files concerning Driving Under Influence (DUI) Offenders.

SUMMARY OF THE RULE OR CHANGE: To require that all programs adhere to 42 CFR Chapter I Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records. Currently only federally-assisted programs have to comply with this federal regulation, but the division requests all agencies who work with them to comply with this federal regulation.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 41-6-44, 62A-8-103, 62A-8-107, and 62A-8-301 to 62A-8-303

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: None--There is no anticipated cost to the State because this change will not require any more work.
❖LOCAL GOVERNMENTS: None--There is no cost or savings because local governments have no involvement with these regulations.
❖OTHER PERSONS: Will have no effect upon anyone except those who offer DUI classes. This amount will be minimal to the offerors of DUI classes and is not known because the cost to modify a possible noncomplying confidentiality policy by each program is not known. The reason the cost is minimal is because all the agency needs to do is institute a policy that says we will comply with the requirements of 42 CFR Chapter I Part 2.
COMPLIANCE COSTS FOR AFFECTED PERSONS: This should require little or no increased cost to any program. Most of the providers now adhere to this regulation. Those that do not now adhere to it will not be required to make more than minimal outlays to be in compliance.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No anticipated costs have been identified in relation to this change.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Human Services
Substance Abuse
Room 201, Human Services Building
120 North 200 West
Salt Lake City, UT 84103, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Douglas M. Cox at the above address, by phone at (801) 538-3939, by FAX at (801) 538-4696, or by Internet E-mail at dcox@hs.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 07/02/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 07/03/2001

AUTHORIZED BY: Patrick Fleming, Director

R544. Human Services, Substance Abuse.
R544-4. Utah Standards for Approval of Alcohol and Drug Educational Programs for Court-Referred DUI Offenders.

. . . . . .

R544-4-3. Certification Requirements for DUI Educational Programs.

A. In order to operate, a DUI Educational Program shall make application to the Division at least 60 days prior to the planned effective date. The Division will provide the application form.

B. Application for certification will require that the program provide, among other things:

1. a brief description and purpose of program, plus explanation of program's relationship with other components of the local DUI system, i.e., Local Substance Abuse Authorities, local courts, police, Probation and Parole, Alcoholics or Narcotics Anonymous, etc.,

2. the geographical area to be served,

3. the ownership and person or group responsible for program operation,

4. the location and time that DUI classes are normally held,

5. a list of instructors employed by the program, and

6. a copy of their substance abuse treatment license.

C. A DUI Educational Program shall also:

1. ensure that offenders receive no less than 16 hours of face-to-face instruction using the Division's approved curriculum with no more than 4 hours of instruction occurring in any calendar day.

2. allow no more than 25 persons, including offenders and others to a class,

3. follow the recommendations of the screening which has been provided,

4. ensure that screenings are conducted by staff from a licensed treatment program who have been trained in administering the screening tool,

5. report the number of offenders completing the DUI Educational Program to the Division,

6. have policies ensuring confidentiality of information maintained on offenders that conform to the requirements in 42 Code of Federal Regulations Chapter I Part 2,

7. ensure that instructors follow the Division-approved curriculum,

8. have available for review a copy of the program's charter, constitution, or bylaws,

9. outline the eligibility criteria for admission to the program, including the screening tool used,

10. ensure that all instructors employed by the program have completed the Division required DUI training/certification and

11. comply with all applicable local, state and federal laws and regulations.

D. An offender's participation in the DUI Educational Program shall not be a substitute for treatment required by the courts.

E. The Division shall issue the program a certificate after determination has been made that the applicant is in compliance with these standards.

F. The Division Director has the authority to grant exceptions to any of the certification requirements.

. . . . . .

KEY: DUI programs, certification of instructors

[~~November 20, 2000~~]2001	**41-6-44**
Notice of Continuation June 25, 1997	**62A-8-103**
	17A-3-701
	73-18-12.1-2

Insurance, Administration
R590-155
Disclosure of Life and Disability Guaranty Association Limitations

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23765
FILED: 05/15/2001, 15:17
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes to this rule have been made to comply with legislation passed in the 2001 Legislative Session in the form of H.B. 109, Amendments to the Insurance Law.
(**DAR Note:** H.B. 109 can be found at 2001 Utah Laws 161 and was effective April 30, 2001.)

SUMMARY OF THE RULE OR CHANGE: The caps have been increased on the amount that the Utah Life and Disability Guaranty Association will pay.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201 and 31A-28-119

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: This change will not result in an additional or reduced workload for the department nor will it result in additional revenue or expense.
❖LOCAL GOVERNMENTS: This rule will not affect local government. The rule is regulated by a state government agency to which all fees are paid by its licensees.
❖OTHER PERSONS: Accident and health and life companies will have to file new disclosure forms reflecting the change in caps. This will be a charge of $20 per filing. In addition the companies will have to print the new forms.
COMPLIANCE COSTS FOR AFFECTED PERSONS: Accident and health and life companies will have to file new disclosure forms reflecting the change in caps. This will be a charge of $20 per filing. In addition the companies will have to print the new forms.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The additional costs imposed by this rule change are minimal to insurers.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Insurance
Administration
3110 State Office Building
Salt Lake City, UT 84114, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jilene Whitby at the above address, by phone at (801) 538-3803, by FAX at (801) 538-3829, or by Internet E-mail at idmain.jwhitby@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 07/02/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 08/20/2001

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-155. Disclosure of Life and [~~Disability~~]Health Guaranty Association Limitations.
R590-155-1. Authority.

This rule is promulgated pursuant to Subsection 31A-2-201(3)(a)[~~, Utah Code (U.C.)~~], in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title and pursuant to the specific authority of Subsection 31A-28-119(4)[~~, U.C.~~], to provide guidelines to enable insurers to comply with the requirement to disclose to insureds the extent that contractual guarantees are not covered or have limited coverage by the Utah Life and [~~Disability~~]Health Guaranty Association.

R590-155-2. Purpose and Scope.

A. The purpose of this rule is to specify the form and content of the summary document for insurers to disclose to insureds the

extent that contractual guarantees are not covered or have limited coverage by the Utah Life and [~~Disability~~]Health Guaranty Association as required by Section 31A-28-119[~~, U.C~~].

B. The rule shall apply to all insurance transactions in this state involving direct life and [~~disability~~]health insurance policies and annuity contracts as specified in Subsection 31A-28-103(2)[~~, U.C~~].

R590-155-3. Rule.

A. An insurer authorized to do business in this state, which is subject to the Utah Life and [~~Disability~~]Health Insurance Guaranty Association Act, shall disclose to its policy or contract holders that its contractual guarantees may not be covered by the Utah Life and [~~Disability~~]Health Insurance Guaranty Association.

B. For the purpose of this rule, the statutory term "policy or contract holders" shall also mean insureds or certificate holders of group policies.

C. Disclosure shall be made in writing using the Utah Insurance Department summary document entitled "Utah Life and Disability Insurance Guaranty Association, Notice to Policyholders," as follows:

TABLE

NOTICE TO POLICYHOLDERS
(Boldface Type)

Insurance companies licensed to sell life insurance, health insurance, or annuities in the State of Utah are required by law to be members of an organization called the Utah Life and [~~Disability~~]Health Insurance Guaranty Association ("[~~ULDIGA~~]ULHIGA"). If an insurance company that is licensed to sell insurance in Utah becomes insolvent (bankrupt), and is unable to pay claims to its policyholders, the law requires [~~ULDIGA~~]ULHIGA to pay some of the insurance company's claims. The purpose of this notice is to briefly describe some of the benefits and limitations provided to Utah insureds by [~~ULDIGA~~]ULHIGA.

PEOPLE ENTITLED TO COVERAGE
(Boldface Type)

You must be a Utah resident

You must have insurance coverage under an individual or group policy.

POLICIES COVERED
(Boldface Type)

[~~ULDIGA~~]ULHIGA provides coverage for certain life, disability (health) and annuity insurance policies.

EXCLUSIONS AND LIMITATIONS
(Boldface Type)

Several kinds of insurance policies are specifically excluded from coverage. There are also a number of limitations to coverage. The following are not covered by [~~ULDIGA~~]ULHIGA:

Coverage through an HMO

Coverage by insurance companies not licensed in Utah.

Self-funded and self-insured coverage provided by an employer that is only administered by an insurance company.

Policies protected by another state's guaranty association.

Policies where the insurance company does not guarantee the benefits.

Policies where the policyholder bears the risk under the policy.

Re-insurance contracts.

Annuity policies that are not issued to and owned by an individual, unless the annuity policy is issued to a pension benefit plan that is covered.

Policies issued to pension benefit plans protected by the Federal Pension Benefit Guaranty Corporation.

Policies issued to entities that are not members of [~~ULDIGA~~]ULHIGA, including health plans, fraternal benefit societies, state pooling plans and mutual assessment companies.

LIMITS ON AMOUNT OF COVERAGE
(Boldface Type)

Caps are placed on the amount [~~ULDIGA~~]ULHIGA will pay. These caps apply even if you are insured by more than one policy issued by the insolvent company. The maximum [~~ULDIGA~~]ULHIGA will pay is the amount of your coverage or [~~$300,000~~]$500,000 -- whichever is lower. Other caps also apply:

[~~$100,000~~]$200,000 in net cash surrender values.

[~~$300,000~~]$500,000 in life insurance death benefits (including cash surrender values).

[~~$100,000~~]$500,000 in disability (health) insurance benefits.

[~~$100,000~~]$200,000 in annuity benefits -- if the annuity is issued to and owned by an individual or the annuity is issued to a pension plan covering government employees.

$5,000,000 in annuity benefits to the contract holder of annuities issued to pension plans covered by the law. (Other limitations apply).

Interest rates on some policies may be adjusted downward.

DISCLAIMER
(Boldface Type
to, but not to include, the
two addresses at the end.)

PLEASE READ CAREFULLY:

COVERAGE FROM [~~ULDIGA~~]ULHIGA MAY BE UNAVAILABLE UNDER THIS POLICY. OR, IF AVAILABLE, IT MAY BE SUBJECT TO SUBSTANTIAL LIMITATIONS OR EXCLUSIONS. THE DESCRIPTION OF COVERAGES CONTAINED IN THIS DOCUMENT IS AN OVERVIEW. IT IS NOT A COMPLETE DESCRIPTION. YOU CANNOT RELY ON THIS DOCUMENT AS A DESCRIPTION OF COVERAGE. FOR A COMPLETE DESCRIPTION OF COVERAGE, CONSULT THE UTAH CODE, TITLE 31A, CHAPTER 28.

COVERAGE IS CONDITIONED ON CONTINUED RESIDENCY IN THE STATE OF UTAH.

THE PROTECTION THAT MAY BE PROVIDED BY [~~ULDIGA~~]ULHIGA IS NOT A SUBSTITUTE FOR CONSUMERS' CARE IN SELECTING AN INSURANCE COMPANY THAT IS WELL-MANAGED AND FINANCIALLY STABLE.

INSURANCE COMPANIES AND INSURANCE AGENTS ARE REQUIRED BY LAW TO GIVE YOU THIS NOTICE. THE LAW DOES, HOWEVER, PROHIBIT THEM FROM USING THE EXISTENCE OF [~~ULDIGA~~]ULHIGA AS AN INDUCEMENT TO SELL YOU INSURANCE.

THE ADDRESS OF [~~ULDIGA~~]ULHIGA, AND THE INSURANCE DEPARTMENT ARE PROVIDED BELOW.

Utah Life and [~~Disability~~]Health Insurance Guaranty Association, 955 E. Pioneer Rd., Draper, Utah 84020

Utah Insurance Department, State Office Building, Room 3110, Salt Lake City, Utah 84114

D. Disclosure shall be given by the time of delivery of the policy, contract, or certificate. The summary shall also be available upon request by a policy or contract holder.

E. As provided under Subsection 31A-21-201(3)[~~, U.C.~~], each insurer shall file a copy of the form.

R590-155-4. Severability.

If any provision or clause of this rule or the application of it to any person is for any reason held to be invalid, the remainder of the rule and the application of any provisions to other persons or circumstances shall not be affected.

R590-155-5. Compliance Date.

This rule is in effect on the date stated in the Notice of Effective Date form relating to this rule that the department files with the Division of Administrative Rules (the "effective date". The effective date will follow a period of 45 days during which interested parties will have time to prepare to be in compliance with

this rule. It will also be the date on which the department will begin enforcing this rule. The Notice of Effective Date form is published in the Utah State Bulletin, a publication of the Division of Administrative Rules. The Utah State Bulletin is found at the website, www.rules.state.ut.us. In addition, the effective date may be found at the department's website, www.insurance.state.ut.us, by clicking on "Industry Resources" and then "Rules" and scrolling down to the appropriate reference to the rule.

KEY: insurance
[~~1993~~]2001 **31A-2-201**
Notice of Continuation March 27, 1998 **31A-28-119**

Labor Commission, Industrial Accidents
R612-2-5
Regulation of Medical Practitioner Fees

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23746
FILED: 05/14/2001, 08:44
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment corrects an anomaly in the existing rule. The existing rule pays physicians the same rate for medical procedures whether the procedure is performed in the physician's office or in a facility such as a hospital or surgical center. When a medical procedure is performed in a physician's office, it is appropriate to pay the physician at a higher rate in order to cover the physician's costs for staff, equipment, and supplies. However, the physician is not required to cover such costs when the procedure is performed at a hospital or surgical center. In such circumstances, it is appropriate to reduce the physician's payment rate and provide for a separate payment to the facility to cover its costs.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment adds language to the existing rule to distinguish between payment rates for medical procedures performed in facilities and procedures performed in physicians' offices.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 34A-2-101, 34A-3-101, and 34A-1-104

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: The Labor Commission anticipates no cost or savings to the state budget, either with respect to the Commission's expenses in administering the workers' compensation program or in the state's capacity as an employer.
❖LOCAL GOVERNMENTS: The Labor Commission anticipates no net cost or savings to local governments in their capacity as employers.
❖OTHER PERSONS: In the aggregate, the proposed rule will shift some payments for medical care from physicians to facilities such as hospitals and surgical centers. The Commission is unable to quantify with any substantial accuracy the actual dollar amount of this shift.
COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed rule does not impose any additional record-keeping or other compliance requirements on affected persons. Consequently, the Labor Commission anticipates no additional compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment will more closely match payments for the medical care of injured workers with reimbursements for workers' compensation medical care with the entity providing such care. It will reduce physician reimbursement rates in those cases where a higher rate is not justified and transfer such reimbursements to hospitals and surgical centers to allow them to recover their costs of service. It will also prevent employers/insurance carriers from being billed by both the physician and the facility for what are essentially the same services.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Labor Commission
Industrial Accidents
Third Floor, Heber M. Wells Building
160 East 300 South
PO Box 146610
Salt Lake City, UT 84114-6610, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Joyce Sewell at the above address, by phone at (801) 530-6988, by FAX at (801) 530-6804, or by Internet E-mail at icmain.jsewell@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 07/02/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 07/03/2001

AUTHORIZED BY: R. Lee Ellertson, Commissioner

R612. Labor Commission, Industrial Accidents.
R612-2. Workers' Compensation Rules-Health Care Providers.
R612-2-5. Regulation of Medical Practitioner Fees.

Pursuant to Section 34A-2-407:

A. The Labor Commission of Utah:

1. Establishes and regulates fees and other charges for medical, surgical, nursing, physical and occupational therapy, mental health, chiropractic, naturopathic, and osteopathic services, or any other area of the healing arts as required for the treatment of an industrially injured employee.

2. Adopts and by this reference incorporates[~~ the non facility total unit value of~~] the National Health Care Financing Administration's (HCFA) "Resource-Based Relative Value Scale" (RBRVS), 2001 edition, as the method for calculating reimbursement and the American Medical Association's CPT-4, 2001 edition, coding guidelines. The non-facility total unit value will apply in calculating the reimbursement, except that procedures provided in a facility setting shall be reimbursed at the facility total unit value and the facility may bill a separate facility charge. The CPT-4 coding guidelines are subject to the Utah Labor Commission's Medical Fee Guidelines and Codes and the following Labor Commission conversion factors for medical care rendered for an industrial injury or occupational disease, effective January 1, 2001:

Anesthesiology $37.00 (1 unit per 15 minutes of anesthesia);

Medicine $40.00;

Pathology and Laboratory 150% of Utah's published Medicare carrier;

Radiology $53.00;

Restorative Medicine $40.00, with Utah code 97001 at a 0.8 relative value unit and Utah code 97002 at a 0.5 of relative value unit.

Surgery $37.00;

All 20000 codes, codes 49505 thru 49525 and all 60000 codes of the CPT-4 coding guidelines $58.00.

3. Adopts and incorporates by this reference the Utah Labor Commission's Medical Fee Guidelines and Codes, as of March 8, 2001. The Utah Medical Fee Guidelines and Codes can be obtained from the division for a fee sufficient to recover costs of development, printing, and mailing.

4. Decides appropriate billing procedure codes when disputes arise between the medical practitioner and the employer or its insurance carrier. In no instance will the medical practitioner bill both the employer and the insurance carrier.

B. Employees cannot be billed for treatment of their industrial injuries or occupational diseases.

C. Discounting from the fees established by the Labor Commission is allowed only through specific contracts between a medical provider and a payor for treatment of industrial injured/ill patients.

D. Restocking fee 15%. Rule R612-2-16 covers the restocking fee.

E. Dental fees are not published. Rule R612-2-18 covers dental injuries.

F. Ambulance fees are not published. Rule R612-2-19 covers ambulance charges.

KEY: workers' compensation, fees, medical practitioner
[~~January 1,~~]2001 **34A-2-101 et seq.**
Notice of Continuation June 15, 1998 **34A-3-101 et seq.**
34A-1-104

Natural Resources; Forestry, Fire and State Lands

R652-121

Wildland Fire Suppression Fund

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 23761
FILED: 05/15/2001, 11:32
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: During the 2001 General Session, the Utah Legislature amended Sections 65A-8-6.1 and 65A-8-6.2 regarding the Wildland Fire Suppression Fund. The purpose of this proposed rule change is to make the rule consistent with statute.
(**DAR Note:** The amendment refers to H.B. 388 which can be found at 2001 Utah Laws 81 and was effective March 3, 2001.)

SUMMARY OF THE RULE OR CHANGE: The amended statute specifies that the value of real property provides the base for calculation of one element of the county payments to the fund. The proposed rule amendment likewise makes this clarification and specifies the linkage to property values reported by counties to the Tax Commission pursuant to Section 59-2-322. The amended statute provided a one-time waiver of equity payments. The proposed rule amendment allows for this contingency by specifying that the equity payment is required unless waived by the legislature.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 65A-8-6.4

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: If a county previously included personal property in the formula used to determine the annual payment to the Fund, subsequent payments will be reduced. This would reduce both the county payment and the state's match of that payment, thereby reducing the Fund balance. This could change the probability that a supplemental appropriation will be required to cover fire suppression costs of a severe fire season. No specific costs or savings have been identified.
❖LOCAL GOVERNMENTS: If a county previously included personal property in the formula used to determine the annual payment to the fund, subsequent payments will be reduced. The amount would vary by county.
❖OTHER PERSONS: The rule does not apply to other persons.
COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because participation in the Fund is voluntary.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The rule relates only to state and county government. There will be no fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Natural Resources
Forestry, Fire and State Lands
3520
1594 West North Temple
PO Box 145703
Salt Lake City, UT 84114-5703, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Karl Kappe at the above address, by phone at (801) 538-5495, by FAX at (801) 533-4111, or by Internet E-mail at nrslf.kkappe@state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 07/02/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 07/03/2001

AUTHORIZED BY: Karl Kappe, Strategic Planner

R652. Natural Resources; Forestry, Fire and State Lands.
R652-121. Wildland Fire Suppression Fund.

. . . . . .

R652-121-500. Determination of Property Values.

1. The taxable value of property in the unincorporated area of a county will be the locally assessed value of real [~~and personal~~]property provided by the county to the Utah State Tax Commission, Property Tax Division on an annual basis.

2. Value of real property means:

(a) the value of real estate, including patented mining claims as reported pursuant to Section 59-2-322.

(b) the value of improvements as reported pursuant to section 59-2-322.

[~~2~~]3. The county must adhere to Utah State Tax Commission policy for periodic reassessment of property. A county that is found to be in arrears on meeting this requirement will be penalized by increasing the current taxable value of property by 25% in determining the county's assessment fee.

R652-121-600. Determination of Equity Payments.

1. Unless waived by the legislature, a[~~A~~]n equity payment is required if a county elects to participate in the Wildland Fire Suppression Fund after the initial sign up period or to reestablish participation in the fund after a county's participation was terminated at the county's choice or for revocation by the state forester. The initial sign up period ended on May 31, 1998.

2. The equity payment is based on what the county's annual assessment fee would have been for the previous three years. In no case will the equity payment exceed three years of assessment.

3. If a county elects to join the suppression fund for the first time after May 31, 2000, an equity payment will be required that is equal to the previous three years' assessment fees.

4. If a county elects to withdraw from the fund or participation is revoked by the state forester, the county may request permission in writing to re-establish participation. Upon acceptance, the county must make an equity payment equal to what its assessment fees would have been for each year it was out of the fund, not to exceed three years.

. . . . . .

KEY: administrative procedure, wildland fire fund
[~~March 12,~~]2001 65A-8-6.4

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Public Safety, Driver License
R708-38
Anatomical Gift

NOTICE OF PROPOSED RULE
(New)
DAR FILE NO.: 23741
FILED: 05/09/2001, 08:28
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To define the process for authenticating an applicant's intent to make an anatomical gift (organ donation) when applying for a driver license or identification card excluding renewal by mail.

SUMMARY OF THE RULE OR CHANGE: S.B. 109 (2001 General Session) allows the Driver License Division, upon request, to release to an organ procurement organization the names and addresses of all persons who indicate their intent to make an anatomical gift. This rule explains how an applicant can authenticate their indication of intent to donate an organ when applying for a driver license or identification card in person or through a future electronic process such as the Internet, etc.
(**DAR Note:** S.B. 109 can be found at 2001 Utah Laws 117 and will be effective July 1, 2001.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53-03-205(16)(a); and Sections 26-28-2 and 26-28-6

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: There will be no significant cost to the division for gathering information on those who want to be donors and passing this information onto the organ procurement organization. Applications forms already have a place for a person to mark their desire to donate an organ and the cost of passing this information to the organ procurement organization through data processing is negligible.

❖LOCAL GOVERNMENTS: There is no associated cost to local governments because they are not involved in issuing driver licenses and state identification cards.
❖OTHER PERSONS: There is no additional cost to other persons because there is no extra charge for a person who expresses a desire to donate an organ while applying for a driver license or an identification card.
COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no additional compliance cost to other persons because there is no extra charge for a person who expresses a desire to donate an organ while applying for a driver license or an identification card.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule has no fiscal impact on businesses because they are not involved in issuing driver licenses and state identification cards.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Public Safety
Driver License
Calvin Rampton Building
4501 South 2700 West
PO Box 30560
Salt Lake City, UT 84130-0560, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Vinn Roos at the above address, by phone at (801) 965-4456, by FAX at (801) 965-4496, or by Internet E-mail at vroos@email.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 07/02/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 07/03/2001

AUTHORIZED BY: Judy Hamaker-Mann, Director

R708. Public Safety, Driver License.
R708-38. Anatomical Gift.
R708-38-1. Purpose.
The purpose of this rule is to define the process for authenticating an applicant's intent to make an anatomical gift (organ donation) when applying for a driver license or identification card excluding renewal by mail.

R708-38-2. Authority.
This rule is authorized by Subsection 53-3-205(16)(a).

R708-38-3. Process.
An applicant who desires to make an anatomical gift shall authenticate their indication of intent by:
(a) applying for a driver license or identification card;
(b) marking the appropriate place on the application form indicating a desire to make an anatomical gift;
(c) signing the application in person or by some other electronic means affirming that the information entered is true and correct; and
(d) submitting the completed application at a driver license office or submitting the completed application by electronic means when available.

KEY: anatomical gift
July 3, 2001 **53-3-205**
26-28-2
26-28-6

◆ ◆

End of the Notices of Proposed Rules Section

NOTICES OF
CHANGES IN PROPOSED RULES

After an agency has published a PROPOSED RULE in the *Utah State Bulletin*, it may receive public comment that requires the PROPOSED RULE to be altered before it goes into effect. A CHANGE IN PROPOSED RULE allows an agency to respond to comments it receives.

As with a PROPOSED RULE, a CHANGE IN PROPOSED RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the CHANGE IN 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 CHANGE IN PROPOSED RULE is usually printed. The text shows only those changes made since the PROPOSED RULE was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [~~example~~]). A row of dots in the text (• • • • • •) indicates that unaffected text was removed to conserve space. If a CHANGE IN PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

While a CHANGE IN PROPOSED RULE does not have a formal comment period, there is a 30-day waiting period during which interested parties may submit comments. The 30-day waiting period for CHANGES IN PROPOSED RULES published in this issue of the *Utah State Bulletin* ends July 2, 2001. At its option, the agency may hold public hearings.

From the end of the waiting period through September 29, 2001, the agency may notify the Division of Administrative Rules that it wants to make the CHANGE IN PROPOSED RULE effective. When an agency submits a NOTICE OF EFFECTIVE DATE for a CHANGE IN PROPOSED RULE, the PROPOSED RULE as amended by the CHANGE IN PROPOSED RULE becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file another CHANGE IN PROPOSED RULE in response to additional comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or another CHANGE IN PROPOSED RULE, the CHANGE IN PROPOSED RULE filing, along with its associated PROPOSED RULE, lapses and the agency must start the process over.

CHANGES IN PROPOSED RULES are governed by *Utah Code* Section 63-46a-6 (1996); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

The Changes in Proposed Rules Begin on the Following Page.

Environmental Quality, Solid and Hazardous Waste
R315-101-7
Cleanup Action and Risk-Based Closure Standards

NOTICE OF CHANGE IN PROPOSED RULE
DAR FILE NO.: 23419
FILED: 05/15/2001, 14:21
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change in proposed rule is a result of comments received during the initial proposed rule comment period.

SUMMARY OF THE RULE OR CHANGE: This change in proposed rule allows more flexibility in the public participation process by assessing the level of interest at the contaminated hazardous waste site. Therefore, a site with a great deal of public interest in the cleanup action process would have a great amount of public participation throughout the cleanup process as opposed to a site that generated little or no public interest.
(**DAR Note:** This change in proposed rule has been filed to make additional changes to an amendment that was published in the February 1, 2001, issue of the *Utah State Bulletin*, on page 51. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed rule together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 19-6-105 and 19-6-106

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: Since the changes in the rule do not affect State entities and the enforcement of the rule will not change, there will be no cost or savings impact.
❖LOCAL GOVERNMENTS: Since the changes in the rule do not affect local governments and the enforcement of the rule will not change, there will be no cost or savings impact.
❖OTHER PERSONS: Sites undergoing clean up under the provisions of Rule R315-101 may have a determined cost savings depending on the level of public interest and the associated need for preparing public information documents.
COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs for affected persons will not change since the change in proposed rule only allows for more flexibility and actually requires less of the affected site.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Sites undergoing clean up under the provisions of Rule R315-101 may have a determined cost savings depending on the level of public interest and the associated need for preparing public information documents. Dianne R. Nielson, Ph.D.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Environmental Quality
Solid and Hazardous Waste
Cannon Health Building
288 North 1460 West
PO Box 144880
Salt Lake City, UT 84114-4880, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Susan Toronto at the above address, by phone at (801) 538-6170, by FAX at (801) 538-6715, or by Internet E-mail at storonto@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 P.M. ON 07/02/2001.

THIS RULE MAY BECOME EFFECTIVE ON: 07/20/2001

AUTHORIZED BY: Dennis R. Downs, Director

R315. Environmental Quality, Solid and Hazardous Waste.
R315-101. Cleanup Action and Risk-Based Closure Standards.
R315-101-7. Public Participation.

(a) The Executive Secretary [~~shall~~]may provide for public participation[~~early~~] in [~~the~~]all phases of the cleanup action process, as defined in R315-101-4 through R315-101-6. [~~to involve all aspects of site characterization, data presentation, and risk assessment methodologies.~~] As directed by the Executive Secretary and based on the circumstances and level of public interest at the site, [~~P~~]pertinent work plans shall[~~, at a minimum,~~] describe how information will be made available to the public through, for example, fact sheets or information repositories and, where appropriate, contain proposed time frames for public input through, for example,[~~either in the form of~~] public meetings, hearings, or [~~repositories~~]comment periods. The Executive Secretary shall also provide public notice, a public comment period, and public hearing(s) for the site management plan in accordance with R315-4-1.10 through R315-4-1.12 and R315-4-1.17.

KEY: hazardous waste
2001 **19-6-105**
Notice of Continuation June 13, 1997 **19-6-106**

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End of the Notices of Changes in Proposed Rules Section

NOTICES OF
120-DAY (EMERGENCY) RULES

An agency may file a 120-DAY (EMERGENCY) RULE when it finds that the regular rulemaking procedures would:

(a) cause an imminent peril to the public health, safety, or welfare;
(b) cause an imminent budget reduction because of budget restraints or federal requirements; or
(c) place the agency in violation of federal or state law (*Utah Code* Subsection 63-46a-7(1) (1996)).

As with a PROPOSED RULE, a 120-DAY RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the 120-DAY RULE including the name of a contact person, justification for filing a 120-DAY RULE, anticipated cost impact of the rule, and legal cross-references. A row of dots in the text (• • • • •) indicates that unaffected text was removed to conserve space.

A 120-DAY RULE is effective at the moment the Division of Administrative Rules receives the filing, or on a later date designated by the agency. A 120-DAY RULE is effective for 120 days or until it is superseded by a permanent rule.

Because 120-DAY RULES are effective immediately, the law does not require a public comment period. However, when an agency files a 120-DAY RULE, it usually files a PROPOSED RULE at the same time, to make the requirements permanent. Comment may be made on the proposed rule. Emergency or 120-DAY RULES are governed by *Utah Code* Section 63-46a-7 (1996); and *Utah Administrative Code* Section R15-4-8.

Environmental Quality, Air Quality
R307-501
Emergency Rule: Power Generators

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 23781
FILED: 05/15/2001, 17:22
RECEIVED BY: NL

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To allow portable power generator sets to be operated while their regular permits are being processed.

SUMMARY OF THE RULE OR CHANGE: Several public-power municipalities have leased portable generator sets to supplement their regular power supply. These generator sets must receive operating conditions in an approval order from the Division of Air Quality. Staff have completed internal review of the applications and computer modeling indicates that operations will not affect public health. However, the approval orders are not yet complete. This emergency rule will allow those generator sets to operate under the conditions specified in the rule until the approval orders are complete, or until September 12, 2001. The emission limits specified in the rule are as stringent as Best Available Control Technology (BACT). The rule will expire on September 12, 2001.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(1)(a)
FEDERAL REQUIREMENT FOR THIS RULE: 40 CFR Part 60

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: The additional time for processing the notices required under this rule will be added to the time for processing the approval order, and will be paid by the source.
❖LOCAL GOVERNMENTS: Only a few public-power municipalities are affected. For them, especially those in southwestern Utah, the costs are incalculable, as they may include traffic accidents and citizens suffering from loss of air conditioning, as well as loss of revenue if businesses are closed while power is out.
❖OTHER PERSONS: Citizens will be protected from the health, safety and welfare threats of brownouts or blackouts, though the savings cannot be calculated.
COMPLIANCE COSTS FOR AFFECTED PERSONS: The only such affected persons are the suppliers of the generator sets, who would suffer losses if penalized for failure to have approval orders in place before beginning operations.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Without the emergency rule, businesses in the affected municipalities may face periodic closures due to brownouts and blackouts. Diane R. Nielson, Ph. D.

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD cause an imminent peril to the public health, safety, or welfare.

Without immediate additional power, these small municipalities, primarily in southwestern Utah, face brownouts or blackouts, and threatening public welfare: loss of traffic signals, loss of air conditioning during a season of expected high temperatures, and possible shutdowns of businesses with attendant economic losses.

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

Environmental Quality
Air Quality
150 North 1950 West
PO Box 144820
Salt Lake City, UT 84114-4820, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jan Miller at the above address, by phone at (801) 536-4042, by FAX at (801) 536-4099, or by Internet E-mail at jmiller@deq.state.ut.us.

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE.

THIS RULE IS EFFECTIVE ON: 05/15/2001

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

R307. Environmental Quality, Air Quality.
R307-501. Emergency Rule: Power Generators.
R307-501-1. Portable Power Generator Sets.

(1) A new source that consists entirely of portable electricity generator sets that emit oxides of nitrogen at a rate no greater than 7.1 grams per engine horsepower hour is exempt from the notice of intent and approval order requirements of R307-401 et seq. if the following conditions are met:

(a) Prior to operating the source, the owner shall provide notice to the executive secretary, and shall obtain a letter from the executive secretary verifying receipt. The notice to the executive secretary shall include:

(i) the location of the proposed source, including directions to the source,

(ii) the expected startup date,

(iii) if the source boundary is within one mile of the nearest residences, barns or commercial operations, a site diagram showing, to scale, the general equipment location on the site, and the distance to the nearest such structures,

(iv) a list of the equipment to be operated at the proposed source, including the NOx emission rate.

(b) Before operating the source, the owner shall meet the prerequisites for New Unit Exemption under 40 CFR 72.7(a) and must submit a "New Unit Exemption" request to the executive secretary to exempt it from Title IV of the Clean Air Act.

(c) Records of daily operating hours shall be kept on site for all periods the source is operated.

(d) No source shall be located or relocated adjacent or contiguous to an existing power generation plant.

(e) Visible emissions from the source shall not exceed 20% opacity.

(f) The generator exhaust stacks shall be extended at least six feet above the top of the unit's trailer.

(g) The actual hours of operation of the plant shall not exceed 16 hours during any twenty-four hour period measured from midnight to midnight.

(h) If located in Salt Lake County, Utah County, Davis County, or Ogden City, the source shall consist of not more than one generator at any one site, and shall emit less than 25 tons per year of oxides of nitrogen, sulfur dioxide, and PM10 combined.

(i) If located at any site not included in paragraph (h), the source shall consist of no more than two generators, and shall emit less than 100 tons per year of nitrogen oxide.

(j) The sulfur content of any fuel burned at the source shall not exceed 0.05% by weight as determined by ASTM Method D-4294-89, or an equivalent method approved by the executive secretary. Records of sulfur content of fuel shall be kept on site for all periods the source is operated.

(2) This exemption does not eliminate the responsibility of any source under other local, state, or federal law.

(3) This exemption is only effective through September 12, 2001. After September 12, 2001, a source must comply with the notice of intent and approval order requirements of R307-401 et seq. A source that is issued an approval order prior to September 12, 2001, shall be subject to the provisions of the approval order and not the provisions of this emergency rule.

KEY: air pollution, permits*, portable electricity generator sets*
May 15, 2001 **19-2-104(1)(a)**

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End of the Notices of 120-Day (Emergency) 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 responsible agency is required to review the rule. This review is designed 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 when filed. NOTICES are governed by *Utah Code* Section 63-46a-9 (1996).

Agriculture and Food, Regulatory Services

R70-910

Voluntary Registration of Servicemen and Service Agencies for Commercial Weighing and Measuring Devices

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 23728
FILED: 05/03/2001, 08:06
RECEIVED BY: NL

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 4-9-2 authorizes the Department of Agriculture and Food to make and enforce rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule allows the Department of Agriculture and Food to accept voluntary registration of an individual or agency that provides acceptable evidence that they are fully qualified to install, service, repair, or recondition a commercial weighing or measuring device; has a working knowledge of all weights and measures laws, orders, rules and regulations; and has accessible for his use, weights and measures standards and testing equipment certified by the department.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Agriculture and Food
Regulatory Services
350 North Redwood Road
PO Box 146500
Salt Lake City, UT 84114-6500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Brett Gurney at the above address, by phone at (801) 538-7158, by FAX at (801) 538-4949, or Internet E-mail at agmain.bgurney@state.ut.us.

AUTHORIZED BY: Cary G. Peterson, Commissioner

EFFECTIVE: 05/03/2001

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Agriculture and Food, Regulatory Services

R70-950

Uniform National Type Evaluation

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 23729
FILED: 05/03/2001, 08:06
RECEIVED BY: NL

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 4-9-2 authorizes the Department of Agriculture and Food to make and enforce rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule shall apply to all classes of devices and/or equipment as covered in National Institute if Standards and Technology (NIST) Handbooks. These handbooks determine the specifications, tolerances, and other technical requirements for weighing and measuring devices.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Agriculture and Food
Regulatory Services
350 North Redwood Road
PO Box 146500
Salt Lake City, UT 84114-6500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Brett Gurney at the above address, by phone at (801) 538-7158, by FAX at (801) 538-4949, or Internet E-mail at agmain.bgurney@state.ut.us.

AUTHORIZED BY: Cary G. Peterson, Commissioner

EFFECTIVE: 05/03/2001

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Education, Administration
R277-415
Strategic Planning Programs

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 23747
FILED: 05/14/2001, 16:05
RECEIVED BY: NL

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: To be in compliance with the rulemaking act, this rule is continued. However, it has been determined that the rule is no longer required by law and is unnecessary, so the rule will be repealed following the continuation.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule is continued to be in compliance with rulemaking act. The rule will be repealed following its continuation.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Education
Administration
250 East 500 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol B. Lear at the above address, by phone at (801) 538-7835, by FAX at (801) 538-7768, or Internet E-mail at clear@usoe.k12.ut.us.

AUTHORIZED BY: Carol B. Lear, Coordinator School Law and Legislation

EFFECTIVE: 05/14/2001

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Education, Administration
R277-513
Dual Certification

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 23748
FILED: 05/14/2001, 16:05
RECEIVED BY: NL

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 53A-1-402(1)(a) requires the State Board of Education to establish rules and minimum standards regarding the qualification and certification of educators, and Subsection 53A-1-401(3) which the State Board of Education to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule continues to provide necessary information about dual certification.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Education
Administration
250 East 500 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol B. Lear at the above address, by phone at (801) 538-7835, by FAX at (801) 538-7768, or Internet E-mail at clear@usoe.k12.ut.us.

AUTHORIZED BY: Carol B. Lear, Coordinator School Law and Legislation

EFFECTIVE: 05/14/2001

Education, Administration
R277-517
Athletic Coaching Endorsements

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 23749
FILED: 05/14/2001, 16:05
RECEIVED BY: NL

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 53A-1-402(1)(a) requires the State Board of Education to establish rules and minimum standards regarding the qualification and certification of educators, and Subsection 53A-1-401(3) allows the State Board of Education to adopt rules in accordance with its responsibilities.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule continues to provide necessary information about athletic coaching endorsements.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Education
Administration
250 East 500 South
Salt Lake City, UT 84111, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol B. Lear at the above address, by phone at (801) 538-7835, by FAX at (801) 538-7768, or Internet E-mail at clear@usoe.k12.ut.us.

AUTHORIZED BY: Carol B. Lear, Coordinator School Law and Legislation

EFFECTIVE: 05/14/2001

Human Services, Recovery Services
R527-200
Administrative Procedures

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 23733
FILED: 05/07/2001, 09:54
RECEIVED BY: NL

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 enacted under Title 63, Chapter 46b, Utah Administrative Procedures Act (UAPA), which requires the agency to enact rules for implementation of the law. Section 62A-11-203 authorizes the agency to adopt necessary rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because the rule establishes specific processes for the office to use in implementing the UAPA.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Human Services
Recovery Services
Fourteenth Floor, HK Building
515 East 100 South
PO Box 45011
Salt Lake City, UT 84145, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Brenda Zimmerman at the above address, by phone at (801) 536-8777, by FAX at (801) 536-8509, or Internet E-mail at bzimmerm@hs.state.ut.us.

AUTHORIZED BY: Emma L. Chacon, Director

EFFECTIVE: 05/07/2001

Transportation, Operations, Construction
R916-3
DESIGN-BUILD Contracts

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 23750
FILED: 05/14/2001, 18:55
RECEIVED BY: NL

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: Utah Code Ann. Section 63-56-36.1 allows Transportation (UDOT) to make rules for the use of the design/build process.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE-YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: UDOT has a continued duty to use the Design/Build Construction process for the foreseeable future, making this rule necessary. This duty is codified in Utah Code Ann. Section 63-56-36.1, which allows UDOT to make rules for the use of the design/build process. The rule being continued allows that process to go on for five more years.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Transportation
Operations, Construction
Calvin Rampton Complex
4501 South 2700 West
PO Box 148455
Taylorsville, UT 84119-4855, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
James H. Beadles at the above address, by phone at (801) 965-4168, by FAX at (801) 965-4796, or Internet E-mail at jbeadles@dot.state.ut.us.

AUTHORIZED BY: James H. Beadles, Legal Counsel

EFFECTIVE: 05/14/2001

Workforce Services, Workforce Information and Payment Services
R994-302
Payment by Employer

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 23744
FILED: 05/11/2001, 16:21
RECEIVED BY: NL

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 35A-4-502(2)(a) of the Utah Employment Security Act grants rulemaking authority to the Department of Workforce Services. This rule is enacted under Section 35A-4-302 of the Act which requires employers to pay unemployment contributions.

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 have been received since the last five-year review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section 35A-4-302 simply states that unemployment contributions accrue and become payable by each employer in accordance with rules the department may prescribe. This rule fills that legal requirement and determines when contribution reports and payments are due and the acceptable methods of payment.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
Workforce Services
Workforce Information and Payment Services
Third Floor
140 East 300 South
PO Box 45288
Salt Lake City, UT 84145-0288, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Brian I. Seamons at the above address, by phone at (801) 526-9444, by FAX at (801) 526-9236, or Internet E-mail at wsadmcats.bseamon@state.ut.us.

AUTHORIZED BY: Suzan Pixton, Legal Counsel

EFFECTIVE: 05/11/2001

Workforce Services, Workforce Information and Payment Services

R994-308

Bond or Security Requirement

FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 23745
FILED: 05/11/2001, 16:21
RECEIVED BY: NL

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 enacted under Section 35A-4-308 of the Utah Employment Security Act. To ensure compliance with the Utah Employment Security Act, this section authorizes the Department of Workforce Services to require certain employers to deposit a bond or security. Subsection 35A-4-502(2)(a) of the Act grants rulemaking authority to the Department of Workforce Services.

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 have been received since the last five-year review.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Section 35A-4-308 allows the Department of Workforce Services to require employers to deposit a bond or security to ensure compliance with provisions of the Utah Employment Security Act. This rule is necessary to determine reasons a deposit might be required, the amount of such deposit, and the disposition of the deposit.

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

Workforce Services
Workforce Information and Payment Services
Third Floor
140 East 300 South
PO Box 45288
Salt Lake City, UT 84145-0288, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Brian I. Seamons at the above address, by phone at (801) 526-9444, by FAX at (801) 526-9236, or Internet E-mail at wsadmcats.bseamon@state.ut.us.

AUTHORIZED BY: Suzan Pixton, Legal Counsel

EFFECTIVE: 05/11/2001

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF EXPIRED RULES

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (*Utah Code* Section 63-46a-9 (1996)). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file an extension with the Division of Administrative Rules (Division). However, if the agency fails to file either the review or the extension by the five-year anniversary date of the rule, the rule expires. Upon expiration of the rule, the Division is required to remove the rule from the *Utah Administrative Code*. The agency may no longer enforce the rule, and it must follow regular rulemaking procedures to replace the rule if necessary.

The rules listed below were *not* reviewed in accordance with Section 63-46a-9 (1996). These rules have expired and have been removed from the *Utah Administrative Code*. The expiration of administrative rules for failure to comply with the five-year review requirement is governed by *Utah Code* Subsection 63-46a-9(8) (1996).

Pioneer Sesquicentennial Celebration Coordinating Council (Utah)

Administration

No. 23739: R674-1. Functional Baseline: Administration.
Enacted: 05/07/96 (No. 17655, Filed 03/14/96 at 3:50 p.m., Published 04/01/96)
Expired: 05/07/2001

(**DAR Note:** Utah Code Subsection 63C-5-107(1) repealed the Pioneer Sesquicentennial Celebration Coordinating Council on 06/30/98. Since the agency no longer exists, the five-year review was not done and therefore, the rule expired.)

No. 23742: R674-2. Disbursement of Discretionary Grants and Noncommercial Licensing.
Enacted: 05/09/96 (No. 17658, Filed 03/15/96 at 12:00 noon, Published 04/01/96)
Expired: 05/09/2001

(**DAR Note:** Utah Code Subsection 63C-5-107(1) repealed the Pioneer Sesquicentennial Celebration Coordinating Council on 06/30/98. Since the agency no longer exists, the five-year review was not done and therefore, the rule expired.)

No. 23740: R674-3. Administration of the UPSCCC Licensing Program.
Enacted: 05/07/96 (No. 17659, Filed 03/15/96 at 12:00 noon, Published 04/01/96)
Expired: 05/07/2001

(**DAR Note:** Utah Code Subsection 63C-5-107(1) repealed the Pioneer Sesquicentennial Celebration Coordinating Council on 06/30/98. Since the agency no longer exists, the five-year review was not done and therefore, the rule expired.)

End of the Notices of Expired Rules Section

NOTICES OF RULE EFFECTIVE DATES

These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. These effective dates are at least 31 days and not more than 120 days after the date the following rules were published.

Abbreviations
AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal and Reenact
REP = Repeal

Agriculture and Food
Regulatory Services
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Published: April 1, 2001
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Published: April 1, 2001
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Published: April 1, 2001
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Published: April 1, 2001
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Published: April 1, 2001
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Published: April 1, 2001
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Published: January 15, 2001
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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, 2001, including notices of effective date received through May 15, 2001, the effective dates of which are no later than June 1, 2001. The *Rules Index* is published in the *Utah State Bulletin* and in the annual *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).

A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (http://www.rules.state.ut.us/).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment
CPR = Change in proposed rule
EMR = Emergency rule (120 day)
NEW = New rule
5YR = Five-Year Review
EXD = Expired
NSC = Nonsubstantive rule change
REP = Repeal
R&R = Repeal and reenact
* = Text too long to print in *Bulletin*, or repealed text not printed in *Bulletin*

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ABBREVIATIONS

AMD = Amendment
CPR = Change in proposed rule
EMR = Emergency rule (120 day)
NEW = New rule
5YR = Five-Year Review
EXD = Expired
NSC = Nonsubstantive rule change
REP = Repeal
R&R = Repeal and reenact
* = Text too long to print in *Bulletin*, or repealed text not printed in *Bulletin*

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	23665	R309-104	5YR	04/16/2001	2001-9/141
	23252	R309-150	AMD	01/04/2001	2000-22/33
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Environmental Quality, Water Quality	23164	R317-1-3	AMD	see CPR	2000-19/25
	23164	R317-1-3	CPR	01/23/2001	2000-24/74
ELECTRICIANS					
Commerce, Occupational and Professional Licensing	23374	R156-55b	AMD	04/30/2001	2001-1/4
ELEVATORS					
Labor Commission, Safety	23473	R616-3-3	AMD	03/20/2001	2001-4/36
EMERGENCY MEDICAL SERVICES					
Health, Health Systems Improvement, Emergency Medical Services	23344	R426-2	AMD	01/23/2001	2000-24/32
	23185	R426-6	AMD	01/17/2001	2000-20/27
	23186	R426-7	NEW	01/30/2001	2000-20/29
	23202	R426-8	NEW	01/30/2001	2000-21/14
EMERGENCY VEHICLES					
Public Safety, Law Enforcement and Technical Services, Regulatory Licensing (Changed to Public Safety, Criminal Investigations and Technical Services, Criminal Identification)	23446	R724-6 (Changed to R722-340)	NSC	02/01/2001	Not Printed
EMPLOYER LIABILITY					
Workforce Services, Workforce Information and Payment Services	23744	R994-302	5YR	05/11/2001	2001-11/119
EMPLOYMENT					
Labor Commission, Antidiscrimination and Labor, Antidiscrimination	23515	R606-1-3	AMD	04/03/2001	2001-5/17
ENFORCEMENT					
Agriculture and Food, Animal Industry	23588	R58-15	5YR	03/30/2001	2001-8/85

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Environmental Quality, Drinking Water	23662	R309-101	5YR	04/16/2001	2001-9/140
	23664	R309-103	5YR	04/16/2001	2001-9/141
	23665	R309-104	5YR	04/16/2001	2001-9/141
	23252	R309-150	AMD	01/04/2001	2000-22/33
ETHICS					
Natural Resources, Wildlife Resources	23360	R657-38	AMD	01/16/2001	2000-24/53
EXEMPTIONS					
Environmental Quality, Radiation Control	23312	R313-19	AMD	01/26/2001	2000-23/19
FEED CONTAMINATION					
Agriculture and Food, Plant Industry	23435	R68-2	5YR	01/16/2001	2001-3/95
FEES					
Administrative Services, Finance	23366	R25-14	AMD	01/22/2001	2000-24/5
Labor Commission, Industrial Accidents	23463	R612-2-3	NSC	02/15/2001	Not Printed
	23548	R612-2-5	EMR	03/08/2001	2001-7/43
	23464	R612-2-5	NSC	02/15/2001	Not Printed
	23549	R612-2-5	AMD	05/03/2001	2001-7/21
	23465	R612-2-6	NSC	02/15/2001	Not Printed
	23466	R612-2-11	NSC	02/15/2001	Not Printed
	23467	R612-2-16	AMD	03/20/2001	2001-4/33
	23468	R612-2-17	NSC	02/15/2001	Not Printed
	23469	R612-2-22	AMD	03/20/2001	2001-4/33
	23470	R612-2-23	NSC	02/15/2001	Not Printed
	23471	R612-2-24	AMD	03/20/2001	2001-4/34
	23472	R612-2-26	NSC	02/15/2001	Not Printed
FILING DEADLINES					
Labor Commission, Industrial Accidents	23223	R612-1-10	AMD	see CPR	2000-21/18
	23223	R612-1-10	CPR	03/20/2001	2001-1/36
FINANCIAL DISCLOSURE					
Health, Health Care Financing, Coverage and Reimbursement Policy	23397	R414-304	EMR	01/03/2001	2001-3/89
FIRE					
Environmental Quality, Air Quality	23139	R307-204	NEW	see CPR	2000-19/14
	23139	R307-204	CPR	03/06/2001	2001-3/81
FIREARMS					
Administrative Services, Fleet Operations, Surplus Property	23523	R28-2	5YR	02/08/2001	2001-5/39
FIRE PREVENTION					
Public Safety, Fire Marshal	23339	R710-4	AMD	01/16/2001	2000-24/61
FIRE PREVENTION LAW					
Public Safety, Fire Marshal	23340	R710-9	AMD	01/16/2001	2000-24/64
FISH					
Natural Resources, Wildlife Resources	23189	R657-13	AMD	01/02/2001	2000-21/23
FISHING					
Natural Resources, Wildlife Resources	23189	R657-13	AMD	01/02/2001	2000-21/23

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	23585	R58-11	5YR	03/30/2001	2001-8/83
	23586	R58-12	5YR	03/30/2001	2001-8/84
	23587	R58-13	5YR	03/30/2001	2001-8/84
	23589	R58-16	5YR	03/30/2001	2001-8/85
Agriculture and Food, Regulatory Services	23428	R70-420	REP	03/06/2001	2001-3/5
	23429	R70-430	REP	03/06/2001	2001-3/6
	23430	R70-610	5YR	01/16/2001	2001-3/96
	23431	R70-610	NSC	02/01/2001	Not Printed
	23432	R70-620	5YR	01/16/2001	2001-3/97
	23433	R70-620	AMD	03/06/2001	2001-3/7
FOOD STAMPS					
Workforce Services, Employment Development	23474	R986-900-902	AMD	03/20/2001	2001-4/47
FRANCHISE					
Tax Commission, Auditing	23555	R865-6F-1	NSC	04/01/2001	Not Printed
	23556	R865-6F-15	NSC	04/01/2001	Not Printed
FRAUD					
Human Services, Recovery Services	23389	R527-928	AMD	02/15/2001	2001-2/7
GAME LAWS					
Natural Resources, Wildlife Resources	23356	R657-5	AMD	01/16/2001	2000-24/40
	23528	R657-5	AMD	04/03/2001	2001-5/19
	23358	R657-17	AMD	01/16/2001	2000-24/51
	23393	R657-33	AMD	02/15/2001	2001-2/8
GOVERNMENT HEARINGS					
Commerce, Administration	23537	R151-46b	5YR	02/28/2001	2001-6/49
GRANTS					
Community and Economic Development, Community Development	23231	R199-8	AMD	01/23/2001	2000-21/3
	23575	R199-9	NSC	03/28/2001	Not Printed
Pioneer Sesquicentennial Celebration Coordinating Council (Utah), Administration	23742	R674-2	EXD	05/09/2001	2001-11/121
GRIEVANCE PROCEDURES					
Tax Commission, Administration	23403	R861-1A-36	AMD	04/11/2001	2001-3/76
HALFWAY HOUSES					
Corrections, Administration	23512	R251-301	5YR	02/05/2001	2001-5/40
	23400	R251-301	AMD	03/13/2001	2001-3/8
HAZARDOUS MATERIALS TRANSPORTATION					
Transportation, Motor Carrier	23461	R909-75	AMD	03/20/2001	2001-4/45
HAZARDOUS SUBSTANCES					
Transportation, Motor Carrier	23461	R909-75	AMD	03/20/2001	2001-4/45

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	23410	R315-2	AMD	04/20/2001	2001-3/16
	23412	R315-5-3	AMD	04/20/2001	2001-3/30
	23415	R315-13-1	AMD	04/20/2001	2001-3/40
	23416	R315-14-7	AMD	04/20/2001	2001-3/41
	23417	R315-16	AMD	04/20/2001	2001-3/42
	23418	R315-50	AMD	04/20/2001	2001-3/50
Transportation, Motor Carrier	23461	R909-75	AMD	03/20/2001	2001-4/45
HEALTH FACILITIES					
Health, Health Systems Improvement, Health Facility Licensure	23292	R432-106	NEW	01/23/2001	2000-23/31
Health, Health Systems Improvement, Health Facility Licensure (Changed to Health, Health Systems Improvement, Licensing)	23477	R432-1	NSC	04/01/2001	Not Printed
	23478	R432-2	NSC	04/01/2001	Not Printed
	23479	R432-3	NSC	04/01/2001	Not Printed
	23480	R432-4	NSC	04/01/2001	Not Printed
	23481	R432-5	NSC	04/01/2001	Not Printed
	23482	R432-6	NSC	04/01/2001	Not Printed
	23483	R432-7	NSC	04/01/2001	Not Printed
	23484	R432-8	NSC	04/01/2001	Not Printed
	23485	R432-9	NSC	04/01/2001	Not Printed
	23486	R432-10	NSC	04/01/2001	Not Printed
	23487	R432-11	NSC	04/01/2001	Not Printed
	23488	R432-12	NSC	04/01/2001	Not Printed
	23489	R432-13	NSC	04/01/2001	Not Printed
	23490	R432-14	NSC	04/01/2001	Not Printed
	23491	R432-16	NSC	04/01/2001	Not Printed
	23492	R432-30	NSC	04/01/2001	Not Printed
	23493	R432-35	NSC	04/01/2001	Not Printed
	23494	R432-100	NSC	04/01/2001	Not Printed
	23495	R432-101	NSC	04/01/2001	Not Printed
	23496	R432-102	NSC	04/01/2001	Not Printed
	23497	R432-103	NSC	04/01/2001	Not Printed
	23498	R432-104	NSC	04/01/2001	Not Printed
	23499	R432-105	NSC	04/01/2001	Not Printed
	23561	R432-106	NSC	04/01/2001	Not Printed
	23500	R432-150	NSC	04/01/2001	Not Printed
	23501	R432-151	NSC	04/01/2001	Not Printed
	23502	R432-152	NSC	04/01/2001	Not Printed
	23503	R432-200	NSC	04/01/2001	Not Printed
	23504	R432-201	NSC	04/01/2001	Not Printed
	23505	R432-270	NSC	04/01/2001	Not Printed
	23380	R432-270	AMD	03/30/2001	2001-1/10

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	23506	R432-300	NSC	04/01/2001	Not Printed
	23567	R432-500	NSC	04/01/2001	Not Printed
	23507	R432-550	NSC	04/01/2001	Not Printed
	23508	R432-600	NSC	04/01/2001	Not Printed
	23562	R432-650	NSC	04/01/2001	Not Printed
	23509	R432-700	NSC	04/01/2001	Not Printed
	23510	R432-750	NSC	04/01/2001	Not Printed
	23563	R432-950	NSC	04/01/2001	Not Printed
HEARINGS					
Environmental Quality, Air Quality	23442	R307-103-1	NSC	02/01/2001	Not Printed
	23407	R307-103-2	AMD	04/12/2001	2001-3/13
Professional Practices Advisory Commission, Administration	23427	R686-100	AMD	03/06/2001	2001-3/67
	23547	R686-100	NSC	04/01/2001	Not Printed
HIGHWAYS					
Transportation, Operations, Construction	23750	R916-3	5YR	05/14/2001	2001-11/119
HISTORIC PRESERVATION					
Tax Commission, Auditing	23555	R865-6F-1	NSC	04/01/2001	Not Printed
	23556	R865-6F-15	NSC	04/01/2001	Not Printed
HUMAN SERVICES					
Human Services, Administration, Administrative Services, Licensing	23121	R501-7	AMD	see CPR	2000-18/65
	23121	R501-7	CPR	01/16/2001	2000-23/59
	23322	R501-8	AMD	01/16/2001	2000-23/33
	23406	R501-8	NSC	02/01/2001	Not Printed
	23323	R501-17	AMD	01/16/2001	2000-23/39
HUNTING					
Natural Resources, Wildlife Resources	23360	R657-38	AMD	01/16/2001	2000-24/53
HUNTING AND FISHING LICENSES					
Natural Resources, Wildlife Resources	23358	R657-17	AMD	01/16/2001	2000-24/51
IMPACTED AREA PROGRAMS					
Community and Economic Development, Community Development	23576	R199-10	NSC	04/01/2001	Not Printed
IMPORT RESTRICTIONS					
Natural Resources, Wildlife Resources	23673	R657-3	5YR	04/16/2001	2001-9/143
INCIDENTS					
Administrative Services, Fleet Operations	23345	R27-7	NEW	01/31/2001	2000-24/6
INCOME					
Health, Health Care Financing, Coverage and Reimbursement Policy	23396	R414-303	EMR	01/03/2001	2001-3/87
	23420	R414-303	AMD	03/13/2001	2001-3/52
	23397	R414-304	EMR	01/03/2001	2001-3/89
	23452	R414-310	REP	04/04/2001	2001-4/13
INDIAN AFFAIRS					
Community and Economic Development, Indian Affairs	23476	R230-1	5YR	02/01/2001	2001-4/61

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Health, Health Care Financing, Medical Assistance Program	23351	R420-1	AMD	01/23/2001	2000-24/28
	23701	R420-1	EMR	05/01/2001	2001-10/85
INDUSTRIAL WASTE					
Environmental Quality, Water Quality	23164	R317-1-3	AMD	see CPR	2000-19/25
	23164	R317-1-3	CPR	01/23/2001	2000-24/74
INDUSTRY					
Environmental Quality, Radiation Control	23552	R313-36	AMD	05/11/2001	2001-7/13
INSPECTIONS					
Agriculture and Food, Regulatory Services	23728	R70-910	5YR	05/03/2001	2001-11/116
	23729	R70-950	5YR	05/03/2001	2001-11/116
INSTRUCTIONAL MATERIALS					
Education, Administration	23426	R277-469	AMD	03/06/2001	2001-3/9
INSURANCE					
Insurance, Administration	23582	R590-144	5YR	03/30/2001	2001-8/88
	23713	R590-177	5YR	04/30/2001	2001-10/91
INSURANCE BENEFITS					
Insurance, Administration	23378	R590-204	NEW	02/09/2001	2001-1/23
INSURANCE LAW					
Insurance, Administration	22923	R590-200	NEW	see CPR (First)	2000-13/51
	22923	R590-200	CPR (First)	see CPR (Second)	2000-19/159
	22923	R590-200	CPR (Second)	see CPR (Third)	2000-23/60
	22923	R590-200	CPR (Third)	04/30/2001	2001-3/84
INSURANCE LAW PRIVACY					
Insurance, Administration	23247	R590-205	NEW	01/11/2001	2000-22/35
INTERNET ACCESS					
Community and Economic Development, Community Development, Library	23352	R223-2	NEW	02/15/2001	2000-24/11
	23519	R223-2	NSC	02/23/2001	Not Printed
IRON AND MANGANESE CONTROL					
Environmental Quality, Drinking Water	23394	R309-208 (Changed to R309-535)	AMD	05/01/2001	2001-2/3
JURISDICTION					
Workforce Services, Workforce Information and Payment Services	23525	R994-406-304	AMD	04/05/2001	2001-5/28
LAND MANAGER					
Environmental Quality, Air Quality	23139	R307-204	NEW	see CPR	2000-19/14
	23139	R307-204	CPR	03/06/2001	2001-3/81

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LAW					
Human Services, Aging and Adult Services	23453	R510-1	5YR	01/23/2001	2001-4/62
	23538	R510-1	AMD	04/17/2001	2001-6/45
Public Safety, Fire Marshal	23340	R710-9	AMD	01/16/2001	2000-24/64
LAW ENFORCEMENT					
Public Safety, Law Enforcement and Technical Services, Regulatory Licensing (Changed to Public Safety, Criminal Investigations and Technical Services, Criminal Identification)	23447	R724-7 (Changed to R722-320)	NSC	02/01/2001	Not Printed
LIBRARIES					
Community and Economic Development, Community Development, Library	23352	R223-2	NEW	02/15/2001	2000-24/11
	23519	R223-2	NSC	02/23/2001	Not Printed
LICENSE					
Environmental Quality, Radiation Control	23312	R313-19	AMD	01/26/2001	2000-23/19
Public Safety, Law Enforcement and Technical Services, Regulatory Licensing (Changed to Public Safety, Criminal Investigations and Technical Services, Criminal Identification)	23448	R724-9 (Changed to R722-330)	NSC	02/01/2001	Not Printed
	23449	R724-10 (Changed to R722-310)	NSC	02/01/2001	Not Printed
LICENSING					
Commerce, Occupational and Professional Licensing	23295	R156-1-308d	AMD	01/04/2001	2000-23/9
	23350	R156-3a	AMD	05/03/2001	2001-7/9
	23260	R156-11a	AMD	see CPR	2000-22/5
	23260	R156-11a	CPR	03/06/2001	2001-3/79
	23695	R156-17a	5YR	04/26/2001	2001-10/89
	23296	R156-26a	AMD	01/04/2001	2000-23/11
	23309	R156-28	AMD	see CPR	2000-23/15
	23309	R156-28	CPR	03/08/2001	2001-3/80
	23401	R156-37-502	NSC	02/01/2001	Not Printed
	23535	R156-47b	5YR	02/26/2001	2001-6/49
	23696	R156-50	5YR	04/26/2001	2001-10/90
	23518	R156-54-302b	AMD	04/03/2001	2001-5/7
	23374	R156-55b	AMD	04/30/2001	2001-1/4
	23375	R156-55c-102	AMD	04/30/2001	2001-1/5
	23524	R156-55d-603	AMD	04/03/2001	2001-5/8
	23141	R156-69	AMD	see CPR	2000-10/10
	23141	R156-69	CPR	02/15/2001	2001-2/17
	23390	R156-73	AMD	02/15/2001	2001-2/2
Commerce, Real Estate	23321	R162-102	AMD	02/07/2001	2000-23/17
Environmental Quality, Radiation Control	23552	R313-36	AMD	05/11/2001	2001-7/13

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	23121	R501-7	CPR	01/16/2001	2000-23/59
	23322	R501-8	AMD	01/16/2001	2000-23/33
	23406	R501-8	NSC	02/01/2001	Not Printed
	23323	R501-17	AMD	01/16/2001	2000-23/39
Natural Resources, Wildlife Resources	23455	R657-27	AMD	03/26/2001	2001-4/39
LICENSING (TRADEMARK)					
Pioneer Sesquicentennial Celebration Coordinating Council (Utah), Administration	23740	R674-3	EXD	05/07/2001	2001-11/121
LIFELINE RATES					
Public Service Commission, Administration	23376	R746-341	AMD	03/01/2001	2001-1/30
LIQUEFIED PETROLEUM GAS					
Public Safety, Fire Marshal	23367	R710-6	AMD	01/16/2001	2000-24/63
MAMMOGRAPHY					
Health, Health Systems Improvement, Health Facility Licensure (Changed to Health Systems Improvement, Licensing)	23563	R432-950	NSC	04/01/2001	Not Printed
MASSAGE					
Commerce, Occupational and Professional Licensing	23535	R156-47b	5YR	02/26/2001	2001-6/49
MEDICAID					
Health, Health Care Financing, Coverage and Reimbursement Policy	23347	R414-63	NEW	01/17/2001	2000-24/23
	23551	R414-63	AMD	05/07/2001	2001-7/17
	23421	R414-304	AMD	03/13/2001	2001-3/56
	23398	R414-305	EMR	01/03/2001	2001-3/91
	23422	R414-305	AMD	03/13/2001	2001-3/60
Health, Health Care Financing, Medical Assistance Program	23351	R420-1	AMD	01/23/2001	2000-24/28
	23701	R420-1	EMR	05/01/2001	2001-10/85
MEDICAL PRACTITIONER					
Labor Commission, Industrial Accidents	23463	R612-2-3	NSC	02/15/2001	Not Printed
	23548	R612-2-5	EMR	03/08/2001	2001-7/43
	23464	R612-2-5	NSC	02/15/2001	Not Printed
	23549	R612-2-5	AMD	05/03/2001	2001-7/21
	23465	R612-2-6	NSC	02/15/2001	Not Printed
	23466	R612-2-11	NSC	02/15/2001	Not Printed
	23467	R612-2-16	AMD	03/20/2001	2001-4/32
	23468	R612-2-17	NSC	02/15/2001	Not Printed
	23469	R612-2-22	AMD	03/20/2001	2001-4/33
	23470	R612-2-23	NSC	02/15/2001	Not Printed
	23471	R612-2-24	AMD	03/20/2001	2001-4/34
	23472	R612-2-26	NSC	02/15/2001	Not Printed

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	23511	R251-102	5YR	02/05/2001	2001-5/40
MENTAL HEALTH					
Corrections, Administration	23568	R251-109	5YR	03/27/2001	2001-8/86
METHADONE PROGRAMS					
Human Services, Substance Abuse	23706	R544-2	5YR	04/30/2001	2001-10/90
MISCELLANEOUS TREATMENT					
Environmental Quality, Drinking Water	23394	R309-208 (Changed to R309-535)	AMD	05/01/2001	2001-2/3
MOTOR VEHICLE					
Transportation, Motor Carrier, Ports of Entry	23698	R912-8	5YR	04/27/2001	2001-10/91
NATIVE AMERICAN REMAINS					
Community and Economic Development, Indian Affairs	23476	R230-1	5YR	02/01/2001	2001-4/61
NOTIFICATION					
Corrections, Administration	23571	R251-110	5YR	03/27/2001	2001-8/87
NURSERIES (AGRICULTURAL)					
Agriculture and Food, Plant Industry	23436	R68-6	5YR	01/16/2001	2001-3/95
OCCUPATIONAL LICENSING					
Commerce, Occupational and Professional Licensing	23295	R156-1-308d	AMD	01/04/2001	2000-23/9
	23374	R156-55b	AMD	04/30/2001	2001-1/4
	23375	R156-55c-102	AMD	04/30/2001	2001-1/5
OIL AND GAS LAW					
Natural Resources; Oil, Gas and Mining; Oil and Gas	23304	R649-4	NEW	01/03/2001	2001-23/43
OLDER AMERICANS ACT					
Human Services, Aging and Adult Services	23453	R510-1	5YR	01/23/2001	2001-4/62
	23538	R510-1	AMD	04/17/2001	2001-6/45
OVERPAYMENT					
Human Services, Recovery Services	23733	R527-200	5YR	05/07/2001	2001-11/118
OVERPAYMENTS					
Workforce Services, Workforce Information and Payment Services	23525	R994-406-304	AMD	04/05/2001	2001-5/28
PARKS					
Natural Resources, Parks and Recreation	23423	R651-601	AMD	03/06/2001	2001-3/62
	23424	R651-608-2	AMD	03/06/2001	2001-3/63
PEER REVIEW					
Commerce, Occupational and Professional Licensing	23296	R156-26a	AMD	01/04/2001	2000-23/11
PERMITS					
Environmental Quality, Air Quality	23781	R307-501	EMR	05/15/2001	2001-11/114

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	23533	R657-42-6	AMD	04/03/2001	2001-5/27
PERSONAL PROPERTY					
Tax Commission, Property Tax	23475	R884-24P-49	AMD	04/11/2001	2001-4/42
	23395	R884-24P-62	AMD	05/14/2001	2001-2/11
	23316	R884-24P-65	AMD	02/20/2001	2000-23/54
PHARMACIES					
Commerce, Occupational and Professional Licensing	23695	R156-17a	5YR	04/26/2001	2001-10/89
PHARMACISTS					
Commerce, Occupational and Professional Licensing	23695	R156-17a	5YR	04/26/2001	2001-10/89
PLANNING					
Governor, Planning and Budget	23408	R361-1	5YR	01/11/2001	2001-3/97
PLANT DISEASES					
Agriculture and Food, Plant Industry	23437	R68-10	5YR	01/16/2001	2001-3/96
	23438	R68-12	5YR	01/16/2001	2001-3/96
PLUMBERS					
Commerce, Occupational and Professional Licensing	23375	R156-55c-102	AMD	04/30/2001	2001-1/5
PLUMBING					
Commerce, Occupational and Professional Licensing	23375	R156-55c-102	AMD	04/30/2001	2001-1/5
POINT SYSTEM					
Public Safety, Driver License	23402	R708-3	AMD	03/06/2001	2001-3/75
	23514	R708-3	NSC	02/22/2001	Not Printed
PORTABLE ELECTRICITY GENERATOR SETS					
Environmental Quality, Air Quality	23781	R307-501	EMR	05/15/2001	2001-11/114
POST CONVICTION					
Administrative Services, Finance	23366	R25-14	AMD	01/22/2001	2000-24/5
PRISONS					
Corrections, Administration	23570	R251-709	5YR	03/27/2001	2001-8/87
	23540	R251-709	AMD	05/15/2001	2001-7/12
PRIVATE INVESTIGATORS					
Public Safety, Law Enforcement and Technical Services, Regulatory Licensing (Changed to Public Safety, Criminal Investigations and Technical Services, Criminal Identification)	23448	R724-9 (Changed to R722-330)	NSC	02/01/2001	Not Printed
PRIVATE PROBATION PROVIDER					
Commerce, Occupational and Professional Licensing	23696	R156-50	5YR	04/26/2001	2001-10/90
PROBATION					
Commerce, Occupational and Professional Licensing	23696	R156-50	5YR	04/26/2001	2001-10/90

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	23328	R746-340	AMD	see CPR	2000-23/49
	23328	R746-340	CPR	03/26/2001	2001-4/56
PROFESSIONAL COMPETENCY					
Education, Administration	23748	R277-513	5YR	05/14/2001	2001-11/117
	23546	R277-514	NSC	04/01/2001	Not Printed
Money Management Council, Administration	23624	R628-10	5YR	04/11/2001	2001-9/143
PROGRAM BENEFITS					
Health, Health Care Financing, Coverage and Reimbursement Policy	23459	R414-306	AMD	04/04/2001	2001-4/11
PROMOTIONS					
Agriculture and Food, Marketing and Conservation	23543	R65-1	5YR	03/06/2001	2001-7/45
	23544	R65-3	5YR	03/06/2001	2001-7/45
	23545	R65-4	5YR	03/06/2001	2001-7/46
PROPERTY TAX					
Tax Commission, Property Tax	23475	R884-24P-49	AMD	04/11/2001	2001-4/42
	23395	R884-24P-62	AMD	05/14/2001	2001-2/11
	23316	R884-24P-65	AMD	02/20/2001	2000-23/54
PSYCHIATRIC PERSONNEL					
Corrections, Administration	23568	R251-109	5YR	03/27/2001	2001-8/86
PSYCHOTHERAPY					
Corrections, Administration	23568	R251-109	5YR	03/27/2001	2001-8/86
PUBLIC ASSISTANCE					
Workforce Services, Employment Development	23474	R986-900-902	AMD	03/20/2001	2001-4/47
PUBLIC ASSISTANCE PROGRAMS					
Human Services, Recovery Services	23389	R527-928	AMD	02/15/2001	2001-2/7
PUBLIC BUILDINGS					
Public Safety, Fire Marshal	23339	R710-4	AMD	01/16/2001	2000-24/61
PUBLIC INVESTMENTS					
Money Management Council, Administration	23624	R628-10	5YR	04/11/2001	2001-9/143
PUBLIC LIBRARY					
Community and Economic Development, Community Development, Library	23352	R223-2	NEW	02/15/2001	2000-24/11
	23519	R223-2	NSC	02/23/2001	Not Printed
PUBLIC MEETINGS					
Natural Resources, Wildlife Resources	23529	R657-39	5YR	02/15/2001	2001-5/41
	23530	R657-39	AMD	04/03/2001	2001-5/20

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	23271	R746-360	AMD	02/15/2001	2000-22/45
QUALITY CONTROL					
Agriculture and Food, Regulatory Services	23541	R70-101	5YR	03/06/2001	2001-7/46
	23542	R70-101	AMD	05/02/2001	2001-7/6
QUARANTINES					
Agriculture and Food, Animal Industry	23557	R58-2	NSC	04/01/2001	Not Printed
RADIOACTIVE MATERIAL					
Environmental Quality, Radiation Control	23552	R313-36	AMD	05/11/2001	2001-7/13
RADIOLOGY					
Commerce, Occupational and Professional Licensing	23518	R156-54-302b	AMD	04/03/2001	2001-5/7
RADIOLOGY PRACTICAL TECHNICIAN					
Commerce, Occupational and Professional Licensing	23518	R156-54-302b	AMD	04/03/2001	2001-5/7
RANGE MANAGEMENT					
School and Institutional Trust Lands, Administration	23558	R850-50-400	AMD	05/02/2001	2001-7/22
RATES					
Labor Commission, Industrial Accidents	23520	R612-4	5YR	02/08/2001	2001-5/41
REAL ESTATE APPRAISAL					
Commerce, Real Estate	23321	R162-102	AMD	02/07/2001	2000-23/17
RECIPROCITY					
Environmental Quality, Radiation Control	23312	R313-19	AMD	01/26/2001	2000-23/19
RECLAMATION					
Natural Resources; Oil, Gas and Mining; Coal	23385	R645-100-200	AMD	04/02/2001	2001-1/25
	23386	R645-301-500	AMD	04/02/2001	2001-1/26
	23387	R645-301-700	AMD	see CPR	2001-1/29
	23387	R645-301-700	CPR	05/03/2001	2001-7/26
RECREATION					
Natural Resources, Wildlife Resources	23360	R657-38	AMD	01/16/2001	2000-24/53
REGIONAL ADVISORY COUNCILS					
Natural Resources, Wildlife Resources	23529	R657-39	5YR	02/15/2001	2001-5/41
	23530	R657-39	AMD	04/03/2001	2001-5/20
REHABILITATION					
Natural Resources, Wildlife Resources	23531	R657-40	5YR	02/15/2001	2001-5/42
	23532	R657-40	AMD	04/03/2001	2001-5/22
RESIDENTIAL MORTGAGE LOAN ORIGINATION					
Commerce, Real Estate	23526	R162-209	NEW	04/13/2001	2001-5/9
RESOURCE COORDINATION					
Governor, Planning and Budget	23408	R361-1	5YR	01/11/2001	2001-3/97

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RIGHT-OF-WAY					
Transportation, Program Development	23311	R926-6	AMD	01/03/2001	2000-23/55
Transportation, Preconstruction, Right-of-Way Acquisition	23536	R933-4	AMD	04/18/2001	2001-6/45
RULES					
Public Service Commission, Administration	23353	R746-200	AMD	02/15/2001	2000-24/66
RULES AND PROCEDURES					
Natural Resources, Wildlife Resources	23455	R657-27	AMD	03/26/2001	2001-4/39
Public Service Commission, Administration	23376	R746-341	AMD	03/01/2001	2001-1/30
SAFETY					
Labor Commission, Occupational Safety and Health	23372	R614-1-4	AMD	02/01/2001	2001-1/24
	23516	R614-1-4	NSC	02/22/2001	Not Printed
Labor Commission, Safety	23310	R616-2-3	AMD	01/03/2001	2000-23/42
	23473	R616-3-3	AMD	03/20/2001	2001-4/36
SAFETY REGULATION					
Transportation, Motor Carrier	23565	R909-4	NSC	04/01/2001	Not Printed
	23461	R909-75	AMD	03/20/2001	2001-4/45
SCHOOL PERSONNEL					
Education, Administration	23748	R277-513	5YR	05/14/2001	2001-11/117
SCREENING					
Health, Epidemiology and Laboratory Services; HIV/AIDS, Tuberculosis Control/Refugee Health	23303	R388-804	AMD	02/02/2001	2000-23/29
SECURITY MEASURES					
Corrections, Administration	23570	R251-709	5YR	03/27/2001	2001-8/87
	23540	R251-709	AMD	05/15/2001	2001-7/12
SEIZURE OF PROPERTY					
Tax Commission, Collections	23574	R867-2B	5YR	03/27/2001	2001-8/89
SESQUICENTENNIAL (UTAH PIONEER)					
Pioneer Sesquicentennial Celebration Coordinating Council (Utah), Administration	23739	R674-1	EXD	05/07/2001	2001-11/121
	23742	R674-2	EXD	05/09/2001	2001-11/121
	23740	R674-3	EXD	05/07/2001	2001-11/121
SEX CRIMES					
Corrections, Administration	23571	R251-110	5YR	03/27/2001	2001-8/87
SMOKE					
Environmental Quality, Air Quality	23139	R307-204	NEW	see CPR	2000-19/14
	23139	R307-204	CPR	03/06/2001	2001-3/81
SNOW REMOVAL					
Transportation, Operations, Maintenance	23379	R918-3	AMD	02/15/2001	2001-1/32
SOCIAL SERVICES					
Human Services, Administration	23605	R495-862	5YR	04/04/2001	2001-9/142

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SOLID WASTE MANAGEMENT					
Environmental Quality, Solid and Hazardous Waste	22858	R315-315-8	AMD	see CPR (First)	2000-11/18
	22858	R315-315-8	CPR (First)	see CPR (Second)	2000-17/67
	22858	R315-315-8	CPR (Second)	01/05/2001	2000-23/58
STABILIZATION					
Environmental Quality, Drinking Water	23394	R309-208 (Changed to R309-535)	AMD	05/01/2001	2001-2/3
STANDARDS					
Natural Resources, Wildlife Resources	23531	R657-40	5YR	02/15/2001	2001-5/42
	23532	R657-40	AMD	04/03/2001	2001-5/22
STATE LANDS					
Community and Economic Development, Indian Affairs	23476	R230-1	5YR	02/01/2001	2001-4/61
STRATEGIC PLANNING					
Education, Administration	23747	R277-415	5YR	05/14/2001	2001-11/117
SURVEYS					
Environmental Quality, Radiation Control	23552	R313-36	AMD	05/11/2001	2001-7/13
TAXATION					
Tax Commission, Administration	23403	R861-1A-36	AMD	04/11/2001	2001-3/76
Tax Commission, Auditing	23555	R865-6F-1	NSC	04/01/2001	Not Printed
	23556	R865-6F-15	NSC	04/01/2001	Not Printed
	23572	R865-21U	5YR	03/27/2001	2001-8/88
	23553	R865-21U-6	NSC	04/01/2001	Not Printed
Tax Commission, Collections	23574	R867-2B	5YR	03/27/2001	2001-8/89
Tax Commission, Property Tax	23475	R884-24P-49	AMD	04/11/2001	2001-4/42
	23395	R884-24P-62	AMD	05/14/2001	2001-2/11
	23316	R884-24P-65	AMD	02/20/2001	2000-23/54
TEACHER CERTIFICATION					
Education, Administration	23748	R277-513	5YR	05/14/2001	2001-11/117
	23749	R277-517	5YR	05/14/2001	2001-11/118
Professional Practices Advisory Commission, Administration	23427	R686-100	AMD	03/06/2001	2001-3/67
	23547	R686-100	NSC	04/01/2001	Not Printed
TEACHER LICENSURE					
Education, Administration	23546	R277-514	NSC	04/01/2001	Not Printed
TELECOMMUNICATIONS					
Public Service Commission, Administration	23354	R746-240	AMD	02/15/2001	2000-24/67
	23328	R746-340	AMD	see CPR	2000-23/49
	23328	R746-340	CPR	03/27/2001	2001-4/56
	23376	R746-341	AMD	03/01/2001	2001-1/30
	23271	R746-360	AMD	02/15/2001	2000-22/45

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	23376	R746-341	AMD	03/01/2001	2001-1/30
TELEPHONE UTILITY REGULATION					
Public Service Commission, Administration	23328	R746-340	AMD	see CPR	2000-23/49
	23328	R746-340	CPR	03/27/2001	2001-4/56
TERMS OF OFFICE					
Natural Resources, Wildlife Resources	23529	R657-39	5YR	02/15/2001	2001-5/41
	23530	R657-39	AMD	04/03/2001	2001-5/20
TICKETS					
Administrative Services, Fleet Operation	23345	R27-7	NEW	01/31/2001	2000-24/6
TIME					
Labor Commission, Antidiscrimination and Labor, Antidiscrimination	23515	R606-1-3	AMD	04/03/2001	2001-5/17
Labor Commission, Industrial Accidents	23223	R612-1-10	AMD	see CPR	2000-21/18
	23223	R612-1-10	CPR	03/20/2001	2001-1/36
TOWING					
Transportation, Motor Carrier	23565	R909-4	NSC	04/01/2001	Not Printed
TRAFFIC VIOLATIONS					
Public Safety, Driver License	23402	R708-3	AMD	03/06/2001	2001-3/75
	23514	R708-3	NSC	02/22/2001	Not Printed
TRAINING					
Corrections, Administration	23512	R251-301	5YR	02/05/2001	2001-5/40
	23400	R251-301	AMD	03/13/2001	2001-3/8
TRANSPORTATION					
Environmental Quality, Radiation Control	23312	R313-19	AMD	01/26/2001	2000-23/19
Transportation, Motor Carrier	23460	R909-1	AMD	03/20/001	2001-4/44
Transportation, Program Development	23311	R926-6	AMD	01/03/2001	2000-23/55
TRANSPORTATION CORRIDOR PRESERVATION REVOLVING LOAN FUND					
Transportation, Program Development	23311	R926-6	AMD	01/03/2001	2000-23/55
TRANSPORTATION PLANNING					
Transportation, Program Development	23311	R926-6	AMD	01/03/2001	2000-23/55
TRANSPORTATION SAFETY					
Transportation, Motor Carrier	23460	R909-1	AMD	03/20/2001	2001-4/44
	23573	R909-1	NSC	04/01/2001	Not Printed
TRUCKING INDUSTRIES					
Tax Commission, Auditing	23555	R865-6F-1	NSC	04/01/2001	Not Printed
	23556	R865-6F-15	NSC	04/01/2001	Not Printed
TRUCKS					
Transportation, Motor Carrier	23460	R909-1	AMD	03/20/2001	2001-4/44
	23573	R909-1	NSC	04/01/2001	Not Printed
	23565	R909-4	NSC	04/01/2001	Not Printed

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TUBERCULOSIS					
Health, Epidemiology and Laboratory Services; HIV/AIDS, Tuberculosis Control/Refugee Health	23303	R388-804	AMD	02/02/2001	2000-23/29
UMAP (Utah Medical Assistance Program)					
Health, Health Care Financing, Converge and Reimbursement Policy	23349	R414-309	AMD	01/17/2001	2000-24/24
	23700	R414-309	EMR	05/01/2001	2001-10/82
Health, Health Care Financing, Medical Assistance Program	23351	R420-1	AMD	01/23/2001	2000-24/28
	23701	R420-1	EMR	05/01/2001	2001-10/85
UNDERCOVER IDENTIFICATION					
Public Safety, Law Enforcement and Technical Services, Regulatory Licensing (Changed to Public Safety, Criminal Investigations and Technical Services, Criminal Identification)	23447	R724-7 (Changed to R722-320)	NSC	02/01/2001	Not Printed
UNDERGROUND INJECTION CONTROL					
Environmental Quality, Water Quality	23162	R317-7	AMD	see CPR	2000-19/34
	23162	R317-7	CPR	01/23/2001	2000-24/75
UNEMPLOYMENT COMPENSATION					
Workforce Services, Workforce Information and Payment Services	23744	R994-302	5YR	05/11/2001	2001-11/119
	23525	R994-406-304	AMD	04/05/2001	2001-5/28
	23745	R994-308	5YR	05/11/2001	2001-11/120
UNIVERSAL SERVICE					
Public Service Commission, Administration	23271	R746-360	AMD	02/15/2001	2000-22/45
UPSCCC (Utah Pioneer Sesquicentennial Celebration Coordinating Council)					
Pioneer Sesquicentennial Celebration Coordinating Council (Utah), Administration	23739	R674-1	EXD	05/07/2001	2001-11/121
	23742	R674-2	EXD	05/09/2001	2001-11/121
	23740	R674-3	EXD	05/07/2001	2001-11/121
USER TAX					
Tax Commission, Auditing	23572	R865-21U	5YR	03/27/2001	2001-8/88
	23553	R865-21U-6	NSC	04/01/2001	Not Printed
UTILITY RULES					
Transportation, Preconstruction	23198	R930-6	AMD	01/19/2001	2000-21/43
	23443	R930-6	NSC	02/12/2001	Not Printed
UTILITY SERVICE SHUTOFF					
Public Service Commission, Administration	23353	R746-200	AMD	02/15/2001	2000-24/66
VETERINARY MEDICINE					
Commerce, Occupational and Professional Licensing	23309	R156-28	AMD	see CPR	2000-23/15
	23309	R156-28	AMD	03/08/2001	2001-3/80

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VICTIM COMPENSATION					
Crime Victim Reparations, Administration	23527	R270-1	AMD	04/03/2001	2001-5/11
VICTIMS OF CRIMES					
Crime Victim Reparations, Administration	23527	R270-1	AMD	04/03/2001	2001-5/11
WASTE DISPOSAL					
Environmental Quality, Solid and Hazardous Waste	22858	R315-315-8	AMD	see CPR (First)	2000-11/18
	22858	R315-315-8	CPR (First)	see CPR (Second)	2000-17/67
	22858	R315-315-8	CPR (Second)	01/05/2001	2000-23/58
Environmental Quality, Water Quality	23164	R317-1-3	AMD	see CPR	2000-19/25
	23164	R317-1-3	CPR	01/23/2001	2000-24/74
	23161	R317-8	AMD	see CPR	2000-19/40
	23161	R317-8	CPR	01/23/2001	2000-24/78
WATER POLLUTION					
Environmental Quality, Water Quality	23164	R317-1-3	AMD	see CPR	2000-19/25
	23164	R317-1-3	CPR	01/23/2001	2000-24/72
WATER QUALITY					
Environmental Quality, Water Quality	23162	R317-7	AMD	see CPR	2000-19/34
	23162	R317-7	CPR	01/23/2001	2000-24/75
WATERSHED MANAGEMENT					
Environmental Quality, Drinking Water	23663	R309-102	5YR	04/16/2001	2001-9/140
WATER SYSTEM RATING					
Environmental Quality, Drinking Water	23252	R309-150	AMD	01/04/2001	2000-22/33
WELFARE FRAUD					
Human Services, Recovery Services	23733	R527-200	5YR	05/07/2001	2001-11/118
WILDLAND FIRE FUND					
Natural Resources; Forestry, Fire and State Lands	23425	R652-121	AMD	03/12/2001	2001-3/64
WILDLIFE					
Natural Resources, Wildlife Resources	23673	R657-3	5YR	04/16/2001	2001-9/143
	23356	R657-5	AMD	01/16/2001	2000-24/40
	23528	R657-5	AMD	04/03/2001	2001-5/19
	23189	R657-13	AMD	01/02/2001	2000-21/23
	23358	R657-17	AMD	01/16/2001	2000-24/51
	23455	R657-27	AMD	03/26/2001	2001-4/39
	23393	R657-33	AMD	02/15/2001	2001-2/8
	23360	R657-38	AMD	01/16/2001	2000-24/53
	23531	R657-40	5YR	02/15/2001	2001-5/42
	23532	R657-40	AMD	04/03/2001	2001-5/22
	23362	R657-41	AMD	01/16/2001	2000-24/56
	23364	R657-42	AMD	01/16/2001	2000-24/60
	23533	R657-42-6	AMD	04/03/2001	2001-5/27

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Natural Resources, Wildlife Resources	23189	R657-13	AMD	01/02/2001	2000-21/23
	23455	R657-27	AMD	03/26/2001	2001-4/39
WILDLIFE PERMITS					
Natural Resources, Wildlife Resources	23362	R657-41	AMD	01/16/2001	2000-24/56
WORKERS' COMPENSATION					
Labor Commission, Industrial Accidents	23462	R612-1-3	NSC	02/15/2001	Not Printed
	23223	R612-1-10	AMD	see CPR	2000-21/18
	23223	R612-1-10	CPR	03/20/2001	2001-1/36
	23463	R612-2-3	NSC	02/15/2001	Not Printed
	23548	R612-2-5	EMR	03/08/2001	2001-7/43
	23464	R612-2-5	NSC	02/15/2001	Not Printed
	23549	R612-2-5	AMD	05/03/2001	2001-7/21
	23465	R612-2-6	NSC	02/15/2001	Not Printed
	23466	R612-2-11	NSC	02/15/2001	Not Printed
	23467	R612-2-16	AMD	03/20/2001	2001-4/32
	23468	R612-2-17	NSC	02/15/2001	Not Printed
	23469	R612-2-22	AMD	03/20/2001	2001-4/33
	23470	R612-2-23	NSC	02/15/2001	Not Printed
	23471	R612-2-24	AMD	03/20/2001	2001-4/34
	23472	R612-2-26	NSC	02/15/2001	Not Printed
	23520	R612-4	5YR	02/08/2001	2001-5/41
YOUTH					
Human Services, Administration, Administrative Services, Licensing	23322	R501-8	AMD	01/16/2001	2000-23/33
	23406	R501-8	NSC	02/01/2001	Not Printed
ZOOLOGICAL ANIMALS					
Natural Resources, Wildlife Resources	23673	R657-3	5YR	04/16/2001	2001-9/143