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

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TABLE OF CONTENTS

1. EDITOR'S NOTES

Incorrect Description for Expired Rules Published in May 15, 2002, Issue of the Utah State Bulletin..... 1

2. SPECIAL NOTICES

Governor, Administration: Governor's Proclamation: Calling the Fifty-Fourth Legislature into a Fourth Special Session 3

3. NOTICES OF PROPOSED RULES

Administrative Services

Debt Collection

No. 24811 (Amendment): R21-1. Transfer of Collection Responsibility of State Agencies..... 6

No. 24810 (Amendment): R21-2. Office of State Debt Collection Administrative Procedures 8

No. 24812 (Amendment): R21-3. Debt Collection Through Administrative Offset 11

Finance

No. 24844 (Amendment): R25-6. Relocation Reimbursement..... 13

No. 24843 (Amendment): R25-7. Travel-Related Reimbursements for State Employees 14

Commerce

Administration

No. 24860 (Amendment): R151-2. Government Records Access and Management Act Rules 17

No. 24862 (Amendment): R151-46b. Department of Commerce Administrative Procedures Act Rules..... 19

Occupational and Professional Licensing

No. 24818 (Amendment): R156-26a-307. Reinstatement of Licenses..... 21

No. 24822 (Amendment): R156-38. Residence Lien Restriction and Lien Recovery Fund Rules 22

No. 24828 (Amendment): R156-73. Chiropractic Physician Practice Act Rules 26

Corrections

Administration

No. 24826 (Amendment): R251-305. Visiting at Community Correctional Centers 28

Health

Epidemiology and Laboratory Services, Epidemiology

No. 24820 (Amendment): R386-800. Immunization Coordination 29

Epidemiology and Laboratory Services, Environmental Services

No. 24833 (Amendment): R392-302. Design, Construction and Operation of Public Pools 30

Health Care Financing, Coverage and Reimbursement Policy

No. 24834 (Amendment): R414-303. Coverage Groups..... 33

No. 24861 (Amendment): R414-304. Income and Budgeting 38

TABLE OF CONTENTS

No. 24864 (Repeal): R414-309. Utah Medical Assistance Program (UMAP)..... 48

Health Care Financing, Medical Assistance Program
No. 24863 (Amendment): R420-1. Utah Medical Assistance Program..... 51

Human Resource Management

Administration

No. 24845 (Amendment): R477-1. Definitions..... 55

No. 24846 (Amendment): R477-2. Administration..... 59

No. 24847 (Repeal): R477-3. Control of Personal Service Expenditures 64

No. 24848 (Amendment): R477-4. Classification 65

No. 24849 (Amendment): R477-5. Filling Positions..... 66

No. 24850 (Amendment): R477-6. Employee Status and Probation 69

No. 24858 (Amendment): R477-7. Compensation 71

No. 24851 (New Rule): R477-7. Leave 75

No. 24852 (Amendment): R477-8. Working Conditions 81

No. 24853 (Amendment): R477-9. Employee Conduct 89

No. 24854 (Amendment): R477-10. Employee Development..... 91

No. 24855 (Amendment): R477-11. Discipline 93

No. 24856 (Amendment): R477-12. Separations 95

No. 24857 (Amendment): R477-14. Substance Abuse and Drug-Free Workplace 97

Human Services

Child and Family Services

No. 24831 (Amendment): R512-43. Adoption Assistance 99

Mental Health

No. 24835 (Amendment): R523-1-15. Funding Formula 105

Insurance

Administration

No. 24827 (Amendment): R590-212. Requirements for Interest Bearing Accounts Used by Title Insurance Agencies for Trust Fund Deposits 106

Natural Resources

Wildlife Resources

No. 24839 (Amendment): R657-2. Adjudicative Proceedings 108

No. 24838 (Amendment): R657-5. Taking Big Game..... 113

No. 24837 (Amendment): R657-29. Government Records Access Management Act..... 116

No. 24836 (Amendment): R657-42. Accepted Payment of Fees, Late Fees, Exchanges, Surrenders, Refunds and Reallocation of Licenses, Certificates of Registration and Permits..... 117

Public Safety

Peace Officer Standards and Training
 No. 24859 (New Rule): R728-405. Drug Testing Requirement..... 120

4. NOTICES OF 120-DAY (EMERGENCY) RULES

Human Services

Child and Family Services
 No. 24829: R512-43. Adoption Assistance 123

Mental Health
 No. 24842: R523-1-15. Funding Formula 129

5. FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Administrative Services

Debt Collection
 No. 24813: R21-1. Transfer of Collection Responsibility of State Agencies 131

No. 24814: R21-2. Office of State Debt Collection Administrative Procedures..... 132

No. 24815: R21-3. Debt Collection Through Administrative Offset..... 132

Commerce

Occupational and Professional Licensing
 No. 24808: R156-1. General Rules of the Division of Occupational and Professional Licensing..... 133

No. 24821: R156-37. Utah Controlled Substance Act Rules 133

No. 24809: R156-70a. Physician Assistant Practice Act Rules 134

Corrections

Administration
 No. 24825: R251-305. Visiting at Community Correctional Centers 134

No. 24823: R251-707. Legal Access 135

Environmental Quality

Drinking Water
 No. 24832: R309-600. Drinking Water Source Protection for Ground-Water Sources..... 135

Health

Administration
 No. 24807: R380-20. Government Records Access and Management 136

Health Care Financing, Coverage and Reimbursement Policy
 No. 24816: R414-21. Physical Therapy 136

No. 24817: R414-38. Personal Care Service..... 137

Natural Resources

Wildlife Resources
 No. 24841: R657-2. Adjudicative Proceedings 137

TABLE OF CONTENTS

No. 24840: R657-29. Government Records Access Management Act..... 138

6. NOTICES OF EXPIRED RULES 139

7. NOTICES OF RULE EFFECTIVE DATES..... 141

8. RULES INDEX..... 143

EDITOR'S NOTES

INCORRECT DESCRIPTION FOR EXPIRED RULES PUBLISHED IN MAY 15, 2002, ISSUE OF THE UTAH STATE BULLETIN

The Notices of Expired Rules section published in the May 15, 2002, issue of the Utah State Bulletin was preceded with the wrong explanatory text. This problem arose because the Utah Administrative Rulemaking Act (UT Code Title 63, Ch 46a (2002 through 4th Spec Sess)) provides for two different types of expirations. The text published described the expiration of a rule based on failure of an agency to comply with the five-year review requirements required in UT Code S 63-46a-9 (2002 through 4th Spec Sess).

The Notice published in the May 15 Bulletin identified a portion of a rule that expired because the Legislature did not reauthorize it. The Notice should have read as follows:

Statute provides that "every [administrative] rule that is in effect on February 28 of any calendar year expires on May 1 of that year unless it has been reauthorized by the Legislature." In addition, "the [Legislature's] Administrative Rules Review Committee shall have omnibus legislation prepared for consideration by the Legislature during its annual general session." The form of the legislation is a statement that all administrative rules are reauthorized, followed by an exception list of rules that are not.

The legislature did not reauthorize a portion of the codified rule listed below. The legislature took this action by passing Senate Bill 170 (UT L 2002 Ch 325 S 1), entitled "Reauthorization of Administrative Rules," considered during the 2002 General Session.

UT Code S 63-46a-11.5 (2002 through 4th Spec Sess) governs the expiration of administrative rules that are not reauthorized by the Legislature. UT Code S 63-46a-11 (2002 through 4th Spec Sess) creates the Administrative Rules Review Committee.

Human Services

Administration, Administrative Services, Licensing

DAR No. 24787: R501-12-6(B)(2)(d), subsection which deals with the number of children in a foster home.

UT L 2002 Ch 325 S 1 (S.B. 170)

The Division regrets any confusion this error may have created.

If you have any questions regarding this notice, please contact Kenneth A. Hansen, Director, Division of Administrative Rules, PO Box 141007, Salt Lake City, UT 84114-1007, phone: (801) 538-3777, FAX: (801) 538-1773, or Internet E-mail: khansen@utah.gov.

End of the Editor's Notes Section

Special Notices Begin on the Following Page

SPECIAL NOTICES

Governor's Proclamation: Calling the Fifty-Fourth Legislature into a Fourth Special Session

WHEREAS, since the adjournment of the 2002 General Session of the Fifty-Fourth Legislature of the State of Utah, 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 into Special 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 Fifty-Fourth Legislature of the State of Utah into a Fourth Special Session at the State Capitol at Salt Lake City, Utah, on the 22nd day of May, 2002, at 5:00 p.m., for the following purposes:

1. To fund the Fiscal Year 2002 budget shortfall.
2. And, to consider such other measures as may be brought to the attention of the Legislature by supplemental communication from the Governor before or during the Special Session hereby called.

IN TESTIMONY WHEREOF, I have here unto set my hand and caused to be affixed the Great Seal of the State of Utah. Done at the State Capitol in Salt Lake City, Utah, this 21st day of May, 2002.

(STATE SEAL)

MICHAEL O. LEAVITT
Governor

ATTEST:

OLENE S. WALKER
Lieutenant Governor

End of the Special Notices Section

Notices of Proposed Rules Begin on the Following Page

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, 2002, 12:00 a.m., and May 15, 2002, 11:59 p.m. are included in this, the June 1, 2002, 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 each rule that is too long to print is available from the filing agency or from the Division of Administrative Rules.

The law requires that an agency accept public comment on PROPOSED RULES published in this issue of the *Utah State Bulletin* until at least July 1, 2002. 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, 2002, 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 (2001); 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.

Administrative Services, Debt Collection

R21-1

Transfer of Collection Responsibility of State Agencies

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 24811

FILED: 05/03/2002, 09:20

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to establish the procedures by which agencies shall bill and make initial collection efforts according to a coordinated schedule, the method to be used by agencies to transfer their delinquent accounts receivable to the Office of State Debt Collection (OSDC), or its designee for additional collection action, write-off of receivables, and the procedures and allocation of costs of collection established pursuant to Subsection 63-2-206(g) of the Utah Code.

SUMMARY OF THE RULE OR CHANGE: To ensure that terms used in the rule mean the same as the terms defined in Section 63A-8-101, the rule is changed to reference the terms defined in the law. State-wide policies and procedures that require state agencies to do a specific thing are being removed from the policies and procedures published by the OSDC and put into rule to comply with the Utah Administrative Rulemaking Act that provides a vehicle for public comment.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 63A-8-201(3)(m), 63A-8-201(4)(g), 63A-8-201(6)(a), and 63A-8-201(6)(f)

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** None--The costs for the OSDC and the collection of state debt are paid by the citizens that incur the debt, and are in addition to the amount owed the state or those the state has a responsibility to collect for.
- ❖ **LOCAL GOVERNMENTS:** None--The costs for the OSDC and the collection of state debt are paid by the citizens that incur the debt, and are in addition to the amount owed the state or those the state has a responsibility to collect for.
- ❖ **OTHER PERSONS:** Individuals owing the state money will be responsible to pay the costs of collection in addition to the original debt. Since the legislature created OSDC and the OSDC implemented the state collection program, the costs of collection have been collected from the debtor. Therefore, the change in this rule will have no impact upon other persons. The legislature authorizes OSDC to add the costs of collection to the original debt and collect the costs from the debtor through intent language found in the state's Appropriation Act. The legislature authorized the continuation of the practice for FY2003.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no change in the compliance cost for affected persons. Costs are set by the Legislature each year as part of the appropriations process.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The rule will have no fiscal impact on a business unless the business chooses not to pay the state timely. When a business chooses not to pay money owed, by the payment demand date, and the account is referred for collection, the business will be responsible for paying the costs of collection. The OSDC has been collecting the costs of collection from businesses owing the state money since 1997; therefore, the rule validates the practice and will have no fiscal impact on businesses that has not been there in the past.

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

ADMINISTRATIVE SERVICES
DEBT COLLECTION
Room 5100 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Gwen Anderson at the above address, by phone at 801-538-3603, by FAX at 801-538-3844, or by Internet E-mail at ganderson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: Gwen Anderson, Director

R21. Administrative Services, Debt Collection.

R21-1. Transfer of Collection Responsibility of State Agencies.

R21-1-1. Purpose.

The purpose of this rule is to establish the procedures by which agencies shall bill and make initial collection efforts according to a coordinated schedule, ~~and~~ the method to be used by agencies to transfer their delinquent accounts receivable to the Office ~~of State Debt Collection~~ or its designee for additional collection action, write-off of receivables, and the procedures and allocation of costs of collection established pursuant to Subsections 63A-8-201(4)(g), 63A-8-201(6)(b), Section 15-1-4, Utah Code, and by the Legislature in applicable laws.

R21-1-2. Authority.

This rule is established pursuant to Subsections 63A-8-201(3)(m), 63A-8-201(6)(f), 63A-8-201(4)(g), 63A-8-201(6)(b), Section 15-1-4, Utah Code and the Office intent language and fees authorized by the Legislature in applicable laws. Subsection 63A-8-201(3)(m) authorizes the Office to establish procedures for writing off accounts receivable for accounting and collection purposes. Subsection 63A-8-201(6)(f) ~~which~~ authorizes the Office ~~of State Debt Collection~~ to require state agencies to bill and make initial collection efforts of its receivables up to the time the accounts must be transferred. Subsection 63A-8-201(6)(a) authorizes the Office ~~of State Debt Collection~~ to require state agencies to transfer collection responsibility to the

~~the~~ Office or its designee according to time limits specified by the ~~the~~ Office. Subsection 63A-8-201(4)(g) authorizes Office to establish a fee to cover the administrative costs of collection, a late penalty fee and an interest charge by following the procedures and requirements of Section 63-38-3.2. Subsection 63A-8-201(6)(b) prohibits the Office from assessing the interest charge established by the Office under Subsection 63A-8-201(4)(g) on an account receivable subject to the postjudgment interest rate established by Section 15-1-4. Section 15-1-4 requires civil and criminal judgments of the district court and justice court to bear interest at the federal postjudgment interest rate and sets forth the procedures to be followed. The annual Appropriation Act authorizes the fees charged by the Office to collect accounts and provides legislative intent language allowing the costs of collection to be collected from the debtor.

R21-1-3. Definitions.

In addition to terms defined in Section 63A-8-101, the following terms are defined below as follows:

(1) ~~["Accounts receivable" also includes contracts, interest, penalties, permits, restitutions, and other payments due the state as allowed by law or other court ordered debts.~~

~~(2)~~(1) "Delinquent" means any account receivable for which the state has not received payment in full by the payment demand date.

~~(3)~~(2) "Designee" means a Private Sector Collector or State Agency that the Office of State Debt Collection has contracted with to provide accounts receivable collection services.

~~(4)~~(3) "Payment demand date" is the date by which the agency requires payment for the account receivable that an entity has incurred.

~~(5)~~(4) "Skipped" means that the entity formerly transacting business with the state is not known at the address or telephone number previously used nor is any new address or telephone number known of the entity.

(5) "Event" is the day the goods are purchased, services completed, fines, fees, and assessments are due, etc.

(6) "Trust" means a receivable that is owed to a victim of a crime.

R21-1-4. Agency Billing and Collection Responsibility.

~~Pursuant to Subsection 63A-8-201(3)(b),(d), and (f) as provided by Subsection 63-46a-3(4)(b), the office has established the requirements~~state agencies shall document and track agency receivables on the state's Advanced Receivable Subsystem unless the state agency has received an exemption from the Advisory Board to the Office of State Debt Collection. If a state agency receives such an exemption, the state agency shall track their receivables on the agency system and provide the Office with quarterly receivable reports pursuant to 63A-8-201(6)(g). The receivable reports are due to Office no later than 45 days after the end of the quarter.

State agency customers shall be billed within 10 days from the event creating the receivable or the next billing cycle, if reoccurring. The payment demand date shall be no later than 30 days from the event date unless the state agency can demonstrate the 30 day demand date is not appropriate for the agency's business processes. State agencies shall contact customers for payment by phone or written notice when payment is not received within 10 days after the payment demand date.

The Office has published guidelines for billing receivables and collecting delinquent accounts. These ~~can be found~~ guidelines are included in the document entitled "Statewide ~~Policies, Procedures, and~~ Guidelines for Accounting, Reporting and Collecting Accounts Receivable" ~~, as published by the Office of State Debt Collection, which~~. This document is available at ~~this~~ the ~~the~~ Office of State Debt Collection, Room 5110 State Office Building, Salt Lake City, Utah,

during regular working hours, for ~~agency~~ review ~~and examination by the public~~.

R21-1-5. Transfer of Collection Responsibility.

Each ~~S~~state agenc~~ies~~y with delinquent accounts shall comply with the provisions of Section 63A-8-201, et seq. unless prohibited by current state or federal statute or regulation. A state agency or user of the Office of State Debt Collection services shall ~~The~~ transfer ~~of a~~ collection responsibility to the Office, or its designee, ~~shall be executed~~ when the account receivable is not paid within 90 days of the event or is delinquent 61 days. A state agency can negotiate a different receivable transfer date with the Office by demonstrating how the state benefits from the negotiated transfer date. ~~in accordance with conditions, and at times as listed in the Office manual, titled as~~ Office recommendations related to the transfer of collection responsibility can be found in the Office publication "Statewide ~~Policies, Procedures,~~ Guidelines for Accounting, Reporting and Collecting Accounts Receivable".

R21-1-6. Format for Transfer of Accounts Receivable Data.

State agencies shall transfer delinquent accounts to the Office or its designee electronically through the state's Advanced Receivable Subsystem. State agencies exempted from using the state's Advanced Receivable Subsystem shall work with the Office to generate an electronic placement file for placing accounts.

R21-1-7. Costs of Collection.

Pursuant to Subsections 63A-8-201 (4) (g), Section 15-1-4, Utah Code, and by the legislature in applicable laws, the Office shall charge penalty, interest, and administrative costs of collection and shall collect these costs in addition to the receivable balance from the debtor. The fee calculation and payment priority shall be applied according to the following methodology.

(a) Pursuant to 63A-8-201(4)(g)(i), the costs of collection shall be charged on all accounts referred for collection and the cost shall be calculated based on the dollars collected times the rate authorized by the legislature. The cost of collection shall be paid first from each payment.

(b) The Penalty shall be calculated as a percent of the receivable balance referred for collection. A percent of each payment shall be applied to the outstanding penalty until the penalty is paid in full. The penalty payment shall be calculated based on the authorized penalty percent set annually by the legislature, times the received payment amount. The calculated penalty amount shall be paid after the costs of collecton are determined and paid.

(c) Two types of interest shall be charged on accounts referred to the OFFICE. Postjudgment interest as established by Section 15-1-4, Utah Code, applies to receivables with judgments established by the courts with a sentencing date subsequent to May 5, 1999. Postjudgment interest accrues on the unpaid judgment balance of the receivable. Postjudgment interest that accrues on a trust or the trust portion of a receivable, shall be paid subsequent to the state's outstanding receivable. All other state receivables referred to the Office are charged an interest charge pursuant to 63A-8-201 (4) (g)(iii)(B), Utah Code. This interest is referred to as OSDC interest. OSDC accrued interest shall be paid from each payment after the payment of the costs of collection and the penalty except on trust receivables or receivables including a trust account.

(d) Each payment received on trust receivables shall be applied to the following items in the priority listed until the payment is fully

disbursed: 1st - cost of collection, 2nd - penalty, 3rd - the trust receivable balance, and 4th - the accrued postjudgment interest.

(e) Each payment received on receivables that include trust(s) and state receivable balances shall be applied to the following items in the priority listed until the payment is fully disbursed: 1st - cost of collection, 2nd - penalty, 3rd - the trust(s) receivable balance until paid in full, 4th - accrued post-judgment or OSDC interest on the state receivable balance, 5th - the state receivable balance, and 6th - the accrued trust post-judgment interest.

(f) Each payment received on receivables owed only to the state shall be applied to the following items in the priority listed until the payment is fully disbursed: 1st - cost of collection, 2nd penalty payment, 3rd - accrued post-judgment or OSDC interest, and 4th - the receivable balance.

(g) Trust Payments sent to victims of crimes that are returned to the Office because of bad addresses, shall be reversed from the trust account and applied to amounts owed the state on the account. After the state debt is liquidated, payments shall be applied to the trust and if the victim still cannot be located, the payments shall be retained by the division of Finance for the appropriate time and then sent to Unclaimed Property and thereafter to Crime Victims Reparation.

R21-1-8. Write Off of Accounts Receivable.

State agencies shall follow the statewide Accounting Policies and Procedures outlined in FIACCT 06-01.14 and 06-02.04, available from the state Division of Finance.

KEY: accounts receivable collection transfer

July 22, 1997|2002

63A-8-201(3)(m)

63A-8-201(4)(g)

63A-8-201(6)(a)

63A-8-201(6)(f)

63A-8-201(6)(b)

15-14

Annual Appropriation Act

FIACCT 06-01.14

FIACCT 06-02.04

Administrative Services, Debt Collection

R21-2

Office of State Debt Collection Administrative Procedures

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 24810

FILED: 05/03/2002, 09:18

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is being amended to ensure that terms defined in Sections 63A-8-101 and 63-46b-2 of the Utah Code and that are used in the rule mean the same.

SUMMARY OF THE RULE OR CHANGE: To ensure that terms defined in Sections 63A-8-101 and 63-46b-2 of the Utah Code

that are used in the rule have the same meaning, the rule is changed to reference the terms defined in Sections 63A-8-101 and 63-46b-2.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 63-46b-4 and 63-46b-5

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--The rule is changed to reference terms defined in Sections 63A-8-101 and 63-46b-2 of the Utah Code rather than define the terms again in the rule. Since these changes are nonsubstantive, there is no budget costs or savings.

❖ LOCAL GOVERNMENTS: None--The rule is changed to reference terms defined in Sections 63A-8-101 and 63-46b-2 of the Utah Code rather than define the terms again in the rule. Since these changes are nonsubstantive, there is no budget costs or savings.

❖ OTHER PERSONS: None--The rule is changed to reference terms defined in Sections 63A-8-101 and 63-46b-2 of the Utah Code rather than define the terms again in the rule. Since these changes are nonsubstantive, there is no budget costs or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no change in the compliance cost. The change is nonsubstantive. Definitions in the rule that are defined in Sections 63A-8-101 and 63-46b-5 of the Utah Code are deleted from the rule and replaced in the rule with a reference to the definitions in Sections 63a-8-101 and 63-46b-5. The definitions in Sections 63A-8-101 and 63-46b-5 are not changed; therefore, there is no change in the compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The rule amendment eliminates duplicate terms in the rule definitions and incorporates those definitions in the rule by referencing Sections 63A-8-101 and 63-46b-2 of the Utah Code. Since the definitions in Sections 63A-8-101 and 63-46b-5 are not being changed, the amendment has no fiscal impact on businesses.

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

ADMINISTRATIVE SERVICES
DEBT COLLECTION
Room 5100 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Gwen Anderson at the above address, by phone at 801-538-3603, by FAX at 801-538-3844, or by Internet E-mail at ganderson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: Gwen Anderson, Director

R21. Administrative Services, Debt Collection.

R21-2. Office of State Debt Collection Administrative Procedures.

R21-2-1. Purpose.

The purpose of this rule is to establish the form of adjudicative proceedings, provide procedures and standards for the conduct of informal hearings, and provide procedures and standards for orders resulting from the administrative process.

R21-2-2. Authority.

This rule establishes procedures for informal adjudicative proceedings as required by Sections 63-46b-4 and 63-46b-5 of the Utah Administrative Procedures Act.

R21-2-3. Definitions.

In addition to terms defined in Sections 63A-8-101 and 63-46b-2, the following terms are defined below as follows:

(1) ~~["Accounts receivable" also includes contracts, interest, penalties, permits, restitutions, and other payments due the state as allowed by law or other court ordered debts.~~

~~—(2) "Adjudicative proceeding" means an agency action or proceeding described in Section 63-46b-1.~~

~~—(3) "State Agency" also includes local governments, school districts, Justice Courts and such state quasi agencies which may elect to participate and use any debt collection service.~~

~~—(4) "Delinquent" means any account receivable for which the state has not received payment in full by the payment demand date.~~

~~[(5)](2)(a) "Participate" means present relevant information to the presiding officer within the time period described by statute or rule for requesting a hearing; and~~

~~(b) if a hearing is scheduled, "participate" means attend the hearing.~~

~~[(6) "Party" means the agency or other entity commencing an adjudicative proceeding, all respondents, all persons permitted by the presiding officer to participate in the proceeding, and all persons authorized by statute or agency rule to participate as parties in an adjudicative proceeding.~~

~~—(7)(3) "Payment demand date" is the date by which the agency requires payment for the account receivable that an entity has incurred.[~~

~~—(8)(a) "Presiding officer" means an agency head, or an individual or body of individuals designated by the agency head, by the agency's rules, or by statute to conduct an adjudicative proceeding.~~

~~—(b) If fairness to the parties is not compromised, an agency may substitute one presiding officer for another during any proceeding.~~

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

R21-2-4. Designation of Presiding Officers.

All matters over which the office has jurisdiction and which are subject to Section 63-46b-4 will be presided over by the office director or designee.

R21-2-5. Form of Proceeding.

All adjudicative proceedings commenced by the office or commenced by other persons affected by the office's actions shall be informal adjudicative proceedings.

R21-2-6. Adjudicative Proceedings.

(1) The following actions are considered to be adjudicative proceedings:

(a) All hearings which lead to the establishment of an Order to collect delinquent accounts receivable owed to an agency of the State;

(b) All hearings which lead to the amending of an Administrative Order; and

(c) All hearings which lead to the setting aside of an Administrative Order.

R21-2-7. Service of Notice and Orders.

Notices, orders, written decisions, or any other documents for which service is required or permitted to be made by Title 63, Chapter [63-]46b may be served using methods provided in Title 63, Chapter [63-]46b or outlined by the Utah Rules of Civil Procedures.

R21-2-8. Procedures for Informal Adjudicative Proceedings.

The procedures for informal adjudicative proceedings will be as follows:

(1) The presiding officer will issue an order of default unless the entity does one of the following in response to service of a notice of office action:

(a) pays the entire delinquent account receivable in full; or

(b) participates as provided in Section R21-2-11;

(2) The presiding officer shall schedule a hearing if available under Section R21-2-9 and the entity requests it in writing within the following time periods:

(a) within 30 days of service of a notice of agency action requesting payment in full of a delinquent accounts receivable;

(b) within 20 days of service of a notice of agency action in all other adjudicative proceedings; or

(c) before an order is issued by the presiding officer.

(3) Within a reasonable time after the close of an informal adjudicative proceeding, the presiding officer shall issue a signed order in writing which states the following:

(a) the decision;

(b) the reason for the decision;

(c) a notice of the right to administrative and judicial review available to the parties; and

(d) the time limits for filing an appeal or requesting reconsideration.

(4) The presiding officer's order shall be based on the facts appearing in the office files (the record) and on the facts presented in evidence at any hearings.

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

R21-2-9. Availability of Hearing in Informal Adjudicative Proceedings.

(1) A hearing is permitted in an informal adjudicative proceeding if:

(a) the entity in a properly filed request for hearing or in the course of participation raises a genuine issue as to a material fact as provided in Section R21-2-10; and

(b) participates in an office conference.

R21-2-10. Hearings in Informal Adjudicative Proceedings.

(1) All hearing requests shall be referred to the presiding officer appointed to conduct hearings.

(2) The presiding officer shall give timely notice of the date and time of the hearing to all parties.

(3) Before granting a hearing regarding a delinquent account receivable, the presiding officer appointed to conduct the hearing may decide whether or not the respondent raises a genuine issue as to a material fact. If the presiding officer determines that there is no genuine issue as to a material fact, he may deny the request for hearing, and close the adjudicative proceeding.

(4) If the respondent objects to the denial of the hearing, he may raise that objection as grounds for relief in a request for reconsideration.

(5) There is no genuine issue as to a material fact if:

(a) the evidence gathered by the office and the evidence presented for acceptance by the entity are sufficient to establish the delinquent obligation of the entity under applicable law; and

(b) no other evidence in the record or presented for acceptance by the entity in the course of entity's participation conflicts with the evidence to be relied upon by the presiding officer in issuing an order.

(6) Evidence upon which a presiding officer may rely in issuing an order when there has been no hearing:

(a) documented information from agency sources;

(b) failure of the entity to produce upon request of the presiding officer canceled checks, or alternative documentation, as evidence of payments made; or

(c) failure of the entity to produce a record kept by a financial institution, the agency initially servicing the debt, the office or its designee, showing payments made.

R21-2-11. Telephonic Hearings.

Telephonic hearings will be held at the discretion of the presiding officer unless the entity specifically requests that the hearing be conducted face to face.

R21-2-12. Procedures and Standards for Orders Resulting from Service of a Notice of Office Action.

(1) If the entity agrees with the notice of action, it may stipulate to the facts and to the amount of the debt and obligation to be paid. A stipulation and order based on that stipulation is prepared by the office for the entity's signature. Orders based on stipulation are not subject to reconsideration or judicial review.

(2) If the entity participates by attending a preliminary conference or otherwise presents relevant information to the presiding officer, but does not reach an agreement with the office or is unavailable to sign a stipulation, and does not request a hearing, the presiding officer shall issue an order based on that participation.

(3) If the entity requests a hearing and participates by attending the hearing, the presiding officer who conducts the hearing shall issue an order based upon the hearing.

(4) If the entity fails to participate as follows, the presiding officer shall issue an order of default, based on whether or not:

(a) the entity fails to participate by presenting relevant information and does not request a hearing in response to the notice of office action;

(b) after proper notice the entity fails to attend a preliminary conference scheduled by the presiding officer to consider matters which may aid in the disposition of the action; or

(c) after proper notice the entity fails to attend a hearing scheduled by the presiding officer pursuant to a written request for a hearing.

(5) The default order is taken for the amount specified in the notice of action which was served on the entity plus accrued interest, penalties and applicable collection costs from the date of the action until paid in full by the entity at the interest rate specified in the default order. The entity may seek to have the default order set aside, in accordance with Section 63-46b-11.

(6) If an entity's request for a hearing is denied under Section R21-2-10, the presiding officer issues an order based upon the information in the office file.

(7) Notwithstanding any prior agreements which sets terms for the payment of the delinquent account receivable, the office reserves the right to intercept state tax refunds or other State payments to the entity to satisfy the debt represented by the delinquent account receivable.

R21-2-13. Conduct of Hearing in Informal Adjudicative Proceedings.

(1) The hearing shall be conducted by a duly qualified presiding officer. No presiding officer shall hear a contested case if it is alleged and proved that good cause exists for the removal of the presiding officer assigned to the case. The party or representative requesting the change of presiding officer shall make the request in writing, and the request shall be filed and called to the attention of the presiding officer not less than 24 hours in advance of the hearing.

(2) Duties of the presiding officer:

(a) Based upon the notice of office action, objections thereto, if any, and the evidence presented at the hearing, the presiding officer shall determine the liability and responsibility, if any, of the parties.

(b) The presiding officer conducting the hearing may:

(i) regulate the course of hearing on all issues designated for hearing;

(ii) receive and determine procedural requests, rule on offers of proof and evidentiary objections, receive relevant evidence, rule on the scope and extent of cross-examination, and hear argument and make determination of all questions of law necessary to the conduct of the hearing;

(iii) request testimony under oath or affirmation administered by the presiding officer;

(iv) upon motion, amend the notice of office action to conform to the evidence.

(3) Rules of Evidence:

(a) Discovery is prohibited, but the office may issue subpoenas or other orders to compel production of necessary evidence.

(b) Any person who is a party to the proceedings may call witnesses and present such oral, documentary, and other evidence and comment on the issues and conduct such cross-examination of any witness as may be required for a full and true disclosure of all facts relevant to any issue designated for fact hearing and as may affect the disposition of any interest which permits the person participating to be a party.

(c) Any evidence may be presented by affidavit rather than by oral testimony subject to the right of any party to call and examine or cross-examine the affiant.

(d) All relevant evidence shall be admitted.

(e) Official notice may be taken of all facts of which judicial notice may be taken in the courts of this state.

(f) All parties shall have access to information contained in the office's files and to all materials and information gathered in the hearing, to the extent permitted by law.

(g) Intervention is prohibited.

(4) Rights of the parties: A party appearing before the presiding

officer for the purpose of a hearing may be represented by a licensed attorney, or, after leave of the presiding officer, any other person designated to act as the party's representative for the purpose of the hearing. The office's supporting evidence for the office's claim shall be presented at a hearing before the presiding officer by a representative of the office. The supporting evidence may, at the office's discretion, be presented by a representative from the office of the Attorney General.

R21-2-14. Order Review.

Nothing in this rule prohibits a party from filing a request for reconsideration or for judicial review as provided in the Sections 63-46b-13 and 63-46b-14.

R21-2-15. Reconsideration.

Either the entity or the office may request reconsideration in accordance with Section 63-46b-13 once during an informal adjudicative proceeding.

R21-2-16. Setting Aside Administrative Orders.

(1) The office may set aside an administrative order for any of the following reasons:

- (a) a rule or policy was not followed when the order was taken;
- (b) the entity was not properly served with a notice of office action;
- (c) the entity was not given due process; or
- (d) the order has been replaced by a judicial order which covers the same time period.

(2) The office shall notify the entity of its intent to set the order aside by serving the entity with a notice of office action. The notice shall be signed by the presiding officer at the level which issued the order.

(3) If after serving the entity with a notice of office action, the presiding officer determines that the order shall be set aside, the office shall notify the entity.

R21-2-17. Amending Administrative Orders.

(1) The office may amend an order for either of the following reasons:

- (a) a clerical mistake was made in the preparation of the order; or
- (b) the time periods covered in the order overlap the time periods in another order for the same participants.

(2) The office shall notify the entity of its intent to amend the order by serving the entity with a notice of office action. The notice shall be signed by the presiding officer at the level which issued the order.

(3) If after serving the entity with a notice of agency action, the presiding officer determines that the order shall be amended, the office shall provide a copy of the amended order to the entity.

KEY: accounts receivable adjudicative process

~~July 22, 1997~~ **2002**

63-46b-4

63-46b-5



Administrative Services, Debt Collection **R21-3** Debt Collection Through Administrative Offset

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 24812

FILED: 05/03/2002, 09:21

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to establish procedures to be followed by agencies to reduce or eliminate accounts receivable through administrative offset of tax overpayments or state payments due to entities.

SUMMARY OF THE RULE OR CHANGE: To ensure terms defined in Section 63A-8-101 of the Utah Code that are used in the rule have the same meaning, the rule is changed to reference the terms defined in Section 63A-8-101.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63A-8-204(6)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** None--The change in the rule is nonsubstantive. The definitions in the rule are being deleted and replaced by referencing the definitions in Section 63A-8-101 of the Utah Code. The terms in Section 63A-8-101 are not changing; therefore there is no budget impact.

❖ **LOCAL GOVERNMENTS:** None--The change in the rule is nonsubstantive. The definitions in the rule are being deleted and replaced by referencing the definitions in Section 63A-8-101 of the Utah Code. The terms in Section 63A-8-101 are not changing; therefore there is no budget impact.

❖ **OTHER PERSONS:** None--The change in the rule is nonsubstantive. The definitions in the rule are being deleted and replaced by referencing the definitions in Section 63A-8-101 of the Utah Code. The terms in Section 63A-8-101 are not changing; therefore there is no budget impact.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The change in the rule is nonsubstantive. The definitions in the rule are being deleted and are referenced in the rule to definitions in Section 63A-8-101 of the Utah Code. The terms in Section 63A-8-101 are not changing; therefore the impact on affected persons is not changed.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The change in the rule is nonsubstantive. The definitions in the rule that are duplicated in Section 63-8-101 of the Utah Code are being deleted. The rule references the definitions in Section 63A-8-101. The terms in Section 63A-8-101 are not changing; therefore there is no budget impact on businesses.

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

ADMINISTRATIVE SERVICES
DEBT COLLECTION
Room 5100 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Gwen Anderson at the above address, by phone at 801-538-3603, by FAX at 801-538-3844, or by Internet E-mail at ganderson@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: Gwen Anderson, Director

R21. Administrative Services, Debt Collection.

R21-3. Debt Collection Through Administrative Offset.

R21-3-1. Purpose.

The purpose of this rule is to establish procedures to be followed by agencies to reduce or eliminate accounts receivable through administrative offset of tax overpayments or state payments due to entities.

R21-3-2. Authority.

This rule is established pursuant to Subsection 63A-8-204(6), which authorizes the Office of State Debt Collection to establish, by rule, an implementation of the debt collection technique of administrative offset.

R21-3-3. Definitions.

In addition to terms defined in Section 63A-8-101, the following terms are defined below as follows:

(1) [~~"Accounts Receivable" also includes contracts, interest, penalties, permits, restitutions, and other payments due the state as allowed by law or other court ordered debts.~~

~~—(2) "State Agency" also includes local governments, school districts, Justice Courts and such state quasi-agencies which may elect to participate and use any debt collection service.~~

~~—(3)—~~"Division" means the Division of Finance.

[(4)](2) "Match or Matched" means a one-to-one corresponding of a social security number or a federal employer's identification number between the entity and the tax overpayment or other state payment to the entity.

R21-3-4. Eligible Accounts Receivable.

(1) If a delinquent account receivable meets the criteria established under Section 59-10-529, an agency shall proceed under this rule to collect the delinquent amount against tax overpayments.

(2) If a delinquent account receivable meets the criteria established under Section 63A-3-302, an agency shall proceed under this rule to collect the delinquent amount against tax overpayments or state payments due to entities.

R21-3-5. Submission of Accounts Receivable to the Division.

(1) Upon qualifying the account for administrative offset as established in Section R21-3-4, the agency shall submit the account receivable to the division. The account receivable submission shall include:

(a) name of entity;

(b) social security number or federal employer's identification number of the entity;

(c) amount of delinquent account receivable; and

(2) Once the account has been established for administrative offset, it matches continuously from the date of the establishment until the account receivable is totally satisfied.

R21-3-6. Control of Matched Tax Overpayments or Payment Due to Entity by the Division.

The division shall place the entity's matched tax overpayment or payment due to entity in a separate agency fund in the state's Accounting System.

R21-3-7. Notification and Response.

(1) The division shall notify the agency submitting the account receivable of each administrative offset match.

(2)(a) The agency shall verify the delinquent account balance; and

(b) notify the division of the amount to be offset.

(3) The amount shall include the outstanding balance of the delinquent account receivable plus any penalty, interest or applicable collection costs.

(4) The agency shall identify for the division the exact amount(s) to be offset as early as practicable.

R21-3-8. Offsetting Matched Accounts.

(1) The division will offset the matched entity tax overpayment or payment due to entity by:

(a) an "administrative fee". Which shall be charged for performing debt-collection functions associated with the administrative offset; plus

(b) the amount identified in Subsection R21-3-7(3) to satisfy the delinquent account receivable.

R21-3-9. Release of Offset Funds by the Division.

(1) The division shall retain the administrative charge.

(2) The division shall release the offset funds to the agency.

(3) The division shall release the balance of any available funds from the match to the entity.

R21-3-10. Credit of Accounts Receivable.

Upon receipt of the offset funds from the division, the agency shall deposit the amount into their account and credit the entity's accounts receivable for the amount received.

R21-3-11. Administrative Fee.

Pursuant to Section 63A-8-201(4), the division may charge the agency a fee for the debt collection effort. This fee may be deducted from the amounts collected.

KEY: accounts receivable administrative offset

~~July 22, 1997~~ **2002**

63A-8-204(6)

Administrative Services, Finance
R25-6
Relocation Reimbursement

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 24844

FILED: 05/15/2002, 14:57

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule was revised to limit relocation costs reimbursed to new employees.

SUMMARY OF THE RULE OR CHANGE: The rule was amended to: (1) specify that the amount of relocation costs to be reimbursed to new employees shall not exceed those costs identified as reimbursable in Finance policy, and (2) make minor, nonsubstantive wording changes.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-3-103

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: Amending this rule could result in a cost to the state budget. This rule limits relocation reimbursement for new employees to amounts specified in Finance policy, which was revised to allow an additional \$5 per day meal expense for each dependent, up to an additional \$20 per day for the family. Because we do not know how many new employees will receive the increased reimbursement, we cannot anticipate the aggregate cost to the state budget.
- ❖ LOCAL GOVERNMENTS: This rule applies only to state agencies and state employees and, therefore, will have no impact on local government.
- ❖ OTHER PERSONS: The amendments to this rule may result in savings to new employees who are reimbursed for expenses incurred during relocation. These employees may be eligible to be reimbursed an additional \$5 per day meal expense for each dependent, up to an additional \$20 per day for the family. Because we do not know how many new employees will receive the increased reimbursement, we cannot anticipate the aggregate savings to employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with the revisions to R25-7.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Amendments to R25-6 apply only to state agencies and state employees and have no impact on businesses. Camille Anthony, Executive Director

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

ADMINISTRATIVE SERVICES
 FINANCE
 Room 2110 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY UT 84114-1201, or

at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Teddy Cramer at the above address, by phone at 801-538-3450, by FAX at 801-538-3244, or by Internet E-mail at tcramer@fi.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 PM on 07/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: Kim Thorne, Director

R25. Administrative Services, Finance.

R25-6. Relocation Reimbursement.

R25-6-1. Purpose.

The purpose of this rule is to establish procedures for payment of relocation reimbursements to employees who move for career progression or to accept employment with the state.

R25-6-2. Authority.

This rule is established pursuant to Subsection 63A-3-103(1), which authorizes the Director of Finance to define fiscal procedures relating to approval and allocation of funds.

R25-6-3. Definitions.

- (1) "Agency" means any department, division, commission, council, board, bureau, committee, office, or other administrative subunit of state government.
- (2) "Career progression" means job advancement.
- (3) "Department" means all executive departments of state government.
- (4) "Finance" means the Division of Finance.
- (5) "Policy" means the policies and procedures of the Division of Finance, as published in the "Accounting Policies and Procedures."
- (6) "Relocation" means the distance between the employee's old residence and new job site must increase at least 50 miles over the distance between the old residence and the old job site.
- (7) "Reimbursement" means money paid to compensate an employee for money spent.

R25-6-4. Approval of Relocation Reimbursement.

All relocation reimbursements require prior written approval of the department director or agency head.

R25-6-5. Eligible Employees.

- (1) Relocation reimbursement costs shall be granted to employees who move due to an involuntary change in jobs.
- (2) Relocation reimbursement costs may be granted to employees who move due to a voluntary change in jobs.
- (3) Relocation reimbursement costs may be granted to new employees who are required by the employing agency to move to accept employment with the state.
 - (a) The amount of relocation costs to be reimbursed to new employees is a matter of negotiation between the department or agency and the employee, but shall be for only those categories of

expenditures identified as reimbursable by Section R25-6-8 and shall not exceed those costs identified as reimbursable in Finance policy.

R25-6-6. Repayment of Reimbursement.

The employee shall agree in writing to repay any relocation expense if, within one year following the relocation, the employee terminates employment with the state or transfers to another department. Exceptions to repayment of the relocation expense must be approved in writing by the Director of Finance.

R25-6-7. Payment of Relocation Expenses.

(1) The employee[~~or new hire~~] makes all payments and then requests reimbursement from the state.

(2) The employee may receive an advance of up to 90 percent of the estimated cost of the moving company, the storage of goods, and/or the real estate fees.

R25-6-8. Reimbursable Categories of Expenditures.

(1) Based on Finance policy, costs reimbursable to an employee for relocation fall into the following broad categories:

- (a) Mileage or common carrier expenses;
- (b) Lodging and meal expenses;
- (c) Costs of moving household goods and furniture; and
- (d) Real estate expenses.

(2) The use of state equipment to move an employee or to pull a privately-owned trailer or trailer house is prohibited unless approved by the Director of Finance and the State Risk Manager.

R25-6-9. Maximum Reimbursement.

The maximum reimbursement for relocation costs may not exceed \$10,000 unless approved in writing by the Director of Finance.

**KEY: costs, finance, relocation benefits, reimbursements[±]
[December 29, 1998] July 2, 2002
Notice of Continuation October 30, 1998
63A-3-103**



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

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 24843

FILED: 05/15/2002, 14:52

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule was revised as a result of a division review of current reimbursement rates and practices. The review showed the following: (1) the lodging per diem for Tooele is not sufficient; (2) fuel costs have increased; (3) reimbursement for use of private aircraft should be computed on air mileage, not road mileage;

(4) the timeframe for comparing the cost of driving to the cost of flying is confusing; (5) employees should be reimbursed for mileage only, not for the actual cost of renting private aircraft; and (6) it is not clear when employees are required to submit a receipt for airport parking.

SUMMARY OF THE RULE OR CHANGE: The rule was amended to: (1) change the lodging per diem for Tooele to \$68; (2) change the reimbursement rate for private vehicle mileage to 28 cents per mile, or 36-1/2 cents per mile if a state fleet vehicle is not available to the employee; (3) change the reimbursement rate to 28 cents per mile for a traveler who chooses to drive a privately-owned vehicle instead of flying; (4) require employees to submit a receipt for all airport parking; (5) clarify that the lowest air fare available within 30 days prior to the departure date will be used when comparing the cost of travel by air to the cost of driving; (6) base the reimbursement for travel by private aircraft on air mileage; (7) eliminate the reimbursement for the actual cost of renting aircraft; and (8) make minor, nonsubstantive wording changes.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 63A-3-107 and 63A-3-106; and UT L 2000 Ch 344, UT L 2001 Ch 334, and UT L 2002 Ch 277

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Amending this rule will result in a cost to the state budget. State agencies (including legislative staff, the Judicial Branch, and the Utah System of Higher Education) will spend more to reimburse some travel expenses. They will spend up to \$13 more per night when they reimburse lodging for Tooele; 1 cent more for each mile they reimburse to an employee who chooses to drive a personal vehicle instead of a fleet vehicle, or to an employee who chooses to drive a privately-owned vehicle instead of flying; and 2 cents more for each private vehicle mile they reimburse when a fleet vehicle is not available to the employee. Because we do not know how many total miles or how many total nights' lodging in Tooele agencies will reimburse, we cannot anticipate the aggregate cost to the state budget.

❖ LOCAL GOVERNMENTS: This rule applies only to state agencies and state employees and, therefore, will have no impact on local government.

❖ OTHER PERSONS: The amendments to this rule may result in savings to employees of the state, legislative staff, the Judicial Branch, and the Utah System of Higher Education who travel on business. Employees who drive a personal vehicle for business will receive 2 cents more per mile driven when a fleet vehicle is not available to the employee and 1 cent more per mile driven when an employee chooses to drive a personal vehicle instead of a fleet vehicle, or when an employee chooses to drive a personal vehicle instead of flying. Employees will receive up to \$13 more per night for lodging reimbursement for Tooele. Because we do not know how many total miles or how many total nights' lodging in Tooele employees will be reimbursed for, we cannot anticipate the aggregate savings to employees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with the revisions to R25-7.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Amendments to R25-7 apply only to state agencies and state employees (including legislative staff, the Judicial Branch, and the Utah System of Higher Education) and have no impact on businesses. Camille Anthony, Executive Director

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

ADMINISTRATIVE SERVICES
FINANCE
Room 2110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Teddy Cramer at the above address, by phone at 801-538-3450, by FAX at 801-538-3244, or by Internet E-mail at tcramer@fi.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 PM on 07/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: Kim Thorne, Director

R25. Administrative Services, Finance.

R25-7. Travel-Related Reimbursements for State Employees.

R25-7-6. Reimbursement for Meals.

.....

(4) When traveling to premium cities (New York, Los Angeles, Chicago, San Francisco, Washington DC, Boston, and Atlanta), the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the actual meal cost, with original receipts, up to \$50 per day.

(a) The traveler must be entitled to be reimbursed for all meals for the day in order to qualify for premium rates for a given day.

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

(c) Actual meal cost includes tips.

(d) Alcoholic beverages are not reimbursable.

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R25-7-8. Reimbursement for Lodging.

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

(1) Lodging is reimbursed for single occupancy only.

(2) For non-conference hotel in-state travel, where the department/traveler makes reservations through the State Travel Agency, the state will reimburse the actual cost up to \$55 per night plus tax except in Moab, Cedar City, St. George, metropolitan Salt Lake City (Draper to Centerville), Ogden city, Park City, Tooele,

Heber City, Midway, and Provo/Orem city. In these areas, the rates are:

(a) Moab, Cedar City, and St. George - \$65 per night plus tax

(b) Metropolitan Salt Lake City (Draper to Centerville), Park City, Tooele, Heber City, and Midway - \$68 per night plus tax

(c) Ogden city and Provo/Orem city - \$63 per night plus tax

(3) The state will reimburse the actual cost per night plus tax for out-of-state travel where the department/traveler makes reservations through the State Travel Agency.

(4) The same rates apply for in-state travel for stays at a non-conference hotel where the department/traveler makes their own reservations.

(5) For out-of-state travel, the state will reimburse the actual cost up to \$65 per night plus tax.

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

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

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

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

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

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

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

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

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

(i) \$20 per night with no receipts required or

(ii) Actual cost up to \$30 per night with a signed receipt from a facility such as a campground or trailer park, not from a private residence.

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

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

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

R25-7-9. Reimbursement for Incidentals.

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

(1) Travelers will be reimbursed for actual out-of-pocket costs for incidental items such as baggage tips and transportation costs.

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

(b) No other gratuities will be reimbursed.

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

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

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

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

(c) Parking at the Salt Lake City airport will be reimbursed at a maximum of the airport long-term parking rate with a receipt.

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

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

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

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

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

(b) The traveler must provide an original lodging receipt or original personal phone bill showing the phone number called and the dollar amount for business telephone calls and personal telephone calls made during stays of five nights or more.

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

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

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

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

(d) More than thirty days - start over

(6) Actual laundry expenses up to \$18.00 per week will be allowed for trips longer than seven days, beginning after the seventh night out.

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

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

(7) An amount of \$5 per day will be allowed for travelers away in excess of six consecutive nights.

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

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

R25-7-10. Reimbursement for Transportation.

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

(1) Air transportation is limited to Air Coach or Excursion class.

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

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

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

(d) In order to preserve insurance coverage, travelers must fly on tickets in their names only.

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

(a) The maximum reimbursement for parking, whether travelers park at the airport or away from the airport, is the airport long-term parking rate.

(b) The parking receipt must be included with the Travel Reimbursement Request, form FI 51A or FI 51B.

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

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

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

(b) Reimbursement for a private vehicle will be at the rate of [27]28 cents per mile, or [34-1/2]36 1/2 cents per mile if a state fleet vehicle is not available to the employee.

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

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

(e) Mileage will be computed from the latest official state road map and will be limited to the most economical, usually traveled routes.

(f) The mileage rate is all-inclusive, and additional expenses such as parking and storage will not be allowed unless approved in writing by the Department Director.

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

(h) Departments may allow mileage reimbursement on an approved Travel Reimbursement Request, form FI 51A or FI 51B, if other costs associated with the trip are to be reimbursed at the same time.

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

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

(b) If the traveler drives a privately-owned vehicle, reimbursement will be at the rate of [27]28 cents per mile or the airplane fare, whichever is less, unless otherwise approved by the Department Director.

(i) The [~~airline ticket cost in effect between 15 and~~] lowest fare available within 30 days prior to the departure date will be used when calculating the cost of travel for comparison to private vehicle cost.

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

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

(d) These reimbursements are all-inclusive, and additional expenses such as parking and toll fees will not be allowed unless approved in writing by the Department Director.

(e) When submitting the reimbursement form, attach a schedule comparing the cost of driving with the cost of flying. The

schedule should show that the total cost of the trip driving was less than or equal to the total cost of the trip flying.

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

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

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

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

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

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

(ii) Rental vehicle reservations not made through the travel agency must be approved in advance by the Department Director.

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

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

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

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

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

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

(d) Reimbursement will be made at 50 cents per mile.

(e) Mileage calculation is based on ~~road~~air mileage ~~[computed from the latest official state road map]~~ and is limited to the most economical, usually-traveled route.

~~—(f) An employee may be reimbursed for rental of the aircraft and purchase of gasoline and oil instead of the amount per mile, with prior approval from the Department Director, when it is cost effective for the state.]~~

(7) Travel by private motorcycle must be approved prior to the trip by the Department Director or designee. Travel will be reimbursed at 16 cents per mile.

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

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

[July 1, 2001] July 2, 2002

Notice of Continuation October 30, 1998

63A-3-107

63A-3-106

2000 Utah Laws 344

2001 Utah Laws 334

2002 Utah Laws 277

Commerce, Administration

R151-2

Government Records Access and Management Act Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 24860

FILED: 05/15/2002, 16:08

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These changes are nonsubstantive changes intended to clarify the language in various provisions.

SUMMARY OF THE RULE OR CHANGE: The changes simplify and clarify the language in the rule. In addition, Subsection R151-2-5(2) designates the Executive Director of the Department as presiding officer over appeals regarding requests to amend a record. Section R151-2-6 designates requests to amend a record as informal proceedings under the Utah Administrative Procedures Act (UAPA), while removing the reference to requests for records, which are expressly exempt from UAPA.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63, Chapter 2

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** This rule change poses no anticipated cost to the State budget. The changes are for clarification purposes only and do not change how requests for records or requests to amend records have been traditionally handled by the Department.

❖ **LOCAL GOVERNMENTS:** This rule does not apply to local governments.

❖ **OTHER PERSONS:** This rule change poses no anticipated cost to other persons. The changes are for clarification purposes only and do not change the procedure for requesting records or procedure for requesting an amendment to a record.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes are for clarification purposes only and do not change the procedure for requesting records or procedure for requesting an amendment to a record.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These changes create no fiscal impact to businesses. They are nonsubstantive, and they simply clarify the existing procedures.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Masuda Medcalf at the above address, by phone at 801-530-7663, by FAX at 801-530-6001, or by Internet E-mail at mmedcalf@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: Klare Bachman, Deputy Director

R151. Commerce, Administration.

R151-2. Government Records Access and Management Act Rule[s].

R151-2-1. Purpose and Authority.

This rule is made pursuant to Section 63-2-204, which allows agencies to specify where and to whom requests for access to records shall be directed; Subsection 63-2-904 (2), which allows an agency to specify at which levels certain requirements shall be undertaken; and Section 63-2-603, concerning requests to amend a record[appeals].

R151-2-2. Duties of Divisions within the Department.

Each division director shall comply with Section 63-2-903 and shall appoint a records officer to perform, or to assist in performing, the following functions:

- (1) the duties set forth in Section 63-2-903; and
- (2) responding to requests for access to division records.

R151-2-3. Requests for Access.

(1) Waiver of Written Requests: Notwithstanding Subsection 63-2-204 (1) requiring written requests for records, a division may at its discretion waive the requirement for a written request if the records requested are public, the records are readily accessible, and the request is filled promptly by allowing access or copying at the time the request is made.

(2) To whom directed: All requests for access to records shall be directed to the records officer of the particular division which the requester believes generated or possesses the records.

(3) Fees: A fee shall be charged for copies of records provided. That fee shall be established pursuant to Title 63, Chapter 38 and Subsection 63-2-203 (1). Fees must be paid at the time of the request or before the records are provided to the requester.

R151-2-4. Forms.

(1) The forms described as follows, or a written document containing substantially similar information to that requested in the forms, shall be completed by requesters in connection with records requests, unless a division waives written requests.

(a) Form 2-204(1), "Request for Records", shall be used by all persons requesting records from the department or its divisions. It is intended to assist persons who request records to comply with the requirements of Subsection 63-2-204 (1) regarding the contents of a request. The form requires the requester's name, address, telephone, organization, if any, a description of the records requested, and information regarding the requester's status, for records which are not public.

(b) Form 2-206(2), "Certification by Requesting Governmental Entity", shall be used by another governmental entity requesting controlled or private records from a division or the department, pursuant to Subsection 63-2-206 (2). This form requires both the information to be provided in Form 2-204(1) and certain representations required from the governmental entity, if the information sought is not public.

(c) Form 2-206(5), "Disclosure and Agreement", shall be used when another governmental entity requests controlled, private or protected records, pursuant to Subsection 63-2-206 (5). This form discloses to the governmental entity certain information regarding restrictions on access and obtains the written agreement of the governmental entity to abide with those restrictions.

(2) The department or its divisions may use forms to respond to requests for records.

R151-2-5. Designation of Authorized Officers.

(1) The determinations or weighing of interests permitted or required under the following sections by a "governmental entity" or the "head of a governmental entity" shall be made by the division director which has custody or control of the records, or his designee:

- (a) Subsection 63-2-201 (5) (b), which governs disclosure of certain private or protected records;
- (b) Section 63-2-308, which governs business confidentiality claims;
- (c) Subsection 63-2-202 (8), which governs disclosure for research purposes;
- (d) Subsection 63-2-201 (10) (a), which governs intellectual property rights.

(2) The "chief administrative officer of the governmental entity" for purposes of appeals under Sections 63-2-401 and 63-2-603 shall be the E[e]xecutive D[d]irector of the Department of Commerce or the Executive Director's designee.

R151-2-6. Designation of Requests to Amend Record[**Appeals**].

Requests to amend a record[All appeals] under [Section 63-2-401, which governs access determination and]Section 63-2-603[, which governs a request to amend a record,] are hereby designated as informal proceedings.

KEY: government documents, freedom of information, public records

[1993]2002

Notice of Continuation April 15, 2002

63-2-204

63-2-201(5)(b)

63-2-201(10)(a)

63-2-202(8)

63-2-308

63-2-401

63-2-603



Commerce, Administration
R151-46b
 Department of Commerce
 Administrative Procedures Act Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 24862

FILED: 05/15/2002, 17:06

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These changes are intended to clarify language in the rule and to establish procedures to resolve certain issues that have arisen, including appearance of out-of-state counsel, service of pleadings in agency review proceedings, and additional exemptions from the agency review process.

SUMMARY OF THE RULE OR CHANGE: The proposed changes would change several provisions that govern adjudicative proceedings in this Department. Section R151-46b-6 allows out-of-state counsel to represent parties and establishes the procedure to be followed (submission of entry of appearance and certificate of good standing from foreign licensing state). Subsection R151-46b-12(2) exempts the Utah Motor Vehicle Franchise Board, the Utah Powersport Advisory Board, and the Pete Suazo Utah Athletic Commission from the agency review proceedings, due to the specific statutes and rules applicable to the Boards and Commission. Subsection R151-46b-12(3)(c) clarifies the requirements for challenging a finding of fact on agency review, and the standards applied by the Department. Subsection R151-46b-12(3)(e) removes language that conflicts with Subsection (d), but adds a requirement that the person requesting agency review provide a copy of the request, any pleadings and any transcript to the division whose decision is challenged. This requirement is common practice in administrative and court proceedings and has always been the practice of the Department, but it was not specifically mentioned in the agency review provision. Subsection R151-46b-12(9) removes language about the effective date of the order, which is duplicative of Subsection R151-46b-11(2). Subsection R151-46b-13(1) is revised to include reconsideration (as opposed to agency review) for the Motor Vehicle and Powersport Advisory Boards and the Athletic Commission as explained above, and the procedures for filing a response to a request for reconsideration. Subsection R151-46b-13(3) removes language that was duplicative of the statute, Section 63-46b-13. Finally, Section R151-46b-18 clarifies that exhibits are considered to be part of an adjudicative proceeding record.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 13-1-6; Title 63, Chapter 46b; Section 13-14-106; UT L 2002 ch 234; and Section 13-13-202

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** These changes do not appear to affect the State budget in any measurable fashion, because they are

largely intended to clarify administrative procedures before the Department.

❖ **LOCAL GOVERNMENTS:** This rule does not apply to local governments.

❖ **OTHER PERSONS:** The regulated professions may enjoy a positive fiscal impact from their ability to retain out-of-state counsel rather than having to comply with the pro hac vice and motion requirements of the courts. Otherwise, the amendments generally clarify administrative procedures before the Department.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There should be no compliance costs to the regulated professions, but rather a cost savings due to their ability to retain out-of-state counsel.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The only fiscal impact to businesses seen in these amendments is a possible positive impact to companies or other regulated individuals who are allowed to retain out-of-state counsel rather than retaining Utah counsel. In that circumstance, the amendment would create a positive fiscal impact to the affected regulated entity or individual. However, the savings are not determinable, as they would depend on the number of actions involving out-of-state counsel.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Masuda Medcalf at the above address, by phone at 801-530-7663, by FAX at 801-530-6001, or by Internet E-mail at mmedcalf@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: Klare Bachman, Deputy Director

R151. Commerce, Administration.

R151-46b. Department of Commerce Administrative Procedures Act Rules.

R151-46b-6. Representation of Parties.

(a) A party may be represented by counsel or may represent himself individually, or if not an individual, may represent itself through an officer or employee~~[-or may be represented by counsel].~~ For the purpose of this provision, the term "counsel" includes active members of the Utah State Bar or active members of any other state bar.

(b) Counsel from a foreign licensing state shall submit a notice of appearance to the presiding officer along with a certificate of good standing from the foreign licensing state.

R151-46b-12. Agency Review.

(1) Availability of Agency Review.

Except as otherwise provided in Subsection 63-46b-11(3)(c), an aggrieved party may obtain agency review of a final order by filing a request with the executive director of the department within thirty days following the issuance of the order.

(2) When Agency Review Is Not Available~~[Exception to filing requirements].~~

Agency review is not available as to any order or decision entered by the Real Estate Appraiser Licensing~~[Registration]~~ and Certification Board, the Utah Motor Vehicle Franchise Board, the Utah Powersport Advisory Board and the Pete Suazo Utah Athletic Commission. However, agency reconsideration is available pursuant to R151-46b-13.

(3) Content of a Request for Agency Review - Transcript of Hearing - Service~~[and Submission of the Record].~~

(a) The content of a request for agency review shall be in accordance with Subsection 63-46b-12(1)(b). The request for agency review shall include a copy of the order that~~[which]~~ is the subject of the request.

(b) A party requesting agency review shall set forth any factual or legal basis in support of that request, including adequate supporting arguments and citation to appropriate legal authority and to the relevant portions of the record developed during the adjudicative proceeding.

(c) If a party challenges a finding of fact in the order subject to review, the party must demonstrate, based on the entire record, that the finding is not supported by substantial evidence. A party challenging the facts bears the burden to marshal or gather all of the evidence in support of a finding and to show that despite such evidence, the finding is not supported by substantial evidence. The failure to so marshal the evidence permits the executive director to accept a division's findings of fact as conclusive. A party challenging a legal conclusion must support the~~[#]~~ argument with citation to any relevant authority and also cite to those portions of the record that~~[which]~~ are relevant to that issue.

(d) If the grounds for agency review include any challenge to a determination of fact or conclusion of law as unsupported by or contrary to the evidence, the party seeking agency review shall order and cause a transcript of the record relevant to such finding or conclusion to be prepared. When a request for agency review is filed under such circumstances, the party seeking review shall certify that a transcript has been ordered and shall notify the department when the transcript will be available for filing with the department. The party seeking agency review shall bear the cost of the transcript.

(e) A party seeking agency review shall, in the manner described in R151-46b-8, file and serve copies of the request for agency review, pleadings, and other submissions to the appropriate division whose order is challenged. If an attorney enters an appearance on behalf of the division, the party seeking agency review shall thereafter serve copies of relevant documents to the attorney.~~[When agency review is sought of an order entered in an informal proceeding, the division or committee which issued the order shall provide the record of the proceeding to the department. The record shall include the audio or video tape of the proceeding, or the minutes prepared or adopted by the presiding officer pursuant to Subsection R151-46b-10(1)(b)(ii).]~~

(f) Failure to comply with this rule may result in dismissal of the request for agency review.

(4) Stay Pending Agency Review~~[Effect of Filing].~~

(a) Upon the timely filing of a request for agency review, the party seeking review may request that the effective date of the order subject to review be stayed pending the completion of review. If a stay is not timely requested, the order subject to review shall take effect according to its terms.

(b) The division or committee that~~[which]~~ issued the order subject to review may oppose the request for a stay in writing within ten days from the date the stay is requested. Failure to oppose a timely request for a stay shall result in an order granting the stay unless the department determines that a stay would not be in the best interest of the public. The department may also enter an interim order granting a stay pending a decision on the motion for a stay.

(c) In determining whether to grant a request for a stay or a motion opposing that request, the department shall review the division's or committee's findings of fact, conclusions of law and order to determine whether granting a stay would, or might reasonably be expected to, pose a significant threat to the public health, safety and welfare. The department may also issue a conditional stay by imposing terms, conditions or restrictions on a party pending agency review.

(5) Memoranda.

(a) The department may order or permit the parties to file memoranda to assist in conducting agency review. Any memoranda shall be filed consistent with these rules or as otherwise governed by any scheduling order entered by the department.

(b) When no transcript is necessary to conduct agency review, any memoranda supporting a request for such review shall be concurrently filed with the request. If a transcript is necessary to conduct agency review, any supporting memoranda shall be filed no later than 15 days after the filing of the transcript with the department.

(c) Any response to a request for agency review and any memoranda supporting that response shall be filed no later than 15 days from the filing of the request for agency review or no later than 15 days from the filing of any subsequent memoranda supporting that request. Any final reply memoranda shall be filed no later than five days after the filing of a response to the request for agency review.

(6) Oral Argument.

The request for agency review or the response thereto shall state whether oral argument is sought in conjunction with agency review. The department may order or permit oral argument if the department determines such argument is warranted to assist in conducting agency review.

(7) Standard of Review.

The standards for agency review correspond to the standards for judicial review of formal adjudicative proceedings, as set forth in Subsection 63-46b-16(4).

(8) Type of Relief.

The type of relief available on agency review shall be the same as the type of relief available on judicial review, as set forth in Subsection 63-46b-17(1)(b).

(9) Order on Review.

The order on review ~~[shall identify the effective date of the order and]~~ shall comply with the requirements of Subsection 63-46b-12(6).

R151-46b-13. Agency Reconsideration.

(1) Filing requirements for agency reconsideration.

(a) Before seeking judicial review of any order or decision entered by the Real Estate Appraiser Licensing~~[Registration]~~ and Certification Board, the Utah Motor Vehicle Franchise Board, the Utah Powersport Advisory Board and the Pete Suazo Utah Athletic Commission, an aggrieved party may file a petition for reconsideration by the relevant board or commission pursuant to Section 63-46b-13.

(b) The request shall be signed by the party seeking reconsideration ~~[and filed with the Division of Real Estate, which shall provide a copy of the request to the board]~~. Any response to the request for reconsideration shall be filed ~~[with the division]~~ within ten days of the filing of the request for reconsideration. Responses relating to matters before the Real Estate Appraiser Licensing and Certification Board shall be filed with the Division of Real Estate. All other responses shall be filed with the executive director of the Department. ~~[The division shall provide a copy of any response to the board.]~~

(2) Stay Pending Reconsideration ~~[Effect of filing]~~.

Upon the timely filing of a request for reconsideration by the board, the effective date of the previously issued order or decision shall be suspended pending the completion of reconsideration.

(3) Order on reconsideration.

~~[Any written order on reconsideration shall be issued by the board no later than 20 days after the filing of the request.]~~ Any order on reconsideration ~~[shall set forth an effective date and]~~ constitutes final agency action for purposes of Section 63-46b-14. The order shall provide notice to any aggrieved party of any right to judicial review.

R151-46b-18. Record of an Adjudicative Proceeding.

(1) Definition.

The record of an adjudicative proceeding includes the pleadings and exhibits filed by the parties, the recording of any hearing under Subsection R151-46b-10(11), any transcript of a hearing, and orders or other documents issued by any presiding officer in the adjudicative proceeding or on agency review or reconsideration of the adjudicative proceeding.

(2) Retention.

The record of an adjudicative proceeding shall be retained by the department pursuant to Title 63, Chapter 2, the Government Records Access and Management Act ("GRAMA"). As used herein, "department" means the department, division or committee before whom the adjudicative proceeding was conducted.

(3) Classification.

The record of an adjudicative proceeding is classified as a "public record" except as otherwise classified by the department pursuant to GRAMA.

KEY: administrative procedures, government hearings

~~[June 1, 2000]~~ **July 2, 2002**

Notice of Continuation February 28, 2001

13-1-6

63-46b-1(6)



Commerce, Occupational and Professional Licensing **R156-26a-307** Reinstatement of Licenses

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 24818

FILED: 05/06/2002, 17:42

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division has determined it needs to relax the reinstatement requirements for certified public accountants (CPAs) who have inadvertently allowed their license to lapse but who have continued to obtain the required continuing professional education (CPE).

SUMMARY OF THE RULE OR CHANGE: Section R156-26a-307 is amended to allow CPAs who have continued to obtain CPE after inadvertently allowing their license to lapse up to two years rather than six months to reinstate their license without being required to take additional CPE and testing order to reinstate their license.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-26a-102, 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 amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

❖ **LOCAL GOVERNMENTS:** Proposed amendments do not apply to local governments.

❖ **OTHER PERSONS:** The cost of obtaining the required additional CPE and testing is estimated to be about \$400 which would be saved by each affected CPA reinstatement applicant. The Division is unable to determine an aggregate amount as it depends on the number of reinstatement applicants and the Division is unable to determine an exact number, but the number of such applicants should be minimal.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The cost of obtaining the required additional CPE and testing is estimated to be about \$400 which would be saved by each affected CPA reinstatement applicant as a result of these proposed amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change provides licensees who inadvertently allow their license to lapse an additional 18 months to reinstate their license without additional continuing education or testing. There does not appear to be any negative fiscal impact to businesses. Ted Boyer, Executive Director

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

COMMERCE

OCCUPATIONAL AND PROFESSIONAL LICENSING

HEBER M WELLS BLDG

160 E 300 S

SALT LAKE CITY UT 84111-2316, or

at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Dan S. Jones at the above address, by phone at 801-530-6720, by FAX at 801-530-6511, or by Internet E-mail at dsjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/01/2002

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 6/26/2002 at 1:00 PM, 160 East 300 South, Conference Room 4B (Fourth Floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: J. Craig Jackson, Director

**R156. Commerce, Occupational and Professional Licensing.
R156-26a. Certified Public Accountant Licensing Act Rules.
R156-26a-307. Reinstatement of Licenses.**

(1) An individual having held a Utah license which has expired for failure to renew for nonpayment of fees, or an individual applying for reinstatement from emeritus status, may be relicensed upon satisfactory completion of:

(a) submission of an application on forms supplied by the division which shall contain information as to why the person allowed their license to lapse;

(b) 80 hours of acceptable CPE, completed within the 12 months preceding the submission of an application for reinstatement, which shall include a minimum of 16 hours in accounting or auditing or both and shall include successful completion of the AICPA Ethics Self-Study Examination and the Utah Law and Rules Examination with a minimum score of at least the minimum score required for initial licensure. Successful completion of the two examinations will count as eight hours of CPE towards the 80 hour requirement.

(i) ~~[This 80 hour]~~The requirements in Subsection R156-26-307(1)(b) ~~are~~~~[is]~~ waived if the reinstatement applicant has not been practicing within the state of Utah since the expiration of the license being reinstated, the reinstatement applicant has continuously since the expiration been licensed and practicing in another state and the reinstatement applicant demonstrates that the applicant has met all the CPE requirements that would have been applicable in the state of Utah during the time the license was expired in the state of Utah.

(ii) ~~[This 80 hours]~~The requirements in Subsection R156-26a-307(1)(b) ~~are~~~~[is]~~ waived, if the applicant failed to renew because of inadvertent failure to pay the renewal fees, to sign application documents, or to meet similarly technical application requirements and the application for reinstatement is filed with the Division within ~~[six]~~24 months after expiration date of the license and at time of application for reinstatement the applicant demonstrates by proof of attendance at acceptable CPE courses that at all times the applicant was in full compliance with the CPE requirements.

(2) A licensee who reinstates their license must obtain ten hours of CPE per full calendar quarter remaining in the current CPE reporting period after reinstatement is granted.

(3) The number of hours required to reinstate the license shall not be considered to satisfy in whole or part any of the 80 hours of CPE required for subsequent renewal of the license.

**KEY: accountants, licensing, peer review[≠]
[January 4, 2001]2002
Notice of Continuation April 15, 2002
58-26a-101**

58-1-106(1)

58-1-202(1)

Commerce, Occupational and
Professional Licensing
R156-38

Residence Lien Restriction and Lien
Recovery Fund Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 24822

FILED: 05/13/2002, 14:03

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Residence Lien Recovery Fund Advisory Board have determined that changes need to be made to this rule to: (1) codify precedent setting decisions since the last rule amendment filing; (2) provide clear guidance to claimants on recurring issues; and (3) correct linguistic and technical errors.

SUMMARY OF THE RULE OR CHANGE: In Section R156-38-102: a definition for "qualified services" was added. In Section R156-38-105: additions are being made to clarify denial and conditional denial procedures with respect to a claimant's application. In Section R156-38-204a: added documents needed with respect to a nonlaborer claim if the contracting entity is a real estate developer; and changed the word "independent evidence" through this section to "credible evidence" to set a legally defensible standard of evidence. In Section R156-38-204d: added wording with respect to claims wherein the claimant has had judgment entered against the nonpaying party and added a new paragraph with respect to claims wherein the nonpaying party's bankruptcy filing precluded the claimant from having judgment entered against the nonpaying party defining what costs would be applicable. Section R156-38-301 was changed to Section R156-38-301a; a new section (R156-38-301b) was added to specify what type of entity status change would require new registration in the Fund and to also clarify when a Fund registration is transferable. In Section R156-38-401: deleted "letter of credit" as an alternate security as required under Section 38-1-28.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 38-11-101, 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, approximately \$100, to reprint this rule once the proposed amendments have been made effective. Any costs incurred will be absorbed in the Division's current budget.

❖ LOCAL GOVERNMENTS: Proposed rule amendments do not apply to local governments.

❖ OTHER PERSONS: These proposed rule amendments will have no fiscal impact on any entity as the amendments codify

existing Division policies and procedures and do not alter claim payment amounts. Therefore, all affected parties have already realized any cost increase or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These proposed rule amendments will have no fiscal impact on any entity as the amendments codify existing Division policies and procedures and do not alter claim payment amounts. Therefore, all affected parties have already realized any cost increase or savings.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The additions of or changes to Subsections R156-38-102(8), R156-38-105(8)(b), R156-38-204d(4), and Section R156-38-301b all reflect Residence Lien Recovery Fund (LRF) Board decisions and policy, and should create no business fiscal impact that industry has not already experienced. The remaining changes to the LRF rule create no business fiscal impact issues, as they are for the purpose of bringing the LRF rules into compliance with new statutory changes, or are otherwise procedural in nature. Ted Boyer, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Earl Webster at the above address, by phone at 801-530-7632, by FAX at 801-530-6511, or by Internet E-mail at ewebster@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/01/2002

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 6/12/2002 at 8:00 AM, 160 East 300 South, South Conference Room (First Floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing.

R156-38. Residence Lien Restriction and Lien Recovery Fund Rules.

R156-38-102. Definitions.

In addition to the definitions in Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; Title 58, Chapter 1, Division of Occupational and Professional Licensing Act; and Rule R156-1, General Rules of the Division of Occupational and Professional Licensing, which shall apply to these rules, as used in these rules:

(1) "Claimant" means a person who submits an application or claim for payment from the fund.

(2) "Construction project", as used in Subsection 38-11-203(4), means all qualified services related to the written contract required by Subsection 38-11-204(3)(a).

(3) "Contracting entity" means an original contractor, a factory built housing retailer, or a real estate developer that contracts with a homeowner.

(4) "Homeowner" means the owner of an owner-occupied residence.

(5) "Necessary party" includes the division, on behalf of the fund, and the claimant.

(6) "Owner", as defined in Subsection 38-11-102(15), does not include any person or developer who builds residences that are offered for sale to the public.

(7) "Permissive party" includes a licensee or qualified beneficiary who will be required to reimburse the fund if a claimant's claim is paid from the fund.

(8) "Qualified services", as used in Subsection 38-11-102(18) do not include:

(a) services provided by the claimant to cure a breach of the contract between the claimant and the nonpaying party; or

(b) services provided by the claimant under a warranty or similar arrangement.

R156-38-105. Adjudicative Proceedings.

(1) The classification of adjudicative proceedings initiated under Title 38, Chapter 11 is set forth at Sections R156-46b-201 and R156-46b-202.

(2) The identity and role of presiding officers for adjudicative proceedings initiated under Title 38, Chapter 11, is set forth in Sections 58-1-109 and R156-1-109.

(3) Issuance of investigative subpoenas under Title 38, Chapter 11 shall be in accordance with Subsection R156-1-110.

(4) Adjudicative proceedings initiated under Title 38, Chapter 11, shall be conducted in accordance with Title 63, Chapter 46b, Utah Administrative Procedures Act, and Rules R151-46b and R156-46b, Utah Administrative Procedures Act Rules for the Department of Commerce and the Division of Occupational and Professional Licensing, respectively, except as otherwise provided by Title 38, Chapter 11 or these rules.

(5) Claims shall be filed with the division and served upon all necessary and permissive parties.

(6) Service of claims or other pleadings by mail to a qualified beneficiary of the fund addressed to the address shown on the division's records with a certificate of service as required by R151-46b-8, shall constitute proper service. It shall be the responsibility of each registrant to maintain a current address with the division.

(7) A permissive party is required to file a response to a claim against the fund within 30 days of notification by the division of the filing of the claim, to perfect the party's right to participate in the adjudicative proceeding to adjudicate the claim.

(8)(a) ~~[The]~~ For informal claims, findings of fact and conclusions of law ~~[established by a judgment]~~ entered by a civil court or ~~state~~ [a final order entered by an administrative] agency submitted in support of or in opposition to a claim against the fund shall not be subject to readjudication in an adjudicative proceeding to adjudicate the claim.

(b) For formal claims, a claim or issue resolved by a prior judgment, order, findings of fact, or conclusions of law entered in by a civil court or a state agency submitted in support of or in

opposition to a claim against the fund shall not be subject to readjudication with respect to the parties to the judgment, order, findings of fact, or conclusions of law.

(9) A party to the adjudication of a claim against the fund may be granted a stay of the adjudication proceeding during the pendency of a judicial appeal of a judgment entered by a civil court or the administrative or judicial appeal of an order entered by an administrative agency provided:

(a) the administrative or judicial appeal is directly related to the adjudication of the claim; and

(b) the request for the stay of proceedings is filed with the presiding officer conducting the adjudicative proceeding and concurrently served upon all parties to the adjudicative proceeding, no later than the deadline for filing the appeal.

(10)(a) A written notice of denial of claim shall be provided to a claimant who submits a complete application if the division determines that the claim does not meet the requirements for payment.

(b) A written notice of incomplete application and conditional denial of claim shall be provided to a claimant who submits an incomplete application. The notice shall advise the claimant that the application is incomplete and that the application is denied, unless the claimant corrects the deficiencies within the time period specified in the notice and the claim otherwise meets all qualification for payment.

R156-38-204a. Claims Against the Fund by Nonlaborers - Supporting Documents and Information.

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

(1) one of the following:

(a) a copy of the written contract between the homeowner and the contracting entity; or

(b) a copy of a civil judgment containing a finding that the homeowner entered into a written contract in compliance the requirements of Subsection 38-11-204(3)(a);

(2)(a) if the claim involves an original contractor, documentation issued by the division that the original contractor is licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act;

(b) if the contracting entity is a real estate developer:

(i) credible evidence that the contracting entity had an ownership interest in the property;

(ii) a copy of the contract between the contracting entity and the contractor that built the residence or other credible evidence showing the existence of such a contract and setting forth a description of the services provided to the contracting entity by the contractor; and

(iii) credible evidence that the real estate developer offered the residence for sale to the public;

(3) one of the following:

(a) an affidavit from the contracting entity acknowledging that the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract;

(b) a copy of a civil judgment containing a finding that the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract; or

(c) documentation that the claimant has been prevented from satisfying Subsections (a) and (b), together with ~~independent~~ credible evidence establishing that the homeowner

paid the contracting entity in full in accordance with the written contract and any amendments to the contract;

(4) one or more of the following as required:

(a) a copy of an action date stamped by a court of competent jurisdiction filed by the claimant against a contracting entity or subcontractor as described in Subsection 38-11-204(3)(c) to recover monies owed for qualified services performed on the owner-occupied residence, filed within 180 days from the date the claimant last provided qualified services; or

(b) a copy of the Notice of Commencement of Action filed with the division; or

(c) documentation that a bankruptcy filing by the contracting entity or subcontractor prevented claimant from satisfying Subsections (a) and (b);

(5) one of the following:

(a) a copy of a civil judgment entered in favor of claimant against the contracting entity or subcontractor containing a finding that the contracting entity or subcontractor failed to pay the claimant pursuant to their contract with the claimant and any amendments to the contract; or

(b) documentation that a bankruptcy filing by the contracting entity or subcontractor prevented the claimant from obtaining such a civil judgment, together with ~~independent~~ credible evidence establishing that the contracting entity or subcontractor failed to pay the claimant pursuant to their contract with the claimant and any amendments to the contract;

(6) one or more of the following as required:

(a) a copy of a supplemental order issued following the civil judgment entered in favor of claimant and a copy of the return of service of the supplemental order indicating either that service was accomplished on the contracting entity or subcontractor or that said contracting entity or subcontractor could not be located or served;

(b) a writ of execution issued if any assets are identified through the supplemental order or other process, which have sufficient value to reasonably justify the expenditure of costs and legal fees which would be incurred in preparing, issuing, and serving execution papers and in holding an execution sale; or

(c) documentation that a bankruptcy filing or other action by the contracting entity or subcontractor prevented the claimant from satisfying Subparagraphs (a) and (b);

(7) certification that the claimant is not entitled to reimbursement from any other person at the time the claim is filed and that the claimant will immediately notify the presiding officer if the claimant becomes entitled to reimbursement from any other person after the date the claim is filed; and

(8) one of the following:

(a) an affidavit from the homeowner establishing that he is an owner as defined in Subsection 38-11-102(15) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(16);

(b) a copy of a civil judgment containing a finding that the homeowner is an owner as defined by Subsection 38-11-102(15) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(16); or

(c) documentation that the claimant has been prevented from obtaining an owner-occupied residence affidavit together with ~~independent~~ credible evidence establishing that the homeowner is an owner as defined by Subsection 38-11-102(15) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(16).

(9) one or more of the following:

(a) a copy of invoices setting forth a description of, the performance dates of, and the value of the qualified services claimed;

(b) a copy of a civil judgment containing a finding setting forth a description of, the performance dates of, and the value of the qualified services claimed; or

(c) ~~independent~~ credible evidence setting forth a description of, the performance dates of, and the value of the qualified services claimed.

(10) In claims in which the presiding officer determines that the claimant has made a reasonable but unsuccessful effort to produce all documentation specified under this rule to satisfy any requirement to recover from the fund, the presiding officer may elect to accept the evidence submitted by the claimant if the requirements to recover from the fund can be established by that evidence.

(11) A separate claim must be filed for each residence and a separate filing fee must be paid for each claim.

R156-38-204d. Calculation of Costs, Attorney Fees and Interest for Payable Claims.

(1) Payment for qualified services, costs, and interest shall be made as specified in Section 38-11-203.

(2) When a claimant requests payment of multiple claims supported by a single judgment or other common documentation and the judgment or documentation does not differentiate costs and attorney fees by owner-occupied residence, the amount of costs and attorney fees shall be allocated among the related claims using the following formula: (Qualified services attributable to the owner-occupied residence divided by Total qualified services awarded as judgment principal or total documented qualified services) x Total costs or total attorney fees.

(3) For claims determined by the division to be payable from the fund, the division shall order payment of attorney fees in an aggregate amount not exceeding the following:

(a) If a civil judgment awards a specific dollar amount for attorney fees, the division shall order payment as ordered in the civil judgment, to the extent that the attorney fees are attributable to the owner-occupied residence at issue in the claim.

(b) Otherwise, the division shall order payment of reasonable attorney fees, documented according to the provisions of Rule 4-505, Utah Code of Judicial Administration, subject to the following limitations:

(i) if the payable amount of qualified services is \$3,000 or less, not more than 33% of the value of the qualified services and not exceeding \$750;

(ii) if the payable amount of qualified services is greater than \$3,000 and \$10,000 or less, not more than 25% of the value of qualified services and not exceeding \$2,000; or

(iii) if the payable amount of qualified services is greater than \$10,000, attorney fees in an amount of not more than 20% of the value of qualified services and not exceeding \$7,000.

(iv) The above limits may be waived by the director in those unique claims where manifest injustice would otherwise result. The burden is on the claimant to demonstrate manifest injustice.

(4)(a) For claims wherein the claimant has had judgment entered against the nonpaying party, ~~[-P]~~ post-judgment costs shall be limited to those costs allowable by a district court, such as costs of service, garnishments, or executions, and shall not include postage, copy expenses, telephone expenses, or other costs related to the preparation and filing of the claim application.

(b) For claims wherein the nonpaying party's bankruptcy filing precluded the claimant from having judgment entered against the nonpaying party, total costs shall be limited to those costs that would have been allowable by the district court had judgment been entered, such as, but not limited to, costs of services, garnishments, or executions, and shall not include postage, copy expenses, telephone expenses, or other costs related to the preparation and filing of the claim application.

R156-38-301a. Contractor Registration as a Qualified Beneficiary - All License Classifications Required to Register Unless Specifically Exempted - Exempted Classifications.

(1) All license classifications of contractors are determined to be regularly engaged in providing qualified services for purposes of automatic registration as a qualified beneficiary, as set forth in Subsections 38-11-301(1) and (2), with the exception of the following license classifications:

.....

R156-38-301b. Event Necessitating Registration - Name Change by Qualified Beneficiary - Reorganization of Registrant's Business Type - Transferability of Registration.

(1) Any change in entity status by a registrant requires registration with the Fund by the new or surviving entity before that entity is a qualified beneficiary.

(2) The following constitute a change of entity status for purposes of Subsection (1):

(a) creation of a new legal entity as a successor or related-party entity of the registrant;

(b) change from one form of legal entity to another by the registrant; or

(c) merger or other similar transaction wherein the existing registrant is acquired by or assumed into another entity and no longer conducts business as its own legal entity.

(3) A qualified beneficiary registrant shall notify the division in writing of a name change within 30 days of the change becoming effective. The notice shall provide the following:

(a) the qualified beneficiary's prior name;

(b) the qualified beneficiary's new name;

(c) the qualified beneficiary's registration number; and

(d) proof of registration with the Division of Corporations and Commercial Code as required by state law.

(4) A registration shall not be transferred, lent, borrowed, sold, exchanged for consideration, assigned, or made available for use by any entity other than the registrant for any reason.

(5) A claimant shall not be considered a qualified beneficiary registrant merely by virtue of owning an entity that is a qualified beneficiary.

R156-38-401. Requirements for a Letter of Credit and/or Evidence of a Cash Deposit as Alternate Security for Mechanics' Lien.

To qualify as alternate security under Section 38-1-28[:

~~— (1) A "letter of credit" must be issued by a federally insured depository institution and satisfy the requirements of Section 70A-5-401, et seq.~~

~~— (2) "E]" evidence of a cash deposit" must be an account at a federally insured depository institution that is pledged to the protected party and is payable to the protected party upon the occurrence of specified conditions in a written agreement.~~

KEY: licensing, contractors, liens
~~[September 17, 2001]~~2002
 Notice of Continuation April 6, 2000
 38-11-101
 58-1-106(1)
 58-1-202(1)

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 incur minimal costs, less than \$100, to reprint this rule once these proposed amendments are made effective. Any costs incurred will be absorbed in the Division's current budget.

❖ LOCAL GOVERNMENTS: Proposed rule amendments do not apply to local governments.

❖ OTHER PERSONS: Licensed chiropractic physicians: The Division estimates it will cost each licensed chiropractic physician approximately \$15-\$17 per hour to complete the additional 16 hours of continuing education every 2 years (\$272 per licensee). There are currently 748 licensed chiropractic physicians in Utah. Therefore, an aggregate cost to the chiropractic industry would be approximately \$203,456 every 2 years. As a result of increased costs to the licensed chiropractic physician to obtain required continuing education every two years, some of the costs may be passed along to the client. However, this could vary from licensee to licensee. The Division estimates that an animal chiropractic course will cost approximately \$17 per hour and 180 hours are required in the animal chiropractic course. Therefore, a total one-time cost of \$3,060 is anticipated for those licensed chiropractic physicians that want to practice animal chiropractic. It should be noted that this requirement is entirely voluntarily as the requirements only pertain to those chiropractic physicians that want to practice animal chiropractic.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Licensed chiropractic physicians: The Division estimates it will cost each licensed chiropractic physician approximately \$15-\$17 per hour to complete the additional 16 hours of continuing education every 2 years for a total of \$272. If a licensed chiropractic physician wants to practice animal chiropractic, the Division estimates it will cost the chiropractic physician approximately \$3,060 (\$17 per hour x 180 hours) to complete the required training.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: In line with the national trend in the chiropractic industry, this rule change increases the number of required continuing education hours for licensees by 16 credit hours for each 2-year period. This change will impact the chiropractic industry for a cost of approximately \$15-\$17 for each credit hour, and the cost will then be passed onto the consumer. There are currently 748 licensed chiropractic physicians in Utah. Therefore, at the high end, we could be looking at an impact of approximately \$203,456 to the chiropractic industry every 2 years. The addition of the animal chiropractor education requirement was passed by the 2001 Legislature in Title 58, Chapter 28, of the Utah Code. Therefore, this rule change creates no further business impact. Ted Boyer, Executive Director

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

COMMERCE
 OCCUPATIONAL AND PROFESSIONAL LICENSING

Commerce, Occupational and
 Professional Licensing

R156-73

Chiropractic Physician Practice Act
 Rules

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 24828

FILED: 05/14/2002, 11:44

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Chiropractic Physician Licensing Board have determined that changes need to be made in the rule to remain in line with national trends in the chiropractic industry. Also, during the 2001 legislative session, S.B. 132 was passed which mandated the establishment of standards for licensed chiropractic physicians providing chiropractic services on animals. (DAR NOTE: S.B. 132 is found at UT L 2001 Ch 124, and was effective April 30, 2001.)

SUMMARY OF THE RULE OR CHANGE: In Section R156-73-102: added a definition for "preceptor". In Section R156-73-303a: changed the number of continuing education hours a licensed chiropractic physician needs every 2 years from 24 hours to 40 hours. In Section R156-73-303b: changed that a licensed chiropractic physician is required to maintain records of completed continuing education hours from two years to four years; and also added that the Chiropractic Physicians Licensing Board may waive the completion of continuing education hours upon sufficient evidence of hardship or illness or other reason that makes it impossible or highly impractical for the licensed chiropractic physician to complete the required hours. In Section R156-73-304: changed that the supervising preceptor shall "be licensed in good standing in Utah and have practiced as a licensed chiropractic physician for the past five years"; deleted the requirement that the preceptor remain on the premises at all times while the preceptee is performing any clinical procedures; replaced the prior requirement with the following: "A supervising preceptor shall provide direct supervision on the premises, either personally, or by delegating to another chiropractic physician who is licensed in good standing in Utah and who has practiced as a licensed chiropractic physician for the past five years; and also added those specific procedures when a supervising preceptor or his designee must remain on the premises. Section R156-73-603 was added to provide the standards for the practice of animal chiropractic.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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 dantjones@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 07/01/2002

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 6/13/2002 at 9:00 AM, 160 East 300 South, Conference Room 428 (Fourth Floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

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.

(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) "Preceptor" means a licensed chiropractic physician who is a supervisor of interns and externs in the professional practice of chiropractic.

(4) "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.

(5) "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.

R156-73-303a. Continuing Education - Renewal Requirement.

(1) In accordance with Subsection 58-73-303(2), each licensee shall complete [24]40 hours of continuing education in each preceding two year period of licensure.

(2) The required number of hours of continuing education for an individual who first becomes licensed during the two year period shall be prorated to the part of that two year period during which the person is licensed.

R156-73-303b. Continuing Education - Standards.

(1) The standards for continuing education are as follows:

(a) the content must be relevant to chiropractic practice and consistent with the laws and rules of this state;
(b) the course must be under the sponsorship of or approved by:

(i) a chiropractic college or university whose doctor of chiropractic program is accredited by the Council on Chiropractic Education, Inc.;

(ii) a professional association or nonprofit organization representing a licensed profession whose program objectives relate to the practice of chiropractic; or

(iii) the licensing agency of another state;

(c) learning objectives must be reasonably and clearly stated;

(d) teaching methods must be clearly stated and appropriate;

(e) faculty must be qualified, both in experience and in teaching expertise;

(f) documentation of attendance must be provided; and

(g) there shall be no more than four clock hours related to

chiropractic practice marketing or practice building.

(2) A licensee shall be responsible for maintaining competent records of completed continuing education for a period of [two]four years after close of the two year period to which the records pertain.

(3) The board may, after review, waive the continuing education requirements for a licensee presenting sufficient evidence of hardship or illness or other reason making it impossible or highly impractical for the licensee to attend or have attended a sufficient number of continuing education classes.

R156-73-304. Preceptorship - Approved Form of Supervision.

In accordance with Subsection 58-73-304(2), the approved form of supervision is defined, clarified or established as follows:

(1) [§]The supervising preceptor shall:

(a) [be currently licensed in good standing in Utah]be licensed in good standing in Utah and have practiced as a licensed chiropractic physician for the past five years;

(b) have entered into a written contract with an approved college or university to provide chiropractic training to a preceptee; and

(c) [remain on the premises at all times while the preceptee is performing any clinical procedures]provide direct supervision on the premises, either personally or by delegating to another chiropractic physician who is licensed in good standing in Utah and who has practiced as a licensed chiropractic physician for the past five years.

(2) The preceptor or his designee must remain on the premises at all times while the preceptee is performing the following procedures:

(a) adjusting of the articulation of the spinal column;

(b) diagnosis of the articulation of the spinal column;

(c) manipulation of the articulation of the spinal column; and

(d) therapeutic positioning of the articulation of the spinal column.

R156-73-603. Standards for Practice of Animal Chiropractic.

In accordance with Subsection 58-28-8(12)(a), a chiropractic physician practicing animal chiropractic shall have completed an

animal chiropractic course approved by the American Chiropractic Veterinary Association (ACVA) or another course that is substantially equivalent to the ACVA course.

KEY: chiropractors, licensing, chiropractic physician[~~§~~]
[~~July 5, 2001~~]**2002**

Notice of Continuation July 5, 2001

58-73-101

58-1-106(1)

58-1-202(1)

Corrections, Administration

R251-305

Visiting at Community Correctional Centers

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 24826

FILED: 05/13/2002, 14:26

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule needs to be changed because of a change in terminology used in Community Correctional Centers. A definition was added to describe the new terminology.

SUMMARY OF THE RULE OR CHANGE: The term "offender" was added to the definitions. The more general term "law enforcement" was used in place of "police department" to include more agencies.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 64-13-17

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--The changes are wording changes only and have no effect on the process, outcome, or cost.

❖ LOCAL GOVERNMENTS: None--The changes are wording changes only and have no effect on the process, outcome, or cost.

❖ OTHER PERSONS: None--The changes are wording changes only and have no effect on the process, outcome, or cost.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The changes are wording changes only and have no effect on the process, outcome, or cost.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: None--This is a housekeeping change with no additional fiscal impact.

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

CORRECTIONS
ADMINISTRATION

14717 S MINUTEMAN DR
DRAPER UT 84020-9549, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ginny L Duncan at the above address, by phone at 801-545-5722, by FAX at 801-545-5523, or by Internet E-mail at gduncan@udc.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 PM on 07/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: Michael P. Chabries, Executive Director

R251. Corrections, Administration.

R251-305. Visiting at Community Correctional Centers.

R251-305-1. Authority and Purpose.

(1) This rule is authorized by Section 64-13-17.

(2) The purpose of this rule is to provide the Department's rules governing visitation at Community Correctional Centers.

R251-305-2. Definitions.

(1) "Center" means a community corrections halfway house facility designed to facilitate an offender's readjustment to private life.

(2) "Confiscate" means to take possession or immediately seize.

(3) "Contraband" means any material, substance or other item not approved by the Department to be in the possession of residents.

(4) "Evidence" means any item which may be used in prosecution of a violation of Department policy or procedure, federal, state or local law.

(5) "Illegal contraband" means any material, substance or other item the possession of which violates criminal statutes.

(6) "Legal representatives" means court personnel, attorneys-at-law and their assistants such as paralegals and investigators.

(7) "Offender" means a probationer, parolee or inmate housed in a Community Correctional Center.

~~(7)~~(8) "Premises" means Center's building and land, including residents' property, rooms, persons and vehicles.

~~(8)~~(9) "Religious representative" means a priest, bishop, rabbi, religious practitioner or similar functionary of a church or legally recognized denomination or organization.

~~(9)~~(10) "Sponsor" means an individual who is approved by Center staff members to accompany ~~a resident~~ an offender while on leave time away from the Center.

~~(10)~~(11) "Visit" means a period of time during which ~~a resident~~ an offender has the opportunity to interact with family and friends on Community Correctional Center premises.

R251-305-3. Policy.

It is the policy of the Department that:

(1) Community Correctional Centers shall schedule days and times for visiting;

(2) visits at other than established visiting hours may be approved by the Center Director/designee;

- (3) Community Correctional Centers shall have designated visiting areas;
- (4) visitors shall not be allowed in unauthorized areas;
- (5) ~~residents'~~ offenders' visitors, except for non-emancipated minors, shall be approved sponsors;
- (6) non-emancipated minors shall be accompanied by a parent or guardian;
- (7) sponsor applicants may be subject to special conditions (i.e., visiting only, leave time only, etc.);
- (8) ~~residents~~ offenders shall be advised of visiting rules during orientation;
- (9) visitors will be advised of visiting rules during the sponsor application process;
- (10) visiting may be prohibited for ~~residents~~ offenders in security cells and as part of restrictions ordered by the Offender Discipline Hearing Officer;
- (11) visitors shall be required to sign a visitor log when entering and leaving the Center;
- (12) visitors may be required to present picture identification prior to visiting;
- (13) visitors shall be modestly dressed to be permitted to visit (i.e., no bare midriffs or see-through blouses or shirts, no shorts, tube tops, halters, extremely tight or revealing clothing, no dresses or skirts more than three inches above the knees, or sexually revealing attire; children under the age of twelve may wear shorts and sleeveless shirts);
- (14) sexual contact between visitors and ~~residents~~ offenders (i.e., petting, prolonged kissing or bodily contact) is prohibited;
- (15) visitors shall not bring animals or pets into the Center with the exception of dogs trained to aid the handicapped;
- (16) visitors shall visit with only one ~~resident~~ offender at a time unless approved by Center staff;
- (17) ~~residents~~ offenders and visitors shall not exhibit abusive, disruptive or other inappropriate behavior;
- (18) ~~residents~~ offenders and visitors shall not use loud or offensive language;
- (19) visitors suspected to be under the influence of alcohol or drugs shall be denied visiting and advised by staff to arrange alternate transportation if they are operating a vehicle;
- (20) if an intoxicated visitor refuses to seek alternate transportation or becomes belligerent, staff shall attempt to detain the individual and contact the local ~~police department~~ law enforcement for assistance;
- (21) visitors shall be responsible for their property and the Department shall not be liable for any loss or damage to visitors' property;
- (22) visitors may be subject to search of their person or property for reasonable cause;
- (23) visitors attempting to bring contraband on Center premises may have visiting privileges restricted, suspended or revoked;
- (24) Center staff may restrict, deny or cancel visiting privileges for the safety, security and orderly operation of the Center or program requirements;
- (25) ~~residents~~ offenders may be prohibited contact with individuals as determined by the court, Board of Pardons and Parole, or Center program requirements; and
- (26) an appeal process shall be available to challenge denial or restriction of visiting privileges.

KEY: corrections, visitation**[1993]2002****Notice of Continuation November 3, 1997****64-13-17**

**Health, Epidemiology and Laboratory
Services, Epidemiology
R386-800
Immunization Coordination**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 24820

FILED: 05/07/2002, 14:24

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The change will allow health care providers to provide immunization records for adults, as well as children.

SUMMARY OF THE RULE OR CHANGE: The rule currently states that immunization records of children may be included in the Utah Statewide Immunization Information System (USIIS). The proposed change states that the immunization records of individuals may be so included.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 6; and Title 26, Chapter 3

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** Cost will be minimal to keep existing records of children after they become adults (less than \$500 per year).

❖ **LOCAL GOVERNMENTS:** Local governments that participate in the program do so on a voluntary basis. The program is a benefit to those that participate. The costs or savings because of this change are negligible.

❖ **OTHER PERSONS:** This is a voluntary program that is a benefit to participants. A study conducted in a private provider clinic demonstrated no costs or savings from the use of an electronic immunization registry to keep patient immunization records. There was a benefit in improved record keeping. There should be no cost or savings.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This is a voluntary program that is a benefit to participants. If there are any costs because of this change, they should be negligible.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: USIIS is a voluntary program. Retaining records after a child turns 18 will have negligible costs to business. Rod L. Betit

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

**HEALTH
EPIDEMIOLOGY AND LABORATORY SERVICES,**

EPIDEMIOLOGY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Barry Nangle at the above address, by phone at 801-538-6907, by FAX at 801-538-7012, or by Internet E-mail at bnangle@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 PM on 07/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: Rod Betit, Executive Director

R386. Health, Epidemiology and Laboratory Services, Epidemiology.

R386-800. Immunization Coordination.

R386-800-1. Authority and Purpose.

(1) This rule is authorized by Title 26, Chapter 6, Communicable Disease Control, and Title 26, Chapter 3, Health Statistics.

(2) It establishes a system to coordinate immunizations among health care providers to assure adequate immunization and to avoid unnecessary immunizations. It provides for the sharing of immunization information among authorized health care providers, health insurers, schools, day care centers, and publicly funded programs to meet statutory immunization requirements and to control disease outbreaks.

(3) It establishes a requirement allowing individuals to withdraw from the system.

(4) It establishes confidentiality requirements and lists penalties for violations.

R386-800-2. Participation by Individuals.

(1) Individual participation in the immunization coordination system is voluntary. ~~[The i]~~Immunization records of ~~[all children]~~individuals in Utah may be included in the system unless the individual or parent or guardian withdraws. An individual or his or her parent or guardian may withdraw from the system at any time.

(2) An individual who has given prior affirmative consent to participate in the system will be included until such time as he or she withdraws from the system.

R386-800-3. Participation by Organizations.

(1) Health care providers, health insurers, schools, day care centers, and publicly funded programs can apply to participate in the system. An authorized organizational participant must sign a participation agreement and abide by its requirements.

(2) No person or individual is required to access the system to coordinate immunizations.

R386-800-4. Notification.

Organizations that participate in the program shall inform individuals or parents or guardians about the system and provide

information about the right to withdraw from of the system as required in the participation agreement. This notice must be provided directly to parents or guardians when issuing birth certificates.

R386-800-5. Withdrawal.

(1) The Department of Health shall provide withdrawal forms and contact information to individuals, parents or guardians, and organizational participants.

(2) Organizational participants shall make the forms and contact information available to individuals or their parents or guardians as required by the participation agreement, but are not responsible to assure that the individual is withdrawn from the system.

R386-800-6. Access and Confidentiality.

(1) Organizational participants may access identifiable patient information in the system only as required to assure adequate immunization of a patient, to avoid unnecessary immunizations, to confirm compliance with mandatory immunization requirements, and to control disease outbreaks.

(2) All other access is restricted by Title 26, Chapter 6, Communicable Disease Control, and Title 26, Chapter 3, Health Statistics.

R386-800-7. Liability.

(1) Organizational participants report immunization records to the system under the authority of the Communicable Disease Control Act.

(2) An organizational participant who reports information in good faith pursuant to this rule is not liable for reporting the immunization information to the Department of Health for use in the system.

R386-800-8. Penalties for Violation.

As required by Section 63-46a-3(5): Any person who 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: immunization data reporting, consent

~~[July 14, 2000]~~2002

26-3

26-6



Health, Epidemiology and Laboratory
Services, Environmental Services

R392-302

Design, Construction and Operation of
Public Pools

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 24833

FILED: 05/15/2002, 09:06

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment adopts a performance-based testing and monitoring system with regard to assuring safe and sanitary public swimming pools. The current rule requires a certain number of tests per day, regardless of the type of pool. The operator of the pool is required under this rule to develop a custom testing and monitoring plan based on the use of the pool. Testing of the water at an independent lab to verify that the plan is working provides a benchmark to protect the public. If the pool fails the independent test, then local health inspectors will consult with the operator and owner of the pool to modify the plan as necessary. The swimming pool advisory committee structure is also addressed.

SUMMARY OF THE RULE OR CHANGE: In Subsection R392-302-27(9): added that local health department's can specify the frequency of water samples. Section R392-302-29 is substantially rewritten to adopt the performance-based system. In Section R392-302-32: expands membership and clarifies duties of the swimming pool advisory committee.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-15-2, and Subsection 26-1-30(2)

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** State health department personnel consult with local health officials as requested. There may be a spike in demand as a result of this rule change implementing a new approach to testing and monitoring. This will be dealt with within existing budgets.

❖ **LOCAL GOVERNMENTS:** Local health department personnel have the primary enforcement responsibility under this rule. Most of the local health departments are already taking at least monthly samples from swimming pools and submitting them to labs for testing. Some counties may find it possible to focus scarce resources on problem pools that show a pattern of failing the lab test. Utah County is already operating in a manner consistent with the proposed amendments. Their experience is that they are able to improve the number of pools that consistently have good water quality under this system, without new resources. Therefore, we believe this amendment will be cost neutral or result in a small savings.

❖ **OTHER PERSONS:** Under the current rule, all public pools, regardless of bather load are required to sample and test at the same frequency. Many large public pools already sample and test more frequently than the minimum standard in the current rule. Under the proposed amendment, the qualified operator will be able to assess the bather load and other factors unique to the pool in question and devise a custom sampling and testing protocol for that pool. For pools that have little use, this could result in a significant savings for the owner of the pool, without compromising the safety of those that use the pool. Therefore, this rule change is predicted to result in a cost savings of an unknown amount to many persons and no additional cost for others.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This proposed amendment will result in lower compliance costs for many persons that operate small public pools. Large public pools will experience no new costs as a result of this change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The previous rule had a "one-size fits all" approach to sampling and testing. Without compromising the high standard for clean and safe water in all public pools in Utah, this amendment will allow qualified operators of pools to develop a custom sampling and testing protocol that reflects the demands placed on that pool. This change will have a positive impact on business. Rod L. Betit

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

HEALTH
EPIDEMIOLOGY AND LABORATORY SERVICES,
ENVIRONMENTAL SERVICES
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ronald Ivie, Charles Brokopp, or Tim Lane at the above address, by phone at 801-538-6753, 801-584-8406, or 801-538-6755, by FAX at 801-538-6036, 801-584-8486, or 801-538-6036, or by Internet E-mail at rivie@doh.state.ut.us, cbrokopp@doh.state.ut.us, or tlane@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 PM on 07/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: Rod Betit, Executive Director

R392. Health, Epidemiology and Laboratory Services, Environmental Services.**R392-302. Design, Construction and Operation of Public Pools.****R392-302-27. Disinfection and Quality of Water.**

(1) A public pool must be continuously disinfected by a process which meets all of the following requirements:

(a) Is registered with the United States Environmental Protection Agency as a disinfecting process or disinfectant product for water.

(b) Imparts a disinfectant residual which may be easily and accurately measured by a field test procedure appropriate to the disinfectant in use.

(c) Is compatible for use with other chemicals normally used in pool water treatment.

(d) Does not create harmful or deleterious physiological effects on bathers if used according to manufacturer's specifications.

(e) Does not create an undue safety hazard if handled, stored and used according to manufacturer's specifications.

(2) If the active disinfecting agent is chlorine, the unstabilized free chlorine residual, as measured by the diethyl-p-phenylene diamine, leuco crystal violet test or other test method approved by the

department, must meet the concentration levels listed in Table 6 for all circumstances, bather loads, and the pH level of the water.

(3) If cyanuric acid is used to stabilize the free residual chlorine, or if one of the chlorinated isocyanurate compounds is used as the disinfecting chemical, the concentration of cyanuric acid in the water must be at least ten ppm, but may not exceed 100 ppm and the free residual chlorine, as measured by the diethyl-p-phenylene diamine, leuco crystal violet test or other test method approved by the department, must meet concentrations levels shown in Table 6, depending upon the pH of the water.

(4) If disinfection of the pool water is accomplished by bromine or iodine, the disinfectant must be within the ranges specified in Table 6.

(5) An easy to operate, pool side disinfectant testing kit, compatible with the disinfectant in use and accurate to within 0.2 ppm, must be provided at each public pool. If stabilized chlorine is used, a testing kit for cyanuric acid, accurate to within 10.0 ppm must be provided.

(a) Test kit reagents may not be used if they have exceeded their expiration dates.

(6) Circulation equipment must be operated 24 hours continuously during the operating seasons.

(7) The water must have sufficient clarity at all times so that a black disc, six inches, 15.24 cm, in diameter, is readily visible if placed on a white field at the deepest point of the pool. The facility must be closed immediately if this requirement is not met.

(8) In a public pool, the difference between the total chlorine and the free chlorine must not be greater than 0.5 ppm as determined by the diethyl-p-phenylene diamine, leuco crystal violet tests or other test method approved by the department.

(a) If the concentration of combined residual chlorine is greater than 0.5 ppm the pool water must be breakpoint chlorinated to oxidize and reduce the concentration of combined chlorines.

(9) A water sample must be collected from a pool at least once per month or as otherwise directed by the local health department, while it is in use, and must be submitted to a laboratory approved by the department to perform Safe Drinking Water Program testing.

(a) The laboratory shall subject the sample to the standard 35 degree Celsius heterotrophic plate count and test for coliform organisms utilizing either a membrane filter test, a multiple tube fermentation test, or a Colilert test.

(b) The testing laboratory must promptly report the results of such analysis to the local health department having jurisdiction and to the facility operator. When requested, the lab or local health department shall mail the results of such analysis to the Utah Department of Health.

(c) When less than two samples per month are collected and submitted for bacteriological analysis, the local health department shall conduct a follow-up inspection for each failing sample to identify the causes for the sample failure. The local health department shall conduct a follow-up within three working days following the reporting of the sample failure to the local health department.

(10) Not more than 15 percent of the samples covering a four month period of time may fail bacteriological quality standards. A seasonal or other pool in operation less than four months may only fail bacteriological quality standards with an initial pre-opening sample prior to the opening of the operating season. If a seasonal or other pool in operation less than four months in a year is sampled on a once per month basis, then failure of any bacteriological water quality sample shall require submission of a second sample within one working day after the sample report has been received.

(a) A pool water sample fails bacteriological quality standards if it:

(i) contains more than 200 bacteria per milliliter, as determined by the standard 35 degrees Celsius heterotrophic plate count;

(ii) shows positive test, confirmed test, for coliform organisms in any of the five 10-milliliter portions of a sample; or

(iii) contains more than 1.0 coliform organisms per 50 ml if the membrane filter test is used; or

(iv) indicates a positive MMO-MUG type test approved by the EPA.

(11) Pool water temperatures, excluding spas and special purpose pools, must meet the following requirements:

(a) Pool water temperatures for general use must be within the range of 82 degrees Fahrenheit, 27.8 degrees Celsius, to 86 degrees Fahrenheit, 30.0 degrees Celsius.

(b) The water in a pool dedicated primarily for swim training and high exertion activities must be within the temperature range of 78 degrees Fahrenheit, 25.6 degrees Celsius, to 82 degrees Fahrenheit, 27.8 degrees Celsius to reduce safety hazards associated with hyperthermia.

(c) The minimum water temperature for a pool is 78 degrees Fahrenheit, 25.6 degrees Celsius.

(d) The local health department may grant an exemption to the pool water temperature requirements for a special purpose pool including a cold plunge pool, but may not exempt maximum hot water temperatures for a spa pool.

(12) Total dissolved solids in a public pool may not exceed 2,500 ppm.

(13) Total alkalinity must be with the range from 100-125 ppm for plaster pools, 80-150 ppm for a spa pool, and 125-150 ppm for a painted or fiberglass pool.

(14) A calcium hardness of at least 200 ppm must be maintained.

(15) The saturation index value of the pool water must be within the range of positive 0.3 and minus 0.3. The saturation index shall be calculated in accordance with Table 5.

.....

R392-302-29. Supervision of Pools.

(1) Public pools [~~in operation after September 16, 1998~~] must be operated by a qualified operator as evidenced by a current National Swimming Pool Foundation Certified Pool Operator, CPO, certification, a National Recreation and Parks Association Aquatic Facility Operator, AFO, certification, or an equivalent certification approved by the department. [~~Local health department may require certification of pool operators prior to this date if it determines that the operation of the pool poses undue health or safety risks to the public, including the failure of bacteriological water quality samples in excess of 15 percent of samples over time.~~]

(a) Approved certifications will be valid for five years from the date of issue.

(b) The local health department may revoke the certification of a pool operator for cause, including failure to comply with the requirements of this rule, or creating or allowing undue health or safety hazards. The local health department shall notify the department of any revocations.

(2) The pool operator must keep written records of all information pertinent to the operation, maintenance and sanitation of each pool facility. Records must be available at the facility and be readily accessible. The pool operator must make records available to the department or the local health department having jurisdiction upon their

request. These records must include disinfectant residual in the pool water, pH and temperature of the pool water, pool circulation rate, quantities of chemicals and filter aid used, filter head loss, filter washing schedule, cleaning and disinfecting schedule for pool decks and dressing rooms, bather load, and other information required by the local health department. The pool operator must keep the records at the facility, for at least two operating seasons.

(3) The public pool owner, in consultation with the qualified operator designated in accordance with 392-302-29(1), shall develop an operation, maintenance and sanitation plan for the pool that will assure that the pool water meets the sanitation and quality standards set forth in this rule. The plan shall be in writing and available for inspection by the local health department. At a minimum the plan shall include the frequency of measurements of pool disinfectant residuals, pH and pool water temperature that will be taken. The plan shall also specify who is responsible to take and record the measurements.

(4) If the public pool water samples required in Section R392-302-27(9) fail bacteriological quality standards as defined in Section R392-302-27(10), the local health department shall require the public pool owner and qualified operator to develop an acceptable plan to correct the problem. The local health department may require more frequent water samples, additional training for the qualified operator and also may require that:

(a) The pool operator shall measure and record the level of disinfectant residuals, pH, and pool water temperature at least four times a day.

(b) The pool operator shall read flow rate gauges and record the pool circulation rate at least four times a day.

(3) Bather load must be limited if necessary to insure the safety of bathers and pool water quality as required in Section R392-302-27.

(4) A sign must be posted in the immediate vicinity of the pool stating the location of the nearest telephone and emergency telephone numbers which shall include:

(a) Name and phone number of nearest police, fire and rescue unit;

(b) Name and phone number of nearest ambulance service;

(c) Name and phone number of nearest hospital.

(5) If a telephone is not available at poolside, emergency telephone numbers must be provided in a form that can be taken to a telephone.

R392-302-32. Advisory Committee.

~~[Wherever the department has authority to grant exceptions to the requirements in this rule the department shall consult with the swimming pool advisory committee prior to making a decision.](1) An advisory committee to the Department regarding regulation of public pools is hereby authorized.~~

(2) The advisory committee shall be appointed by the Executive Director. Representatives from local health departments, pool engineering, construction or maintenance companies and pool owners may be represented on the committee.

(3) Consistent with R380-1, the Executive Director may seek the advice of the advisory committee regarding interpretation of this rule, the granting of exemptions and related matters.

KEY: pools, spas, water slides

~~[November 29, 2000]2002~~

Notice of Continuation October 20, 1997

26-15-2



Health, Health Care Financing, Coverage and Reimbursement Policy **R414-303** Coverage Groups

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 24834

FILED: 05/15/2002, 09:37

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rulemaking is necessary to update and correct certain citations, to make some technical and typographical corrections, to remove the 12-month extension of coverage under the Medicaid Work Incentive for people who lose employment, and to add language that a person who is eligible only for the Primary Care Network program is not eligible for coverage under a home- and community-based services waiver.

SUMMARY OF THE RULE OR CHANGE: Numerous citations have been updated. A portion of Subsection R414-303-1(4) is deleted to reflect that Medicaid is bound by the Social Security Administration determination of disability status. Subsection R414-303-1(10) is deleted to remove the extension of 12 months of coverage under the Medicaid Work Incentive Program when a person stops having earned income, to implement necessary cost savings to stay within appropriations. Subsection R414-303-11(3) is modified to make it clear that qualifying under the Primary Care Network program is not a category of Medicaid which would allow a person to be eligible for a home- and community-based services waiver. Finally, Sections of R414-303-11 and R414-303-12 are modified to clarify that under the home- and community-based services waivers, a person pays a contribution to care, but that this is often called a spenddown, and is actually collected the same way a spenddown is collected.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 18

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 42 CFR 435.130, 435.137, 435.139, 435.117, 435.119, and 435.210 for groups defined under 201(a)(5) and (6); 435.115(f), (g), and (h); 435.115(e)(2); 435.115(e)(1); 435.222; 435.301 through 308; 435.116(a); 435.301(a) and (b)(1)(i) and (iv); 435.217; and 435.726, 2000 ed.; 45 CFR 233.90, 400.90 through 400.107; 401, 2001 ed.; and Title XIX of the Social Security Act, Section 1902(1) and Section 1915(c)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This rulemaking updates and corrects aspects of the Medicaid Work Incentive Program. Removal of the 12-month extension of coverage when a person ceases to be employed, but cannot otherwise qualify for Medicaid, will save the state an unknown amount of money. Combined with

other changes to Department rules, the changes to the Medicaid Work Incentive program itself will save \$400,000 in state General Fund and \$976,000 in federal matching dollars will be lost. These changes are necessary to stay within current appropriations

❖ LOCAL GOVERNMENTS: Local governments are not affected by this rulemaking.

❖ OTHER PERSONS: Current data systems do not track how many participants in the Work Incentive Program take advantage of the 12-month extension of coverage. The Department is unable to assess how many current enrollees will lose coverage as a result of this change. This is part of other changes to the Work Incentive Program that are expected to impact a total of 130 enrollees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule change will cause a few current enrollees to lose state-funded medical coverage. How many of these persons will find other ways to have necessary medical care covered, pay out-of-pocket, or forego seeking medical care is impossible to determine.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This necessary change to the Medicaid Work Incentive Program will have a negligible impact on the health care system and providers. It will have a significant, but unavoidable impact, on a few persons that would otherwise be able to qualify for state-funded medical care. This change is necessary to stay within current appropriations. 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 BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Gayle M. Six, Michael J. Deily, or Ross Martin at the above address, by phone at 801-538-6895, 801-538-6406, or 801-538-6592, by FAX at 801-538-6952, 801-538-6478, or 801-538-6099, or by Internet E-mail at gsix@doh.state.ut.us, mdeily@doh.state.ut.us, or lr martin@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 PM on 07/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: Rod 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~~]435.130 through [~~435.133,~~]435.135, 435.137, 435.138, 435.139, [~~435.210,~~]435.211, 435.301, 435.320, 435.322, 435.324, 435.340, and 435.541, [~~1998~~]2000 ed., which are incorporated by reference. The Department shall provide coverage to individuals as described in 20 CFR 416.901 through 416.1094, [~~1998~~]2000 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)(A)(ii)(X), 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, [~~F~~]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.~~]

(5) The age requirement for A Medicaid is 65 years of age.

(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.

(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)(~~10~~)(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.]~~

R414-303-2. Family Medicaid and Family Institutional Medicaid Coverage Groups.

(1) The Department shall provide Medicaid coverage to individuals who are eligible as described in 42 CFR 435.110, 435.113 through ~~[435.115]~~435.117, 435.119, 435.210 for groups defined under 201(a)(5) and (6), 435.211, 435.217, 435.223, ~~[435.233.9, 435.233.90,]~~and 435.300 through 435.310, ~~[1997]2000~~ ed., and 45 CFR 233.90~~[211]~~, ~~[1997]2001~~ ed., and Title XIX of the Social Security Act as in effect January 1, 2000, Sections 1931(a), (b), and (g), which are incorporated by reference.

(2) The following definitions apply to this rule:

(a) "1931 Family Medicaid" (1931 FM) means a medical assistance program that meets the criteria found in Section 1931(a) and (b) of the Social Security Act in effect January 1, 1999 that requires the Department to use the eligibility criteria of the pre-welfare reform Aid to Families With Dependent Children cash assistance program along with any subsequent amendments made by the Department as allowed under Section 1931 of the Act.

(b) "Family Employment Program" (FEP) means a grant program providing financial assistance to eligible families with dependent children. It is also referred to as Temporary Assistance to Needy Families (TANF).

(c) "Diversion" means a one time FEP payment that may equal up to three months of FEP cash assistance.

(3) The Department provides Medicaid coverage to individuals who are 1931 FM qualified, as described in 45 CFR 233.39, 233.90, and 233.100, ~~[1998]2001~~ ed., which are incorporated by reference.

(4) The Department provides 1931 Family Medicaid coverage to individuals who are qualified for FEP cash assistance.

(5) For unemployed two-parent households, the Department shall not require the primary wage earner to have an employment history.

(6) Households that receive a FEP diversion payment shall have the option to receive 1931 Family Medicaid coverage for three months beginning with the month of application for the diversion payment.

(7) A specified relative, other than the child's parents, may apply for assistance for a child. In addition to other Family Medicaid requirements, all the following rules apply to a Family Medicaid application by a specified relative:

(a) The child must be currently deprived of support because both parents are absent from the home where the child lives.

(b) The child must be currently living with, not just visiting, the specified relative.

(c) The parents' obligation to financially support their child shall be enforced.

(d) The income and resources of the specified relative will not be counted unless the specified relative is also included in the Medicaid coverage group.

(e) If the specified relative is currently included in a FEP household or a 1931 Family Medicaid household, the child shall be included in the FEP or 1931 FM case of the specified relative.

(f) The specified relative may choose to be excluded from the Medicaid coverage group. The ineligible children of the specified relative must be excluded. The specified relative will not be included in the income standard calculation.

(g) The specified relative may choose to exclude any child from the Medicaid coverage group. If a child is excluded from coverage, that child's income and resources will not be used to determine eligibility or spenddown.

(h) If the specified relative is not the parent of a dependent child who meets deprivation of support criteria and elects to be included in the Medicaid coverage group, the following income rules apply:

(i) The monthly gross earned income of the specified relative and spouse shall be counted.

(ii) The unearned income of the relative and the excluded spouse shall be counted.

(iii) For each employed person, \$90 will be deducted from the monthly gross income.

(iv) Child care expenses necessary for employment will be deducted for only the specified relative's children. The maximum allowable deduction will be \$200.00 per child under age two and \$175.00 per child age two and older each month for full-time employment or \$160.00 per child under age two and \$140.00 per child age two and older each month for part-time employment.

(8) An American Indian child in a boarding school and a child in a school for the deaf and blind are considered temporarily absent from the household.

(9) Temporary absence from the home for purposes of schooling, vacation, or medical treatment shall not constitute non-resident status. The following situations do not meet the definition of absence for purposes of determining deprivation of support:

(a) parental absences which are caused solely by reason of employment, school, or training;

(b) an absent parent who will return home to live within 30 days from the date of application;

(c) an absent parent is the primary child care provider for the children, and the child care is frequent enough that the children are not deprived of parental support, care, or guidance.

(10) Joint custody situations are evaluated based on the actual circumstances that exist for a dependent child. The same policy is applied in joint custody cases as is applied in other absent parent cases.

(11) The Department imposes no suitable home requirement.

(12) Medicaid assistance is not continued for a temporary period while the effects of deprivation of support are being overcome.

(13) Full-time employment nullifies a person's claim to incapacity. To claim an incapacity a parent must meet one of the following criteria:

(a) receive SSI;

(b) be recognized as 100% disabled by the Veteran's Administration or the Social Security Administration;

(c) provide a Medical Report Form 21 completed by a physician or licensed/certified psychologist which indicates that the incapacity is expected to last at least 30 days. The medical report must also state that the incapacity will substantially reduce the parent's ability to work or care for the child.

R414-303-3. 12 Month Transitional Family Medicaid.

(1) The Department complies with Title XIX of the Social Security Act, Sections 1925 and 1931 (c)(2) as in effect January 1, 1999, which are incorporated by reference.

(2) The Department shall consider Medicaid coverage under 12 month Transitional Medicaid for households that lose eligibility for 1931 Family Medicaid, FEP cash assistance, and households that receive 1931 Family Medicaid for three months[~~]~~ because they received a FEP Diversion payment.

R414-303-4. Four Month Transitional Family Medicaid.

(1) The Department adopts 42 CFR 435.~~[442]~~115(f), (g) and (h), ~~[1998]~~2000 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.

R414-303-5. Foster Care.

The Department adopts 42 CFR 435.115(e)(2), ~~[1998]~~2000 ed., which is incorporated by reference.~~[-The Department complies with Public Law 74-271(472)-]~~

R414-303-6. Subsidized Adoptions.

The Department adopts 42 CFR 435.115(e)(~~[2]~~1), ~~[1998]~~2000 ed., which is incorporated by reference.~~[-The Department complies with Public Law 74-271(472)-]~~

R414-303-7. Child Medicaid.

(1) The Department adopts 42 CFR 435.222 and 435.301 through 435.308, ~~[1998]~~2000 ed., which are incorporated by reference.

(2) The Department elects to cover all individuals under age 18 who would be eligible for AFDC but do not qualify as dependent children. Individuals who are 18 years old may be covered if they would be eligible for AFDC except for not living with a specified relative or not being deprived of support.

(3) If a child receiving SSI elects to receive Child Medicaid or receives benefits under the Home and Community Based Services Waiver, the child's SSI income shall be counted with other household income.

R414-303-8. Refugee Medicaid.

(1) The Department adopts 45 CFR 400.90 through 400.107, ~~[1998]~~2001 ed., which are modified by the Federal Register 60 FR 33584, published Wednesday, June 28, 1995, and 45 CFR 401, ~~[1997]~~2001 ed., all of which are incorporated by reference.

(2) Specified relative rules do not apply.

(3) Child support enforcement rules do not apply.

(4) The sponsor's income and resources are not counted. In-kind service or shelter provided by the sponsor is not counted.

(5) Initial settlement payments made to a refugee from a resettlement agency are not counted.

(6) Refugees may qualify for medical assistance for eight months after entry into the United States.

R414-303-9. Prenatal and Newborn Medicaid.

(1) The Department adopts Title XIX of the Social Security Act, Section 1902(a)(10)(A)(i)(IV), (VI), (VII) and 1902(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 pregnant 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 adopts 42 CFR 435.116 (a), 435.301 (a) and (b)(1)(i) and (iv), 2000 ed. and 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 ~~[441.304]~~435.217 and 435.726, ~~[1997]~~2000 ed., which are incorporated by reference. The Department 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, except for individuals who only qualify for the Primary Care Network.

(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 unless excluded under other federal laws.

(6) To determine [~~spenddown~~] countable earned income, 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 the contribution to care, which may be referred to as a spenddown, will be the amount of income that exceeds the personal needs allowance after allowable deductions. The contribution to care must be paid to the Department.

(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 [~~441.304~~]435.217 and 435.726, [~~1998~~]2000 ed., which are incorporated by reference. The Department 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~~] The client's contribution to care, which may be referred to as a 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 personal needs 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 [~~441.304~~]435.217 and 435.726, [~~1998~~]2000 ed., which are incorporated by reference. The

Department 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~~] renewed effective July 1, 1998 through June 30, 2003, 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.

R414-303-14. Persons with Brain Injury Home and Community Based Services Waiver.

(1) The Department adopts 42 CFR 435.217 and 435.726, 2000 ed., which are incorporated by reference. The Department adopts Title XIX of the Social Security Act, Section 1915(c) in effect January 1, 1999.

(~~1~~)² The Department will operate this program statewide initially with a limited number of available slots.

(~~2~~)³ Eligibility for services under this waiver require that the individual has medical needs resulting from a brain injury. This means that the individual must be in need of skilled nursing or rehabilitation services as a result of the damage sustained because of the brain injury. A medical need determination will be established through the Department of Human Services, Division of Services for People with Disabilities.

(~~3~~)⁴ To qualify for services under this waiver, the individual must be 18 years old or older. The person is considered to be 18 in the month in which the 18th birthday falls.

(~~4~~)⁵ All other eligibility requirements follow the rules for the Aging Home and Community Based Services Waiver found in R414-303-12.

(~~5~~)⁶ The spousal impoverishment provisions for Institutional Medicaid income apply, with one exception: An individual who has a dependent family member living in the home is allowed a deduction for a dependent family member even if the individual is not married or is not living with the spouse.

R414-303-15. Personal Assistance Waiver for Adults with Physical Disabilities.

(1) The Department adopts 42 CFR 435.726 and 435.217, [~~1998~~]2000 ed., which are incorporated by reference. The Department 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*

~~July 6, 2001~~ 2002

Notice of Continuation February 6, 1998

26-18



Health, Health Care Financing,
Coverage and Reimbursement Policy
R414-304
Income and Budgeting

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 24861

FILED: 05/15/2002, 16:28

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rulemaking is needed to update citations and make certain technical corrections to clarify the rule. Some changes to Medicaid Work Incentive program are required which include changing the maximum income limit for eligibility and changing the premiums a person owes so that the program will operate within legislative funding limits. A change has been made concerning medical bills which can be deducted. Also, language was added about deeming income from an alien's sponsor in compliance with Pub. L. No. 104-193.

SUMMARY OF THE RULE OR CHANGE: Various citations have been updated. Technical and typographical changes have been made; the technical changes are to make provisions of this rule clearer. Language was added in Subsection R414-304-11(3) that raises the premiums a person must pay for eligibility under the Medicaid Work Incentive program. The premium increases as income increases. There is a change to Subsection R414-304-7(4)(c) about how paid medical bills can be used to reduce a person's spenddown such that bills paid in the application month or retroactive period cannot be used beyond the end of the application month. Also, a change was made in Subsection R414-304-7(2) to clarify that health insurance premiums paid in the retroactive period can be used to reduce spenddown like other medical bills paid in the retroactive period. Finally, language was added under Sections R414-304-2, R414-304-4, and R414-304-14 about deeming income from an alien's sponsor when the sponsor has signed an affidavit of support pursuant to Section 213A of the Immigration and Naturalization Act to comply with the provisions of Pub. L. No. 104-193.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 18

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 42 CFR 435.735 through 832, 2000 ed.; 20 CFR 416.1102, 1103, 1120 through 1148, 1150, 1151, 1163 through 1166, and Appendix to Subpart K of 416, 2000 ed.; Subsection 404(h)(4) and 1612(b)(22) of the Compilation of Social Security Laws in effect January 1, 1999; 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, 2001 ed.; 20 CFR 416.1110 through 416.1112, 2000 ed.; 45 CFR 233.20(a)(6)(vi) through (iv), 45 CFR 233.20(a)(6)(v)(B), 233.20(a)(6)(vi) through (vii), 233.20(a)(11), 2001 ed.; 42 CFR 435.601, 435.602, 435.640, 2000 ed.; 45 CFR 233.20(a)(iii), 233.31, 233.33, 206.10(a)(1)(iii), 2001 ed.; 45 CFR 206.10(a)(1)(vii), 2001 ed.; and 20 CFR 416.1166a, 2000 ed.

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** \$400,000 in state general fund will be saved and \$976,000 in federal matching dollars will be lost.

❖ **LOCAL GOVERNMENTS:** Local governments are not affected by this rulemaking.

❖ OTHER PERSONS: Approximately 130 people with disabilities who work will be affected by the lowering of the income limit for the Medicaid Work Incentive Program. Among their options for continuing coverage include a spenddown, paying a higher premium for the program, or paying their own medical costs. We have no way of assigning an impact figure to this group because we do not know which option each client will choose.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Reimbursements under this program have been \$1,376,000. Because some clients will either pay a higher premium or find some other way to cover their costs, we have no way of knowing how much of that almost \$1,400,000 will continue to be received by providers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change will lower the income limit and raise premiums. Current enrollees will be required to pay a spenddown to get under the income limit and/or will be required to pay a higher premium if they wish to continue on the program. This may have a small negative impact on health care providers if enrollees choose to drop coverage rather than pay these higher costs. This change is necessary to stay within current appropriations. 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 BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ross Martin or Gayle M. Six at the above address, by phone at 801-538-6592 or 801-538-6895, by FAX at 801-538-6099 or 801-538-6952, or by Internet E-mail at Irmartin@doh.state.ut.us or gsix@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 PM on 07/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: Rod Betit, Executive Director

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

R414-304. Income and Budgeting.

R414-304-1. Definitions.

The definitions in R414-1 and R414-301 apply to this rule. In addition:

(1) "Allocation for a spouse" means an amount of income that is the difference between the SSI federal benefit rate for a couple minus the federal benefit rate for an individual.

(2) "Basic maintenance standard (BMS)" means the income level for eligibility based on the number of family members who are counted in the medical assistance unit.

(3) "Benefit month" means a month or any portion of a month ~~in~~ for which an individual is eligible for Medicaid.

(4) "Federal poverty guidelines" means the U.S. federal poverty measure issued annually by the Department of Health and Human Services that is used to determine financial eligibility for means tested federal programs.

(5) "Household size" means the number of family members, including the client, who are counted based on the criteria of the particular program to decide what level of income to use to determine eligibility.

(6) "Poverty-related program" means a medical assistance program that uses a percentage of the federal poverty guideline for the household size involved to determine eligibility

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]2000~~ 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]2000~~ ed., which are incorporated by reference. The Department adopts Subsection 404(h)(4) and 1612(b)(22) of the Compilation of the Social Security Laws in effect January 1, 1999 which are 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) "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~~ federal benefit rate 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 current child support received in a month for the disabled child 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. Child support payments which are payments owed for past months or years are countable income to the parent receiving the payments.

(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 current child support payments received by the child or guardian that are not subject to collection by ORS shall count as unearned income 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, the following provisions apply to non-institutional medical assistance:

(a) For A, B, or D Medicaid, the income of a spouse or a parent shall not be considered in determining Medicaid eligibility of a person who receives SSI or meets 1619(b) criteria. SSI recipients and 1619(b) status individuals 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 100% of 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 100% of 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 100% 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 100% of 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 100% of the two-person poverty guideline, then the aged or disabled spouse shall be eligible under the 100% poverty-related Aged or Disabled Medicaid program.

(B) If the countable income exceeds 100% of 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 100% 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) Except when determining countable income for the 100% poverty-related Aged and Disabled Medicaid programs, income will not be deemed from a spouse who meets 1619(b) protected group criteria.

([e]f) 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~~[-]~~ and that spouse either 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.

(iii) If one spouse receives Part A Medicare and the other spouse is not aged, blind or disabled, income of the ineligible spouse shall be deemed to the eligible spouse when it exceeds the allocation for a spouse. The combined countable income shall be compared to the applicable percentage of the federal poverty guideline for a two-person household. If the ineligible spouse's deemable income does not exceed the allocation for a spouse, only the eligible spouse's income shall be counted, and compared to the applicable percentage of the poverty guideline for a one-person household.

(iv) SSI income will not be counted to determine eligibility for QMB, SLMB or QI assistance.

([f]g) If any parent in the home receives SSI or is eligible for 1619(b) protected group coverage, the income of neither parent shall be considered to determine a child's eligibility for B or D Medicaid.

([g]h) 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.

(16) Income, unearned and earned, shall be deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997.

(17) Sponsor deeming will end when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. Beginning after December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(18) Sponsor deeming does not apply to applicants who are eligible for Medicaid for emergency services only.

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, [4998]2000 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, ~~[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 (e) enacted October 28, 1998 which is incorporated by reference.]~~ The Department shall not count as income any payments which are prohibited under other federal laws from being counted as income to determine eligibility for federally-funded medical assistance programs.

(2) The Department shall allow the provisions found in R414-304-2 (3) through (12), and (15) through ([+4]17).

(3) The income 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 as a deduction.

(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. Include in the household size any dependent children under age 18. Also include in the household size any children who are 18, 19, or 20 and are full-time students. After allowable deductions, the net income shall be compared to 250% of the federal poverty guideline for ~~[one person]~~ the household size involved.

(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~~ the individual's parents to 250% of the federal poverty guideline for the household size involved.

~~(6) 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.~~

R414-304-4. Family Medicaid and Institutional Family Medicaid Unearned Income Provisions.

(1) The Department adopts 42 CFR 435.725 through 435.832, ~~[1998]2000~~ 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]2001~~ ed., which are 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 in the month the payment is received or made available to the individual. ~~[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.]~~ Income, unearned and earned, shall be deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997.

(20) Sponsor deeming will end when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. Beginning after December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

(21) Sponsor deeming does not apply to applicants who are eligible for Medicaid for emergency services only.

~~(20)22~~ 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)23~~ 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.

R414-304-5. 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]2000~~ ed., and 20 CFR 416.1110 through 416.1112, ~~[1999]2000~~ 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 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) 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.

R414-304-6. Family Medicaid and Family Institutional Medicaid Earned Income Provisions.

(1) The Department adopts 42 CFR 435.725 through 435.832, [1998]2000 ed. and 45 CFR 233.20(a)(6)(iii) through (iv), 233.20(a)(6)(v)(B[A]), 233.20(a)(6)(vi) through (vii), and 233.20(a)(11), [1999]2001 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 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) 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 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 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.

(12) 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, the household will be eligible to receive Transitional Medicaid following the provisions of R414-303 as long as it meets all other criteria.

R414-304-7. A, B and D Medicaid and Family Medicaid Income Deductions.

(1) The Department adopts 42 CFR 435.831, [1998]2000 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.

(a) The entire payment shall be allowed as a deduction in the month it is due and will not be prorated.

(b) 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.

(c) Health insurance premiums paid in the application month or during the three month retroactive period which are not fully used as a deduction in the month paid may be allowed as a deduction only through the month of application.

(3) Medicare premiums shall not be allowed as deductions if the state will pay the premium or will reimburse[s] 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 the medical service was received and paid during the month of application or [at any time in] during the three month[s] time period immediately preceding the [month] date of application. The date the medical service was provided on an unpaid expense does not matter. Bills for services received and paid during the application month or the three month time period preceding the date of application can be used as deductions only through the month of application.

(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 or co-insurance amounts required under the State Medicaid Plan that are owed or paid by the client to receive Medicaid-covered services.

(8) To determine countable income for the 100% poverty-related Aged and Disabled Medicaid programs, the Department shall deduct \$8 from the individual's income, or from the combined income of the individual and the individual's spouse before making other allowable deductions.

(9) 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.

(10) 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 [;] and at each review when the client continues to be eligible under the spenddown program [; 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.

(11) Pre-paid medical expenses shall not be allowed as deductions.

(12) The Department elects not to set limits on the amount of medical expenses that can be deducted.

(13) Clients may choose to meet their spenddown obligation by incurring medical expenses or by paying a corresponding amount to the Department.

(14) 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.

(15) No one shall be required to pay a spenddown of less than \$1.

(16) 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 R414-304-7 (1) through (3) [~~and (4)~~].

(2) The Department shall [allow] apply the following deductions from income in determining [net] countable 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] half of the remaining 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] will not be deducted 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~~ himself or other family members in the household shall be ~~allowed as a deduction~~ deducted from income before determining the buy-in premium.

(5) An eligible individual may meet the buy-in premium with cash, check or money order payable to the Office of Recovery Services.

(6) No one will be required to pay a buy-in premium of less than \$1.

R414-304-9. A, B, and D Institutional Medicaid and Family Institutional Medicaid Income Deductions.

(1) The Department adopts 42 CFR 435.725, ~~and~~ 435.726, and 435.832, ~~[1998]~~ 2000 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 or co-insurance amounts 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]~~ the standard utility allowance used by the federal food stamp program. 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.

R414-304-10. Budgeting.

(1) The Department adopts 42 CFR 435.601 and 435.640, ~~[1998]~~ 2000 ed., which are incorporated by reference. The Department adopts 45 CFR 233.20(a)(3)(iii), 233.31, and 233.33, ~~[1998]~~ 2001 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 the months in the retroactive [benefit months] period, except when the income was not being received during, and was not intended to cover, those specific months in the retroactive [months] period.

R414-304-11. 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 Department shall charge a buy-in premium for individuals who qualify for the Medicaid Work Incentive Program when 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 buy-in premium [equal to 20% of the child's countable income] when [this] the child's countable income, including income deemed from parents, exceeds 100% of the federal poverty guideline for a one person household. The premium will be calculated as a percentage of the eligible individual's, or eligible couple's, countable income as follows:

TABLE		
Income over	But Not More Than	Premium equals
100% FPL	125% FPL	30%
125% FPL	150% FPL	35%
150% FPL	175% FPL	40%
175% FPL	200% FPL	45%
200% FPL	225% FPL	50%
225% FPL	250% FPL	55%

(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.

(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

R414-304-12. A, B and D Medicaid, Medicaid Work Incentive, QMB, SLMB, and QI Filing Unit.

(1) The Department adopts 42 CFR 435.601 and 435.602, [1998]2000 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 the 100% poverty A or D [~~poverty-related~~] Medicaid program:

- (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[-];
 (6) Eligibility for A, B and D Medicaid and the spenddown, if any; A and D 100% 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[-];
- (d) an alien client's sponsor, and the spouse of the sponsor, if any.

(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[-];
- (d) an alien client's sponsor, and the spouse of the sponsor, if any.

(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.

(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.

R414-304-13. Family Medicaid Filing Unit.

(1) The Department adopts 42 CFR 435.601 and 435.602, 2000 ed., 45 CFR 206.10(a)(1)(iii), 233.20(a)(1) and 233.20(a)(3)(vi), [1998]2001 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.

R414-304-14. 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 the contribution to cost of care, which may be referred to as a spenddown.

(2) For Family institutional, and home and community-based waiver Medicaid programs, the Department adopts 45 CFR 206.10(a)(1)(vii), [~~1998~~2001 ed., which is incorporated by reference.

(3) The Department shall base eligibility and the contribution to cost of care, which may be referred to as a 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~~2000 ed., which is incorporated by reference.

(4) The Department shall base eligibility and the contribution to cost of care, which may be referred to as a spenddown, on the income of the client and the income deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997. Sponsor deeming will end when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. Beginning after December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public benefit.

KEY: financial disclosure, income, budgeting
[January 14, 2002
Notice of Continuation February 6, 1998
26-18-1

▼ ————— ▼

**Health, Health Care Financing,
 Coverage and Reimbursement Policy**
R414-309
Utah Medical Assistance Program
(UMAP)

NOTICE OF PROPOSED RULE
 (Repeal)
 DAR FILE NO.: 24864
 FILED: 05/15/2002, 19:28

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To repeal the eligibility rules for the Utah Medical Assistance Program (UMAP).

SUMMARY OF THE RULE OR CHANGE: This rulemaking will repeal the UMAP eligibility rules because this program is essentially being replaced by the Primary Care Network (PCN) Demonstration waiver. Individuals who used to qualify for the UMAP will be covered by the PCN Demonstration. This rule is repealed in its entirety. (DAR NOTE: See the proposed amendment to R420-1, Utah Medical Assistance Program, under DAR No. 24863 in this Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 18

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** The \$3,415,100 in General Fund that would have paid UMAP reimbursements has been allocated to the PCN and will draw down additional federal dollars to help extend health care coverage to more Utahns.

❖ **LOCAL GOVERNMENTS:** If local governments operate clinics that participated in UMAP, they will experience the same impact as any other health care provider as detailed below.

❖ **OTHER PERSONS:** Former UMAP clients who do not receive the same scope of services will either pay for the services, go without, or receive charity care. We have no way of knowing how many clients will choose which of these options. Providers should be positively impacted overall because more Utahns will be covered under the PCN.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Department does not have data that would allow it to estimate how much care the average enrollee will need or pay to receive care no longer provided by UMAP.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change, by facilitating the shift of these state-only dollars from the UMAP program to a state-federal PCN Program will have a positive impact on business by bringing more dollars to the health care system through the increased federal match on those funds. 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 BLDG
 288 N 1460 W
 SALT LAKE CITY UT 84116-3231, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Gayle M. Six or Ross Martin at the above address, by phone at 801-538-6895 or 801-538-6592, by FAX at 801-538-6952 or 801-538-6099, or by Internet E-mail at gsix@doh.state.ut.us or lrmartin@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 PM on 07/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: Rod Befit, Executive Director

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

~~R414-309. Utah Medical Assistance Program (UMAP).~~

~~R414-309-1. UMAP General Eligibility Requirements.~~

~~— (1) The Department complies with Section 26-18-10. The Department adopts Pub. L. No. 105-33(5302)(c)(2) and (3), (5306)(d), (5307)(a), (5563), (5566), and (5571), which is incorporated by reference.~~

~~— (2) The definitions in R414-1 and R414-301 apply to this rule. In addition, the following definitions apply to this section:~~

~~— (a) "Unearned income" means cash received by an individual for which the individual performs no service.~~

~~— (b) "Full time" employment means an average of 100 or more hours of work per month or an average of 23 hours per week.~~

~~— (c) A "bona fide" loan means a loan that has been contracted in good faith without fraud or deceit and genuinely endorsed in writing for repayment.~~

~~— (d) "Disregard" means a portion of income that is not counted.~~

~~— (e) "Full time student" means a person who is enrolled in any educational program, other than high school, and is attending full time as defined by that educational program.~~

~~— (3) Conditions of eligibility for UMAP:~~

~~— (a) Medical need is not a requirement for UMAP eligibility.~~

~~— (b) An individual ineligible for Medicaid because of resources is not eligible for UMAP assistance.~~

~~— (c) Individuals ineligible for Medicaid because they will not spenddown or because their medical expense is less than the spenddown, are not eligible for UMAP assistance.~~

~~— (d) Individuals who are full time students are not eligible for UMAP assistance if the school in which they are enrolled offers any kind of health insurance to the student.~~

~~— (4) Citizenship requirements for UMAP:~~

~~— Temporary entrants into the U.S. and those who have no registration card are not eligible for UMAP assistance. To be eligible for UMAP, the individual must be one of the following:~~

~~— (a) U.S. born or a naturalized citizen;~~

~~— (b) An American Indian born in Canada to whom the provisions of section 289 of the Immigration and Nationality Act apply, or who is a member of an Indian tribe as defined in section 4(e) of the Indian Self-determination and Education Assistance Act;~~

~~— (c) Residents from Freely Associated States;~~

~~— (d) A qualified alien, as defined in Pub. L. No. 104-193 (431), as amended by Pub. L. No. 105-33(5302)(c)(3), (5562), and (5571) who was admitted into the United States prior to August 22, 1996.~~

~~— (e) A qualified alien, newly admitted into the United States on or after August 22, 1996, is not eligible for UMAP services for five years from the person's date of entry into the United States, unless the person is:~~

~~— (i) A refugee admitted under section 207 of the Immigration and Nationality Act;~~

~~— (ii) An individual granted asylum under section 208 of the Immigration and Nationality Act;~~

~~— (iii) An individual whose deportation has been withheld under section 243(h) of the Immigration and Nationality Act, (as in effect immediately before the effective date of section 307 of division C of Pub. L. No. 104-208) or section 241(b)(3) of such Act (as amended by section 305(a) of division C of Pub. L. No. 104-208);~~

~~— (iv) A Cuban and Haitian entrant as defined in section 501(e) of the Refugee Education Assistance Act of 1980;~~

~~— (v) An Amerasian immigrant pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Pub. L. No. 100-202 and amended by the 9th proviso under MIGRATION AND REFUGEE ASSISTANCE in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1989, Pub. L. No. 100-461, as amended);~~

~~— (vi) An honorably discharged veteran from the Armed Forces of the United States, the spouse of a United States veteran, or the unmarried spouse of a deceased United States veteran;~~

~~— (vii) An individual on active duty in the Armed Forces of the United States or the spouse of such an individual;~~

~~— (viii) A Hmong or Highland Lao veteran who fought on behalf of the Armed Forces of the United States during the Vietnam conflict who has been lawfully admitted to the United States for permanent residence is considered a veteran for the purpose of determining eligibility.~~

~~— (5) Residence requirements for UMAP:~~

~~— To be eligible for UMAP assistance, an individual must be a Utah resident. To be considered a Utah resident, a person must meet one of the following guidelines:~~

~~— (a) The client must live in Utah for 30 days prior to the need for medical services.~~

~~— (b) The client must show intent to reside in the state permanently. If a client shows intent to reside in the State permanently, eligibility can begin no earlier than the date the client entered the state.~~

~~— (c) Any person who is a resident of a prison, jail or halfway house is not eligible for UMAP assistance. A person may qualify in the month in which he enters or leaves a prison, jail or halfway house. The program will not pay for services while the person is in custody. It does not matter if the condition was pre-existing. No payment will be made for any medical problems which arise during the commission of a crime or during an arrest.~~

~~— (6) All recipients of General Financial Assistance (GA) are eligible for UMAP assistance.~~

~~— (7) The Department shall determine income eligibility for UMAP as follows:~~

~~— (a) The Department shall budget income and determine the best estimate for the retroactive month, the application month, and any ongoing month in the same manner as described in R414-304-8.~~

~~— (b) The Department shall compare the countable income to the UMAP BMS for the household size. Persons with countable income in the retroactive month, the application month, or any ongoing month that exceeds the UMAP BMS may spenddown to the BMS level if the spenddown amount is \$50 or less. The Department will not collect a spenddown for amounts of less than \$1.00.~~

~~— (c) In determining the countable income for the retroactive month, the application month, and ongoing months, the Department shall count all income received except:~~

~~— (i) a bona fide loan of money which must be repaid;~~

~~— (ii) rental subsidies;~~

~~— (iii) trust funds that are not available on demand;~~

~~— (iv) GA, AFDC, or Refugee Cash Assistance (RCA) grants;~~

~~— (v) HEAT assistance;~~

~~— (vi) attendant care received by a handicapped person from the Division of Services to the Handicapped if the money is used to pay for attendant care, and the person providing the care is not included in the household's basic maintenance standard (BMS);~~

—(vii) insurance settlements for destroyed property, if the income is actually used to replace the property. If the insurance settlement is more than the replacement cost of the new property, the difference is counted as income.

—(viii) unearned income in kind.

—(ix) special payments to American Indians.

—(d) The following deductions are allowed:

—(i) payments for a health or accident insurance policy;

—(ii) federal taxes are determined by multiplying the number of exemptions by \$162.50, subtracting that amount from the wages, and comparing the remainder to the appropriate tax tables for a single or married person. Tax computation is as follows:

TABLE

Single Person Including Head of Household.

Wages	Income Tax
<\$ 80	\$ 0
80 — \$1,575	0 plus 15% of Excess Over \$ 80
1,576 — 3,683	223.13 plus 28% of Excess Over 1,576
3,684 — 8,461	831.46 plus 33% of Excess Over 3,684
8,462 + 2,390.03	plus 28% of Excess Over 8,462

Married Person Including Head of Household.

Wages	Income Tax
<\$ 255	\$ 0
255 — \$ 2,733	0 plus 15% of Excess Over \$ 255
2,734 — 6,246	371.88 plus 28% of Excess Over 2,734
6,247 — 15,422	1,355.38 plus 33% of Excess Over 6,247
15,423 + 4,383.40	plus 28% of Excess Over 15,423

—(iii) state taxes, as determined by multiplying the federal tax by .45;

FICA. If the client is self employed, this is determined by multiplying monthly earnings by .1503. If the client is not self employed, this is determined by multiplying monthly earnings by .0765.

—(e) The UMAP income standard is as follows:

TABLE

Household Size	UMAP Income Standard (BMS)
1	337
2	413
3	516
4	602
5	686
6	756
7	792
8	829
9	868
10	904
11	941
12	978
13	1016
14	1053
15	1090
16	1128

—(8) When an individual's check amount differs from the entitlement amount, the check amount is used to determine income eligibility only if the reduction is involuntary.

—(9) Self employment income:

Income from self employment is counted. Deductions are allowed for the cost of doing business. Allowable deductions include:

—(a) labor;

—(b) stock;

—(c) raw materials;

—(d) seed and fertilizer;

—(e) taxes and interest paid for income producing property;

—(f) insurance premiums;

—(g) transportation costs only if the person must move from place to place in the course of business.

—(10) Deductions for income producing property include:

—(a) property taxes;

—(b) insurance;

—(c) incidental repairs;

—(d) advertising;

—(e) landscaping;

—(f) utilities.

—(11) The cost of an addition or increase in value of the rental property is not allowed as a deduction.

—(12) UMAP budgeting methods:

—(a) Income shall be budgeted prospectively. Information provided by the client is used to determine the amount of income the client expects to receive during the eligibility period.

—(b) Farm and self employment income is prorated over the number of months in which the money was earned if the income is received less often than monthly. The prorated amount is counted for the same number of months in which the money was earned. The month in which the money was received is counted as the first month, even if the money is not actually earned in that month.

—(c) Student grants and scholarships are prorated over the number of months the grants or scholarships are intended to cover. The first month it is intended to cover is the first budget month. If it is received after the first month it is intended to cover, the client is not liable for an understated liability based on receipt of this income.

—(d) Deferred income counts when it is available if it is not deferred by choice. If it is deferred by choice, it is counted for the months it could have been received.

—(e) Only student income and farm or self employment income are prorated.

—(f) Lump sum payments can be earned or unearned income. Lump sums are income in the month received. An overpayment may exist for the month of receipt. Any amount remaining will count as a resource for the month following the month of receipt.

—(13) UMAP coverage begins no earlier than four days before a completed, signed application is received by the Department.

—(14) The income of all individuals included in the BMS is used to determine eligibility.

—(15) Individuals included in the UMAP BMS:

—(a) A legally married spouse is included in the BMS if the couple lives together or they have not been separated more than six months. The spouse is not included if the couple is legally separated.

—(b) An unmarried person of the opposite sex who lives with the client is included in the BMS if the client is emancipated and the couple present themselves to the community as husband and wife.

—(c) Unemancipated children living with the client are included in the BMS if the client is emancipated. This includes natural, adopted, or stepchildren. Unborn children are not included in the BMS.

—(d) Parents living with the client are included in the BMS if the client is unemancipated. This includes natural, adopted or stepparents.

—(e) Unemancipated children of the client's parents are included in the BMS if they live with the parents and the client is unemancipated.

~~—(16) The client must report any change which may affect eligibility within ten days of the day the client learns of the change. Clients must report income from a new source within ten calendar days of the date the client receives money from that new source.~~

~~—(17) UMAP resource requirements:~~

~~—(a) The resource limit is \$500 for a BMS of one and \$750 for a BMS of two or more.~~

~~—(b) Countable resources include anything of value that is available to the person. When a person is part owner of property, the property is a resource only if the person has a legal right to sell the property. Only the equity value of the resource is counted.~~

~~—(c) If the resource limit is met at any time in the month, it is met for the entire month.~~

~~—(d) The following resources are exempt and are not counted to determine eligibility:~~

~~—(i) one home, including a mobile home;~~

~~—(ii) the lot upon which the home stands if the home is occupied by the client. If the lot on which the home stands exceeds the average size of residential lots in the community where it is, the equity value of the property that is larger than an average size lot is a resource;~~

~~—(iii) water rights attached to the home or lot occupied by the client;~~

~~—(iv) Contents of the home worth less than \$1000 that are essential to daily living;~~

~~—(v) one vehicle;~~

~~—(vi) an irrevocable burial trust;~~

~~—(vii) one burial plot or space for any member of the client's immediate family;~~

~~—(viii) funds from a student loan, grant, or scholarship are exempt until the month following the end of the period the loan, grant, or scholarship is intended to cover;~~

~~—(ix) a life estate which serves as the primary residence of the client;~~

~~—(x) Lump sum insurance payments for destroyed property if the available money is used within ninety days to replace the destroyed property. All other lump sums are a resource in the month following the month of receipt.~~

~~—(e) The resources of everyone in the BMS are counted to determine eligibility.~~

~~—(f) Individuals are not sanctioned for transferring resources unless the transfer was made to become eligible for UMAP. If property is transferred in order to meet resource limitations, the person is ineligible for the month the transfer is made, and for the next five months. If the client regains the transferred resource and uses the resource to meet normal expenses, the sanction will be removed.~~

~~—(18) The UMAP clinic in Utah, Weber, Morgan, and Salt Lake Counties shall determine what services they will cover. The worker in all other counties shall determine what services they will cover.~~

~~—(19) Cooperation in collecting third party liability information is an eligibility requirement for UMAP assistance.~~

KEY: UMAP

June 25, 2001 26-18

Notice of Continuation February 6, 1998]



Health, Health Care Financing, Medical Assistance Program

R420-1

Utah Medical Assistance Program

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 24863

FILED: 05/15/2002, 19:27

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rulemaking specifies the rules for eligibility for coverage under the Utah Medical Assistance Program (UMAP), and changes the medical benefits covered under UMAP.

SUMMARY OF THE RULE OR CHANGE: Individuals must be eligible for the Primary Care Network (PCN) in order to be eligible for coverage under UMAP. Benefits covered by UMAP will change from covering acute and life-threatening conditions, to covering only specialty care that is received during an authorized and donated hospital stay.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 26, Chapter 18

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The \$3,415,100 in General Fund UMAP—except for \$500,000 for specialty care received during an authorized and donated hospital stay—that would have paid UMAP reimbursements has been allocated to the PCN and will draw down additional federal dollars to help extend health care coverage to more Utahns.

❖ LOCAL GOVERNMENTS: If local governments operate clinics that participated in UMAP, they will experience the same impact as any other health care provider as detailed below.

❖ OTHER PERSONS: Former UMAP clients who do not receive the same scope of services will either pay for the services, go without or receive charity care. We have no way of knowing how many clients will choose which of these options. Providers should be positively impacted overall because more Utahns will be covered under the PCN.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The \$500,000 for specialty care received during an authorized and donated hospital stay will benefit providers who can bill Medicaid for those costs. Beyond that, the Department does not have data that would allow it to estimate how much care the average enrollee will need or pay to receive care no longer provided by UMAP.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Retaining this small complimentary piece for donated inpatient hospital care provides a great additional benefit for enrollees in the PCN. Utah's hospitals are to be commended for their willingness to continue to provide this donated care. Specialists associated with the hospital stay will be reimbursed through the UMAP program maintained by this rule. Rod L. Betit

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

HEALTH
HEALTH CARE FINANCING,
MEDICAL ASSISTANCE PROGRAM
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ross Martin or Jacky Stokes at the above address, by phone at 801-538-6592 or 801-538-6418, by FAX at 801-538-6099 or 801-538-6952, or by Internet E-mail at Rmartin@doh.state.ut.us or jstokes@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 PM on 07/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: Rod Betit, Executive Director

R420. Health, Health Care Financing, Medical Assistance Program.

R420-1. Utah Medical Assistance Program.

~~[R420-1-1. Introduction and Authority.]~~ R420-1-1. Utah Medical Assistance Program.

(1) The Utah Medical Assistance Program (UMAP) is designed to provide medically necessary care to low income clients who are not eligible for Medicaid or Medicare.

(2) This rule is authorized under Section 26-18-10.

~~(3) To be eligible for UMAP services, clients must meet the criteria in R414-310.~~

~~(4) The scope of services covered by UMAP is limited to specialty care received during an authorized and donated hospital stay.~~

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R420-1-2. Definitions.

Terms used in this rule are defined in R414-1, except that "client" shall have the meaning defined below. In addition:

(1) "Chronic condition" means a condition characterized by its long duration or recurrence.

(2) "Client" means a person who has completed a current form MI-13 and been approved for UMAP eligibility.

(3) "Crime" means any felony, misdemeanor, or infraction, of which an individual is eventually convicted. Crimes also include those to which an individual pleads guilty or no contest, or those to which an individual enters into a diversion agreement as outlined in sections 77-2-5 through 77-2-9 UCA.

(4) "Emergency service" means a medical service performed to treat a condition that, in the absence of immediate medical attention, could reasonably be expected to result in death or permanent disability to the client. Immediate medical attention is treatment given within 24 hours of the onset of symptoms or within 24 hours of diagnosis.

(5) "Emergency transportation" means an air or ground ambulance required to transport a client in need of an emergency

service. UMAP shall not reimburse for emergency transportation services if a client could have been safely transported by a less costly method of transportation.

(6) "In custody" means being detained or held under guard by law enforcement personnel at the scene of a crime or in a detention facility, until unconditionally released, or released on probation or parole. The Department shall consider a resident of a jail, correctional facility, or half-way house to be in custody.

(7) "Life threatening condition" means a medical condition which, if not immediately treated, poses an imminent danger to life or will result in permanent disability. Disability is the limiting loss or absence of the capacity to perform activities of daily living or occupational demands. Permanent disability occurs when the degree of loss of this capacity becomes static or well-stabilized, and is not likely to improve despite continuing medical or rehabilitative measures.

(8) "Medically indigent" is abbreviated "MI", which is a prefix for UMAP form numbers.

(a) MI-13 is a UMAP form that explains to clients the rights and responsibilities they have as UMAP clients. A MI-13 form is current from the time it is completed until there is a break in eligibility of more than six consecutive months.

(b) MI-706 is a UMAP form entitled "UMAP Reimbursement Agreement" that authorizes reimbursement for a medical service.

(9) "Medically necessary" means reasonably calculated to prevent, diagnose, or cure conditions that endanger life, cause suffering and pain, cause physical deformity or malfunction, or threaten to cause a handicap, and there is no other equally effective course of treatment available or suitable for the client requesting the service that is more conservative or less costly.

(10) "Principal diagnosis at discharge" means the main medical problem, based on the best information available for review by UMAP.

R420-1-3. Client Eligibility Requirements.

(1) To be eligible for UMAP services, clients must meet the criteria in R414-309. These criteria can be viewed at the UMAP administrative office located at 288 N. 1460 W., Salt Lake City, Utah, or at any site where the Department of Workforce Services or the Department of Health determines eligibility for clients.

(2) Before a client can receive services from UMAP, he must have a specific medical need that is within the UMAP scope of services and meets all other UMAP criteria.

R420-1-4. Program Access Requirements.

(1) UMAP has three medical clinics. Each clinic has on its staff a physician, or a physician assistant or nurse practitioner working under the supervision of a physician. For clients who reside in Salt Lake, Weber, Morgan, and Utah counties, if the physician or supervising physician determines it appropriate, the physician, physician assistant, or nurse practitioner shall evaluate and treat the client.

(2) The clinic may refer the client outside of the clinic only for treatment of covered conditions that cannot be treated in the clinic. The supervising physician shall decide the conditions that can be treated at the clinic. The clinic manager shall decide the services that are covered under UMAP.

(3) Clients residing in all other counties may contact the nearest Office of Workforce Services for a form MI-706. This office may then refer the client to a private physician who is willing to treat the client within the guidelines of UMAP criteria.

R420-1-5. Service Coverage.

— (1) The scope of services covered by UMAP is limited to treatment of conditions that meet one or more of the following criteria, unless elsewhere excluded:

— (a) an acute condition characterized by a rapid onset requiring prompt medical attention. UMAP shall not consider a condition to be acute once it is medically established to have been in existence for four months or more, regardless of when the client began experiencing symptoms. Recurring conditions are not acute;

— (b) a life threatening condition that is not psychiatric;

— (c) a communicable disease that poses a health risk to the general public;

— (d) a condition that will result in irreversible blindness if left untreated, blindness meaning no better than 20/200 visual acuity in the better eye after correction;

— (e) cataracts, if the correction is no better than 20/60 visual acuity in the better eye;

— (f) eyeglasses for a client in a work or training program if the client cannot participate in the work or training without the eyeglasses, or for a diabetic client who cannot see well enough to administer his own medication.

— (2) UMAP may cover the following medical services:

— (a) outpatient hospital services;

— (b) physician services;

— (c) midwife and birthing center services;

— (d) radiology and lab services;

— (e) emergency transportation services for both air and ground;

— (f) dental services;

— (g) pharmacy services;

— (h) rural health services;

— (i) home health services for I.V. antibiotics.

— (3) For all UMAP covered services, the principal diagnosis at discharge from the hospital is the reason for the care. UMAP may not consider the other diagnoses when determining whether the service is covered by UMAP.

— (a) UMAP shall pay a fixed triage fee for emergency transportation, emergency room physicians, and emergency room facility charges for services that do not result in an inpatient admission, if the admission diagnosis is a UMAP covered medical condition, but the principal diagnosis at discharge is psychiatric.

— (b) The fixed triage fee shall constitute payment for the entire service. A notation on the form MI-706 advises the provider that he received authorization for only the minimal set triage fee.

— (4) A provider or a client may resolve questions about coverage of a specific condition or service by contacting the appropriate UMAP clinic in Salt Lake, Morgan, Weber, or Utah counties, or the Office of Workforce Services for all other counties, depending upon where the client lives.

R420-1-6. Limitations and Excluded Services.

— (1) Conditions that are not covered by UMAP include:

— (a) chronic pain, back pain, knee pain, joint pain, from recurring or chronic conditions;

— (b) hernias that are not strangulated or incarcerated, carpal tunnel syndrome, bunions, nasal polyps;

— (c) mental illness or disorder, drug addiction, alcohol addiction;

— (d) obesity, hormonal imbalance, bulimia, anorexia nervosa;

— (e) long-standing arthritis, except treatment of acute flare-ups is a covered service;

— (f) allergies, cataracts, temporomandibular joint dysfunction, premenstrual syndrome, aseptic (avascular) necrosis;

— (g) rhinitis, 24-hour gastritis, common cold, any condition for which there is no accepted medical therapy;

— (h) a condition that is disabling, but does not meet the criteria listed in R420-1-5(1);

— (i) a condition that is not covered by the Utah Medicaid program;

— (j) a condition caused because of a snow skiing or snowboarding accident;

— (k) a condition caused when the client was committing a crime. UMAP shall allow the client to present information to prove that involvement in the alleged crime did not cause or contribute to his medical condition. The client must submit this information within 60 days of the date of the denial;

— (l) a condition caused when the client was being arrested;

— (m) a condition caused when the client was injured by a law enforcement officer;

— (n) a condition caused when the client was in custody;

— (o) a condition that results from experimental or recreational use of drugs or chemicals, (with the exception of drinking distilled spirits, wine, or malt beverages, and smoking or chewing tobacco). UMAP considers use to be experimental or recreational if, on his own initiative, an individual uses:

— (i) prescription drugs in a manner that is contrary to the physician's instructions for their use;

— (ii) non-prescription drugs or chemicals in a manner that is contrary to package instructions, e.g., sniffing glue or other substances, drinking rubbing alcohol, laxative abuse;

— (iii) illegal drugs, e.g., a drug or controlled substance, the use of which is a violation of state or federal law.

— (p) UMAP determines use by an evaluation of the best available medical evidence regarding the condition.

— (q) UMAP allows clients to present information to prove that experimental or recreational use of drugs or chemicals did not cause or contribute to the medical condition. Clients must submit this information within 60 days of the date of denial.

— (2) Services that are not covered by UMAP include:

— (a) cosmetic surgery;

— (b) tympanoplasties;

— (c) hysterectomies and pelvic surgery, except when there is a reasonable suspicion of a life threatening condition;

— (d) back surgeries, knee surgeries, joint surgeries, for recurring or chronic conditions;

— (e) psychiatry, or any service provided to a client while he is in a psychiatric facility, wing, ward, or bed;

— (f) diagnostic work, unless a covered condition is suspected;

— (g) speech pathology, audiology (except to rule out a brain tumor), audiometry (except to rule out a brain stem lesion);

— (h) medical supplies, except syringes, lancets, test strips for diabetes, and ostomy supplies;

— (i) medical equipment, except an oxygen concentrator if required 24 hours a day;

— (j) prosthetic devices, except once when the need for the device arises from any authorized surgery;

— (k) care in a long-term care facility, physical therapy, rehabilitative services, chiropractic services;

— (l) dental work (except for exam, x ray, and extraction of infected teeth), dentures;

—(m) sterilization (tubal ligation, vasectomy, etc.), abortion (unless the life of the mother would be endangered if an abortion were not performed), birth control;

—(n) elective surgery, organ transplants;

—(o) liver biopsy or use of Interferon when being prescribed for treatment of Hepatitis C;

—(p) treatment in a pain clinic;

—(q) non-emergency use of an emergency room or emergency transportation;

—(r) a service that is not covered by the Utah Medicaid program;

—(s) a service if the department determines that there is or was an effective less-costly alternative;

—(t) a service provided to treat a medical condition, if the need for treatment arose while the client was in custody;

—(u) a service for a condition that is a complication of, or a follow-up service for, a non-covered UMAP service. The only exception would be if the service was not covered as a result of lack of client eligibility.

R420-1-7. Form MI-706.

—(1) UMAP may only pay for a service authorized on a form MI-706. The client must obtain the form MI-706 before the service is provided. The client may obtain the form MI-706 after the service is provided if the service is within UMAP scope of services, meets all other UMAP criteria, and:

—(a) is a follow-up service for a surgery that UMAP has authorized. Follow-up services are for normal, uncomplicated post-surgery hospitalization, office follow-ups, or other services provided within six weeks of the surgery and directly related to the surgery; or

—(b) is an emergency service; or

—(c) is a service that was provided before UMAP approved the client for eligibility, and before the client had completed a current form MI-13. The client must request the form MI-706 no later than one year after the date of service, or the date UMAP approved his eligibility, whichever is later. The client shall provide any documentation that UMAP requires, or the client wants considered, to make scope-of-service decisions.

—(2) A client must present the form MI-706 to the provider before receiving any service, except for situations in which there is no UMAP requirement for the client to obtain the form MI-706 prior to receiving the service. If a client presents a form MI-706 to a provider before receiving a service, and the provider accepts the form MI-706, the provider may not hold the client financially liable for the service that was provided, whether or not UMAP reimburses the provider. If a client does not present a form MI-706 to a provider, or if the provider does not accept the form MI-706, the provider may hold the client financially liable for the service and treat the client as a "self-pay" patient. Any time a provider receives a form MI-706, and bills UMAP using the MI-706 number, UMAP shall consider that the provider has accepted the form MI-706.

—(3) After a client has completed a current form MI-13 and is approved for UMAP eligibility, he must present a form MI-706 to the provider for all non-emergency services before the services are provided.

R420-1-8. Claims.

—(1) A provider shall submit a claim for UMAP services in the same way he submits a bill for Utah Medicaid services, except the provider must submit a form MI-706 number for UMAP services. If UMAP has authorized a service, a form MI-706 number will be printed on top of the form MI-706. The provider shall enter this

number in the appropriate box on the invoice. The provider shall submit the claim no later than 12 months after the date of service or six months after the form MI-706 was issued, whichever is later.

—(2) If a provider timely submits a claim and the claim is denied because there is no form MI-706, the provider may resubmit the claim to UMAP no later than one year after the date of service or two months after the date of denial, whichever is later. The provider shall include with the resubmitted claim a copy of the remittance advice showing the denial, and documentation explaining the nature of the medical care provided.

R420-1-9. Reimbursement.

—UMAP shall only reimburse Utah Medicaid providers who accept payment from UMAP as payment in full for the service provided. UMAP adopts the Utah Medicaid reimbursement policies and payment rates for services covered by UMAP, with the following exception:

—A client is required to pay a \$1 co-pay for each UMAP covered pharmacy item (those billed using a NDC code) each time the item is dispensed or purchased, not to exceed in aggregate \$5 per client per month.

—Because inpatient hospital services are not a benefit of UMAP, UMAP shall not reimburse for these services.

R420-1-10. Third Party Liability.

—(1) UMAP may not reimburse for covered medical services if payment for the service can be, or could have been, obtained from other third-party sources. If partial payment is made by a third-party payor, UMAP shall pay the difference up to the limits set by Medicaid.

—(2) Clients and providers shall disclose potentially liable third parties. When any other coverage is available (such as treatment at the Veterans Administration Hospital), the UMAP clinic or provider shall refer the client there for treatment, and UMAP may not authorize payment for those services.

—(3) Clients who are potentially eligible for services through the Ryan White Title II Aids Drug Assistance Program (ADAP) must apply for, and follow through with their application for ADAP. UMAP shall not pay if the client fails to cooperate in obtaining benefits through that program.

R420-1-11. Client Rights and Responsibilities.

—(1) The client shall make an appointment to see office or clinic staff.

—(2) If a client misses an appointment in a UMAP clinic, the client shall have two options regarding future appointments. The client may come in as a walk-in and wait to be seen on a first-come-first-served basis after clients who have appointments, or the client may make a co-payment before being seen at his next appointment. The co-payment is \$1 for missing one appointment, \$2 for missing two consecutive appointments, and \$3 for missing three consecutive appointments. If the client misses more than three consecutive appointments, the client must come in as a walk-in and wait to be seen on a first-come-first-served basis after clients who have appointments. Clients may cancel UMAP clinic appointments up to two hours before the appointment with no penalty.

—(3) If a client misses an appointment with a private provider, the client shall make a \$5 co-payment to UMAP for each of the client's next two appointments with private providers before the client will be given a form MI-706 for these appointments. If the client keeps these appointments, UMAP will refund the \$5 as soon

as the client returns to UMAP and UMAP verifies that the client kept the appointment. UMAP shall consider appointments with private providers to be missed if the client cancels the appointment less than 24 hours before the appointment.

— (4) UMAP may deny services to a client who verbally or physically abuses a member of the UMAP staff.

— (5) UMAP shall send a Notice of Denial to a client who is denied coverage for a requested medical treatment. If a client or a provider is aggrieved by any action or inaction of the department, the person aggrieved may request a hearing in accordance with R410-14. A provider does not have standing to contest issues concerning scope of services or the client's eligibility status.

— (6) The client shall be responsible for making a timely request for a form MI-706. If he fails to obtain the form MI-706, the client shall be liable for any costs incurred.]

KEY: indigent, medicaid, UMAP
[June 25, 2001]2002
Notice of Continuation July 21, 1997
26-1-5
26-18-10

▼ ————— ▼

Human Resource Management, Administration **R477-1** Definitions

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE No.: 24845
FILED: 05/15/2002, 15:32

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Clarification of language and the use of the term "executive director" throughout Title R477. Remove the "executive director" definition and renumber. Two substantive changes are made to accommodate the classification title reduction project.

SUMMARY OF THE RULE OR CHANGE: In Subsection R477-1-1(1): added new language for clarification. Termination can be for a variety of reasons including agency initiated actions. The term resignation is a voluntary act of the employee. In Subsections R477-1-1(6) and (7): nonsubstantive changes are made to clarify use of the term "executive director" (see changes to Subsection R477-1-1(49) below). In Subsection R477-1-1(24): Amendments will allow an agency to grieve a classification decision. In Subsection R477-1-1(26): a nonsubstantive change is made to a rule reference. In Subsection R477-1-1(33): added language clarifying what is not a demotion. This is an important distinction, especially as the Department of Human Resource Management (DHRM) implements the title reduction project and is required to adjust employees' classification. The salary of employees whose position is changed through classification is protected by Subsection R477-6-4(3)(c). In Subsection R477-1-1(44): a nonsubstantive change is made to a rule reference. In

Subsection R477-1-1(49): the definition for executive director is eliminated because its meaning will now be defined in the context of the rule where it is used. This will be easier for individuals who are not familiar with these rules. Three terms will be used. When the context means the executive director of the Department of Human Resource Management, the term will be "Executive Director, DHRM"; when the meaning is executive directors of agencies in general, the term will be "agency heads or commissioner"; and when the meaning is the executive director of a particular agency, the term will be "Executive Director of (the agency)." With the amendments in this filing, these terms will be standards throughout Title R477.

In Subsection R477-1-1(66): this amendment is necessary to accommodate the classification title reduction project. It will now make more sense to focus on specific positions to identify required skills rather than broad classes of positions.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** There were no costs to state agencies associated with this rule and likewise no savings are anticipated with this amendment.
- ❖ **LOCAL GOVERNMENTS:** None--This rule only impacts agencies of the executive branch of state government.
- ❖ **OTHER PERSONS:** None--This rule only impacts agencies of 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 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. However, no such costs or saving will accrue with this amendment.

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
Room 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Conroy Whipple at the above address, by phone at 801-538-3067, by FAX at 801-538-3081, or by Internet E-mail at cwhipple.pedhrm@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 PM on 07/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: Karen Suzuki-Okabe, Executive Director

R477. Human Resource Management, Administration.

R477-1. Definitions.

R477-1-1. Definitions.

The following definitions apply throughout these rules unless otherwise indicated within the text of each rule.

(1) Abandonment of Position: [~~A discretionary~~]An act of [~~termination~~]resignation 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~~]head 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~~]head 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 an agency or a career service employee may grieve a formal classification decision regarding the classification of [the employee's] a 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]~~3-4. A study may include single or multiple job or position reviews.

(27) Compensatory Time: Time off that is provided to an employee in lieu of monetary overtime compensation.

(28) 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.

(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.

(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.

(32) Demeaning Behavior: Any behavior which lowers the status, dignity or standing of any other individual.

(33) Demotion: 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, which may include a reduction in salary. Administrative adjustments and reclassifications are not included in the definition of a demotion.

(34) Department: The Department of Human Resource Management.

(35) Derisive Behavior: Any behavior which insults, taunts, or otherwise belittles or shows contempt for another individual.

(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.

(37) DHRM: The Department of Human Resource Management.

(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.

(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.

(40) Disciplinary Action: Action taken by management under the rules outlined in R477-11.

(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.

(42) Dismissal: A separation from state employment for cause.

(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.

(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~~6. This does not include employee information maintained by supervisors.

(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.

(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.

(47) Equal Employment Opportunity (EEO): Non-discrimination in all facets of employment by eliminating patterns and practices of illegal discrimination.

(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.

~~[(49) Executive Director: The executive director of the Department of Human Resource Management.]~~

~~[(50)49] 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.

~~[(51)50] 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.~~

~~[(52)51] FLSA: Fair Labor Standards Act. The federal statute that governs overtime. See 29 USC 201 (1996).~~

~~[(53)52] FLSA Exempt: Employees who are exempt from the Fair Labor Standards Act.~~

~~[(54)53] FLSA Non-Exempt: Employees who are not exempt from the Fair Labor Standards Act.~~

~~[(55)54] Full Time Equivalent (FTE): The budgetary equivalent of one full time position filled full time for one year.~~

~~[(56)55] Furlough: A temporary leave of absence from duty without pay for budgetary reasons or lack of work.~~

~~[(57)56] 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.~~

~~[(58)57] 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.~~

~~[(59)58] Gross Compensation: Employee's total earnings, taxable and untaxable, as shown on the employee's paycheck stub.~~

~~[(60)59] Hiring List: A list of qualified and interested applicants who are eligible to be considered for appointment or conditional appointment to a specific position.~~

~~[(61)60] 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.~~

~~[(62)61] HRE: Human Resource Enterprise; the state human resource management information system.~~

~~[(63)62] Immediate Supervisor: The employee or officer who exercises direct authority over an employee and who appraises the employee's performance.~~

~~[(64)63] Incompetence: Inadequacy or unsuitability in performance of assigned duties and responsibilities.~~

~~[(65)64] Inefficiency: Wastefulness of government resources including time, energy, money, or staff resources or failure to maintain the required level of performance.~~

~~[(66)65] 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.~~

~~[(67)66] Intern: An individual in a college degree program assigned to work in an activity where on-the-job training is accepted.~~

~~[(68)67] 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.~~

~~[(69)68] 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.~~

(~~70~~69) Job Proficiency Rating: An average of the last three annual performance evaluation ratings used in reduction in force proceedings.

(~~74~~70) Job Requirements: Skill requirements defined at the job level.

(~~72~~71) Job Description: A document containing the duties, distinguishing characteristics, knowledge, skills, and other requirements for a job.

(~~73~~72) Job Identification Number: A unique number assigned to a job by DHRM.

(~~74~~73) Legislative Salary Adjustment: A legislatively approved salary increase for a specific category of employees based on criteria determined by the Legislature.

(~~75~~74) Malfeasance: Intentional wrongdoing, deliberate violation of law or standard, or mismanagement of responsibilities.

(~~76~~75) Market Comparability Adjustment: Legislatively approved reallocation of a salary range for a job based on a compensation survey conducted by DHRM.

(~~77~~76) Merit Increase: A legislatively approved and funded salary increase for employees to recognize and reward successful performance.

(~~78~~77) Misfeasance: The improper or unlawful performance of an act that is lawful or proper.

(~~79~~78) Nonfeasance: Failure to perform either an official duty or legal requirement.

(~~80~~79) Performance Evaluation: A formal, periodic evaluation of an employee's work performance.

(~~84~~80) Performance Evaluation Date: The date when an employee's performance evaluation shall be conducted. An evaluation shall be conducted at least once during the probationary period and no less than once annually thereafter consistent with the common review date.

(~~82~~81) Performance Management: The ongoing process of communication between the supervisor and the employee which defines work standards and expectations, and assesses performance leading to a formal annual performance evaluation.

(~~83~~82) Performance Plan: A written summary of the standards and expectations required for the successful performance of each job duty or task. These standards normally include completion dates and qualitative and quantitative levels of performance expectations.

(~~84~~83) Performance Standard: Specific, measurable, observable and attainable objectives that represent the level of performance to which an employee and supervisor are committed during an evaluation period.

(~~85~~84) Personnel Adjudicatory Proceedings: The informal appeals procedure contained in Title 63, Chapter 46b, for all human resource policies and practices not covered by the state employees grievance procedure promulgated by the Career Service Review Board, or the classification appeals procedure.

(~~86~~85) Position: A unique set of duties and responsibilities identified by DHRM authorized job and position management numbers.

(~~87~~86) Position Description: A document that describes the detailed tasks performed, as well as the knowledge, skills, abilities, and other requirements of a specific position.

(~~88~~87) Position Management Report: A document that lists an agency's authorized positions including job identification numbers, salaries, and schedules. The list includes occupied or vacant positions and full or part-time positions.

(~~89~~88) 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.

(~~90~~89) Probationary Period: A period of time considered part of the selection process, identified at the job level, the purpose of which is to allow management to evaluate an employee's ability to perform assigned duties and responsibilities and to determine if career service status should be granted.

(~~94~~90) 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.

(~~92~~91) 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.

(~~93~~92) Protected Activity: Opposition to discrimination or participation in proceedings covered by the anti-discrimination statutes. Harassment based on protected activity can constitute unlawful retaliation.

(~~94~~93) 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.

(~~95~~94) 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.

(~~96~~95) 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.

(~~97~~96) Reassignment: A management initiated action moving an employee from his current job or position to a job or position of an equal 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.

(~~98~~97) Reclassification: A DHRM or an approved contract agency 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 by a classification study.

(~~99~~98) 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.

(~~100~~99) 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.

(~~100~~) 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.

(~~101~~) Retaliation: An adverse employment action taken against an employee who has engaged in a protected act. The adverse action must have a causal link.

(~~102~~) Requisition: An electronic document used for Utah Skill Match search and tracking purposes that includes specific information for a particular position.

(~~103~~) 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.

(~~104~~) Ridiculing Behavior: Any behavior specifically performed to cause humiliation or to mock, taunt or tease another individual.

(~~105~~) RIF'd Employee: An employee who is placed on the reappointment register as a result of a reduction in force.

(~~106~~) 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.

(~~107~~) Salary Range: The segment of an approved pay plan assigned to a job.

(~~108~~) 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).

(~~109~~) 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.

(~~110~~) 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.

(~~111~~) 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.

(~~112~~) 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.

(~~113~~) Transfer: A voluntary movement of an employee from one job or position to another job or position for which the employee qualifies. 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.

(~~114~~) Underfill: DHRM authorization for an agency to fill a position at a lower salary range within the same job series.

(~~115~~) 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.

(~~116~~) 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.

(~~117~~) 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.

(~~118~~) 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.

(~~119~~) 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.

(~~120~~) 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 3, 2001]2002
Notice of Continuation July 1, 1997
67-19-6**



Human Resource Management,
Administration
R477-2
Administration

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 24846

FILED: 05/15/2002, 15:33

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Incorporates language from R477-3 and clarifies procedure on requests for employee information.

SUMMARY OF THE RULE OR CHANGE: There are two substantive changes to this rule. The new section R477-2-5, Control of Personal Service Expenditures, is the exact language taken from Rule R477-3, same title. This now former Rule R477-3 is incorporated into R477-2 to make room for a new rule. Amendments to Subsection R477-2-6(7) are designed to clarify the process by which anyone may request information about state employees. The main intent is to provide better protection of law enforcement employees who work in undercover assignments. All other amendments are nonsubstantive: (1) correct references to other Department of Human Resource Management (DHRM) rules that are being renumbered with this filing, (2) renumber rules as a result of the insertion of the new Section R477-2-5, and (3) clarify the use of the term "executive director". (DAR NOTE: The repeal of Rule R477-3 is under DAR No. 24847 in this Bulletin. Also, Rule R477-4 is renumbered to R477-3 under DAR No. 24848; Rule R477-5 is renumbered to R477-4 under DAR No. 24849; Rule R477-6 is renumbered to R477-5 under DAR No. 24350; the current Rule R477-7 is renumbered to R477-6 under DAR No. 24858; and the new proposed Rule R477-7 is under DAR No. 24851 in this Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63-2-204(5), and Sections 67-19-6, 67-19-6.4, and 67-19-18

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There were no costs to state agencies associated with this rule and thus no savings are anticipated with this amendment.
- ❖ LOCAL GOVERNMENTS: None--This rule only impacts agencies of the executive branch of state government.
- ❖ OTHER PERSONS: None--This rule only impacts agencies of the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No additional resources will be necessary to comply with this 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. However, no such costs or savings will accrue with this amendment.

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
Room 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Conroy Whipple at the above address, by phone at 801-538-3067, by FAX at 801-538-3081, or by Internet E-mail at cwhipple.pedhrm@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 PM on 07/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: Karen Suzuki-Okabe, Executive Director

R477. Human Resource Management, Administration.**R477-2. Administration.****R477-2-1. Rules Applicability.**

These rules apply to all career and non-career state employees except those specifically exempted in Section 67-19-12.

(1) Certificated employees of the State Board of Education are covered by these rules except for rules governing classification and compensation, found in R477-[4]3 and R477-[7]6.

(2) Non-state agencies with employees protected by the career service provisions of these rules in R477-[5]4, R477-[6]5, R477-9 and R477-11 are exempted by contract from any provisions deemed inappropriate in their jurisdictions by the Executive Director, DHRM.

(3) Unless employees in exempt positions have written contracts of employment for a definite period of time, they are "at will" employees. The following employees are exempt from mandatory compliance with these rules:

- (a) Members of the Legislature and legislative employees
- (b) Members of the judiciary and judicial employees
- (c) Elected members of the executive branch and their direct staff who are career service-exempt employees
- (d) Officers, faculty, and other employees of state institutions of higher education
- (e) Any positions for which the salary is set by law
- (f) Attorneys in the attorney general's office
- (g) Agency heads and other persons appointed by the governor when authorized by statute
- (h) Employees of the Department of Community and Economic Development whose positions have been designated executive/professional by the executive director of the Department of Community and Economic Development with the concurrence of the Executive Director, DHRM.

(4) All other exempt positions are covered by provisions of these rules except rules governing career service status in R477-[5]4, R477-[6]5, R477-9 and R477-11.

(5) The above positions may or may not be exempt from federal and other state regulations.

R477-2-2. Compliance Responsibility.

Agencies shall manage their own human resources in compliance with these rules. Agencies are authorized to correct any administrative errors.

(1) The Executive Director, DHRM, may authorize exceptions to provisions of these rules when one or more of the following criteria are satisfied:

(a) Applying the rule prevents the achievement of legitimate government objectives;

(b) Applying the rule impinges on the legal rights of an employee;

(2) Agency personnel records, practices, policies and procedures, employment and actions, shall comply with these rules and are subject to compliance audits by the DHRM.

(3) In cases of noncompliance with the State Personnel Management Act, Title 67, Chapter 19, and these rules, the Executive Director, DHRM, may find the responsible agency official to be subject to the penalties prescribed by Section 67-19-18(1) pertaining to misfeasance, malfeasance or nonfeasance in office.

R477-2-3. Fair Employment Practice.

All state personnel actions must provide equal employment opportunity for all individuals.

(1) Employment actions including appointment, tenure or term, condition or privilege of employment shall be based on the ability to perform the essential duties, functions, and responsibilities assigned to a particular position.

(2) Employment actions shall not be based on race, religion, national origin, color, sex, age, disability, protected activity under the anti-discrimination statutes, political affiliation, military status or affiliation or any other non-job related factor, nor shall any person be subjected to unlawful harassment by a state employee.

(3) 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(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(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(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(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. Control of Personal Service Expenditures.

(1) Statewide control of personal service expenditures shall be the shared responsibility of the employing agency, the Governor's Office of Planning and Budget, the Department of Human Resource Management and the Division of Finance.

(2) Agency management may request changes to the Position Management Report which are justified as cost reduction or improved service measures.

(a) Changes in the numbers, job identification, or salary ranges of positions listed in the Position Management Report shall be approved by the Executive Director, DHRM or designee.

(3) No person shall be placed or retained on an agency payroll unless that person occupies a position listed in an agency's approved Position Management Report.

R477-2-[5]6. 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 the Executive Director, DHRM, who have a legitimate "need-to-know";

(c) individuals who have the employee's written consent.

(7) Utah is an open records state, according to Chapter 2, Title 63, the Government Records Access and Management Act. ~~[Employment verification]~~ ~~[R]Requests for information 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]~~ employees whose records are private or protected:

- (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) 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.

R477-2-~~6~~7. Release of Information in a Reference Inquiry.

Reference checks or inquiries made regarding current or former public employees, volunteers, independent contractors, and members of advisory boards or commissions can be released if the information falls under a category outlined in R477-2-~~5~~6(7), or if the subject of the record has signed and provided a reference release form for information authorized under Title 63, Chapter 2.

(1) The employment record is the property of Utah State Government with all rights reserved to utilize, disseminate or dispose of in accordance with the Government Records Access and Management Act.

(2) Additional information may be provided if authorized by law.

R477-2-~~7~~8. Employment Eligibility Certification (Immigration Reform and Control Act - 1986).

(1) All career and non-career employees appointed on and after November 7, 1986, as a new hire, rehire, interdepartmental transfer or through reciprocity with or assimilation from another career service jurisdiction must provide verifiable documentation of their identity and eligibility for employment in the United States as required under the Immigration Reform and Control Act of 1986.

(2) Agency hiring officials are responsible for verifying the identity and employment eligibility of these employees, by completing all sections of the Employment Eligibility Certification Form I-9 in conformance with Immigration and Naturalization Service (INS) Regulations. The I-9 form shall be maintained in the agency personnel file.

R477-2-~~8~~9. Disclosure by Public Officers Supervising a Relative.

It is unlawful for a public officer to appoint, directly supervise, or to make salary or performance recommendations for relatives except as prescribed in the Nepotism Act, Section 52-3-1.

(1) A public officer supervising a relative shall make a complete written disclosure of the relationship to the chief administrative officer of the agency or institution, in accordance with Section 52-3-1.

R477-2-~~9~~10. Employee Liability.

An employee who becomes aware of any occurrence which may give rise to a law suit, who receives notice of claim, or is sued because of an incident related to his employment, shall give immediate notice to his supervisor and to the Department of Administrative Services, Office of Risk Management.

(1) In most cases, under provisions of the Governmental Immunity Act (GIA), Sections 63-30-36, 63-30-37, employees shall receive defense and indemnification unless the case involves fraud, malice or the use of alcohol or drugs by the employee.

(2) If a law suit results against an employee, the GIA stipulates that the employee must request a defense from his agency head in writing within ten calendar days.

R477-2-~~10~~11. Quality Service Award.

When requested by the Director, agencies shall assign employees to serve on the Utah Quality Award Evaluation Panel according to criteria established by section 67-19-6.4 and DHRM.

KEY: administrative responsibility, confidentiality of information, fair employment practices, public information

~~July 3, 2001~~ **2002**

Notice of Continuation July 1, 1997

63-2-204(5)

67-19-6

67-19-6.4
67-19-18

▼ ————— ▼

Human Resource Management, Administration **R477-3** Control of Personal Service Expenditures

NOTICE OF PROPOSED RULE

(Repeal)

DAR FILE No.: 24847
FILED: 05/15/2002, 15:34

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Remove this rule, which is only 1/2 page, and incorporate the language into Rule R477-2 as Section R477-2-5.

SUMMARY OF THE RULE OR CHANGE: The Department of Human Resource Management (DHRM) proposes to divide Rule R477-8 Working Conditions, into two parts. One part will become a new rule on leave. The other part will remain as it is with the title of Working Conditions. To maintain some continuity and proximity to related rules, the new rule on leave will be designated R477-7. For this to happen, R477-3 is incorporated into R477-2, and Rules R477-4 through R477-7 are renumbered. Rule R477-3 is repealed in its entirety. (DAR NOTE: Rule R477-4 is renumbered to R477-3 under DAR No. 24848; Rule R477-5 is renumbered to R477-4 under DAR No. 24849; Rule R477-6 is renumbered to R477-5 under DAR No. 24350; the current Rule R477-7 is renumbered to R477-6 under DAR No. 24858; and the new proposed Rule R477-7 is under DAR No. 24851 in this Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There were no costs to state agencies associated with this rule and thus no savings are anticipated with this repeal.
- ❖ LOCAL GOVERNMENTS: None--This rule only impacts agencies of the executive branch of state government.
- ❖ OTHER PERSONS: None--This rule only impacts agencies of the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No additional resources will be necessary to comply with this repeal.

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 savings on to businesses through fees. However, no such costs or saving will accrue with this amendment.

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
Room 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Conroy Whipple at the above address, by phone at 801-538-3067, by FAX at 801-538-3081, or by Internet E-mail at cwhipple.pedhrm@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 PM on 07/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: Karen Suzuki-Okabe, Executive Director

R477. Human Resource Management, Administration.

~~**R477-3. Control of Personal Service Expenditures.**~~

~~**R477-3-1. Control Responsibility.**~~

~~Statewide control of personal service expenditures shall be the shared responsibility of the employing agency, the Governor's Office of Planning and Budget, the Department of Human Resource Management and the Division of Finance.~~

~~**R477-3-2. Changes to the Position Management System.**~~

~~Agency management may request changes to Position Management Report which are justified as cost reduction or improved service measures.~~

~~(1) Changes in the numbers, job identification, or salary ranges of positions listed in the Position Management Report shall be approved by the Executive Director, DHRM or designee.~~

~~**R477-3-3. Payroll Consistent With the Position Management Report.**~~

~~No person shall be placed or retained on an agency payroll unless that person occupies a position listed in an agency's approved Position Management Report.~~

~~**R477-3-4. Policy Exceptions.**~~

~~The Executive Director, DHRM, may authorize exceptions to the provisions of this rule, consistent with R477-2-2(1).]~~

~~**[KEY: administrative responsibility, personnel management, state expenditures**~~

~~**December 16, 1998**~~

~~**Notice of Continuation July 1, 1997**~~

~~**67-19-6]**~~

▼ ————— ▼

Human Resource Management,
Administration
R477-4
(Changed to R477-3)
Classification

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 24848

FILED: 05/15/2002, 15:35

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is renumbered to accommodate the creation of a new Rule R477-7.

SUMMARY OF THE RULE OR CHANGE: The only change is a renumbering of the sections of this rule. (DAR NOTE: The repeal of Rule R477-3 is under DAR No. 24847 in this Bulletin. Also, Rule R477-5 is renumbered to R477-4 under DAR No. 24849; Rule R477-6 is renumbered to R477-5 under DAR No. 24350; the current Rule R477-7 is renumbered to R477-6 under DAR No. 24858; and the new proposed Rule R477-7 is under DAR No. 24851 in this Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There were no costs to state agencies associated with this rule and thus no savings are anticipated with this amendment.

❖ LOCAL GOVERNMENTS: None--This rule only impacts agencies of the executive branch of state government.

❖ OTHER PERSONS: None--This rule only impacts agencies of the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No additional resources will be necessary to comply with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. 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 savings on to businesses through fees. However, no such costs or saving will accrue with this amendment.

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
Room 2120 STATE OFFICE BLDG

450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Conroy Whipple at the above address, by phone at 801-538-3067, by FAX at 801-538-3081, or by Internet E-mail at cwhipple.pedhrm@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 PM on 07/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: Karen Suzuki-Okabe, Executive Director

R477. Human Resource Management, Administration.**R477-[4]3. Classification.****R477-[4]3-1. Job Classification Methods.**

The Executive Director, DHRM, shall prescribe the procedures and methods for classifying all positions not exempted by law from the classification plan. The Executive Director, DHRM, may authorize exceptions to provisions of the following rule, consistent with R477-2-2(1).

R477-[4]3-2. Job Description.

DHRM shall maintain job descriptions, as appropriate, for all jobs in the classified plan.

(1) Job descriptions shall contain:

(a) Job title

(b) Distinguishing characteristics

(c) A description of tasks commonly associated with most positions in the job

(d) Statements of required knowledge, skills, and other requirements

(e) FLSA status and other administrative information as approved by DHRM.

R477-[4]3-3. Assignment of Duties.

Management may assign, modify, or remove any employee task or responsibility in order to accomplish reorganization, improve business practices or process, or for any other reason deemed appropriate by the department administration.

R477-[4]3-4. Position Classification Review.

(1) A classification review 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 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]3-5. 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 3, 2001~~ 2002

Notice of Continuation July 1, 1997

67-19-6

67-19-12

Human Resource Management,
Administration

R477-5
(Changed to R477-4)
Filling Positions

NOTICE OF PROPOSED RULE
(Amendment)

DAR FILE NO.: 24849

FILED: 05/15/2002, 15:35

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Make an overdue correction to the recruitment rights of former state employees, renumber the sections of this rule to accommodate the formation of a new Rule R477-7; and make nonsubstantive adjustments in references to other rules that are renumbered with this filing.

SUMMARY OF THE RULE OR CHANGE: In Subsection R477-5-4(2)(b): language giving former state employees priority for rehiring is deleted. Former employees who are rehired have special treatment with leave accrual and benefits but not for selection and recruitment. Previous language has potential to create liability for the state. (DAR NOTE: The repeal of Rule R477-3 is under DAR No. 24847 in this Bulletin. Also, Rule R477-4 is renumbered to R477-3 under DAR No. 24848; Rule R477-6 is renumbered to R477-5 under DAR No. 24350; the current Rule R477-7 is renumbered to R477-6 under DAR No. 24858; and the new proposed Rule R477-7 is under DAR No. 24851 in this Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There were no costs to state agencies associated with this rule and thus no savings are anticipated with this amendment.

❖ **LOCAL GOVERNMENTS:** None--This rule only impacts agencies of the executive branch of state government.

❖ **OTHER PERSONS:** None--This rule only impacts agencies of the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No additional resources will be necessary to comply with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. 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 savings on to businesses through fees. However, no such costs or saving will accrue with this amendment.

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SALT LAKE CITY UT 84114-1201, 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 cwhipple.pedhrm@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 PM on 07/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: Karen Suzuki-Okabe, Executive Director

R477. Human Resource Management, Administration.

R477-[5]4. Filling Positions.

R477-[5]4-1. Authorization to Fill a Position.

Agencies shall have sufficient funds to fill positions that are listed in the Position Management Report. The Executive Director, DHRM, may authorize exceptions to provisions of this rule, consistent with R477-2-2(1).

The DHRM approved recruitment and selection system is the state's recruitment and selection system for career service positions. Agencies shall use the DHRM approved recruitment and selection system unless an alternate system has been pre-approved by the Department of Human Resource Management.

R477-[5]4-2. Selecting Non-Career Service Positions.

(1) Agencies and managers may use any process to select employees for exempt positions which complies with state and federal law and regulations.

R477-[5]4-3. Career Service (Schedule B) Positions.

(1) Selection of career service employees shall be governed by the following:

- (a) DHRM standards and procedures;
- (b) Career service principles;
- (c) Equal employment opportunity principles;
- (d) Utah Code governing nepotism found in Section 52-3-1.
- (e) Reasonable accommodation for qualified applicants covered under the Americans With Disabilities Act.

(2) DHRM shall take affirmative action to ensure that members of legally protected classes have the opportunity to apply and be considered for available positions in state government.

R477-[5]4-4. Order of Selection for Career Service Positions.

(1) Prior to implementing the steps for order of selection, agencies may administer the following personnel actions:

- (a) Reemployment of a veteran eligible under USERRA;
- (b) Reassignment or transfer for the purposes of reasonable accommodation under the Americans with Disabilities Act;
- (c) Fill positions as a result of return to work from long term disability or workers compensation at the same or lesser salary range;
- (d) Reassignments made in order to avoid a reduction in force, or for reorganization or bumping purposes;
- (e) Reassignments, career exchange assignments or other movement of qualified career service employees at the same or lesser salary range to better utilize skills or assist management in meeting the organization's mission;

(f) Reclassification.

(2) Agencies may carry out all the following steps for recruitment and selection of vacant career service positions concurrently. Appointing authorities may make appointments according to the following order of selection which applies to all vacant career service positions:

(a) First, agencies shall make appointments from the statewide reappointment register with the names of employees who meet the job qualifications and who apply for the position. See R477-12-3(7) for additional reinstatement criteria.

(b) Second, agencies may make appointments within an agency through promotion of a qualified career service employee, or across agency lines through transfer or promotion of qualified career service employees, career exchange assignments to a higher salary range, or conversions from schedule A to schedule B as authorized by R477-[6]5-1.(3), or rehire of qualified former career service employees at agency discretion].

(c) Third, agencies may make appointments from a list of qualified applicants certified as eligible for appointment to the position, or from another competitive process pre-approved by the Executive Director, DHRM.

R477-[5]4-5. Recruitment Within Agencies.

(1) Agencies shall provide information about internal job opportunities to their employees. Agencies shall develop a consistent, internal recruitment strategy for job families and shall communicate this strategy to their employees.

(a) For agency recruitments when the DHRM approved recruitment and selection system is not used, vacancies shall be announced for a minimum of 5 days within an agency, an organizational unit or work group. Each vacancy announcement shall include an opening and closing date.

(b) When the DHRM approved recruitment and selection system is used, agencies are required to provide their employees information about the DHRM approved recruitment and selection [system] system.

(c) Recruitment is not required for personnel actions outlined in R477-[5]4-4.(1).

(d) Appointment of employees from the statewide reappointment register must comply with the order of selection specified in R477-[5]4-4.

R477-[5]4-6. Transfer and Reassignment.

(1) Jobs or positions may be filled by reassigning an employee without a reduction in pay for administrative reasons, or corrective action pursuant to R477-10-2.

(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.

(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.

R477-[5]4-7. Rehire.

(1) A former career service employee may be eligible for rehire to any career service position for which he is qualified.

(a) A rehired employee must compete through the DHRM approved recruitment and selection system and must serve a new probationary period, as designated in the official job description.

(i) The annual leave accrual rate for an employee rehired on or after July 1, 1995 shall be based on all State employment in which the employee was eligible to accrue leave.

(ii) An employee who is rehired within 12 months of separation to a position which receives sick leave benefits shall have his previously accrued sick leave credit reinstated.

(b) A Rehired employee may be offered any salary within the regular salary range for the position.

(2) Career Service exempt employees cannot be rehired to career service positions, except as prescribed by Section 67-19-17.

R477-[5]4-8. Public Recruitment and Recruitment Across Agencies.

(1) Recruitment shall comply with federal and state laws and DHRM rules and procedures.

(a) Recruitment shall include the following:

(i) job information about available positions;

(ii) information about the DHRM approved recruitment and selection system;

(iii) documented communication regarding examination methods and opening and closing dates, if applicable;

(iv) a strategy for affirmative action, if applicable.

(2) Job information for career service positions shall be announced publicly for a minimum of 5 days if a DHRM approved recruitment and selection system does not produce a sufficient pool of qualified applicants.

R477-[5]4-9. Examinations.

(1) Examinations shall be designed to measure and predict success of individuals on the job. Appointment to career service positions shall be made through open, competitive selection.

(2) The Executive Director, DHRM, shall establish the standards for the development, approval and implementation of examinations. Examinations shall include the following:

(a) A documented job analysis;

(b) An initial, unbiased screening of the individual's qualifications;

(c) Security of examinations and ratings;

(d) Timely notification of individuals seeking positions;

(e) Elimination from further consideration of individuals who abuse the process;

(f) Unbiased evaluation and results;

(g) Reasonable accommodation for qualified individuals with disabilities.

(3) When examinations utilizing ratings of training and experience are administered, agencies may establish maximum years of credit for training and experience for the purpose of rating qualified applicants. Separate maximums may be set for years of training and years of experience. These maximums shall be included in the agency's recruitment notice.

(4) The Executive Director, DHRM, may enter into delegation agreements with agencies to develop and administer examination instruments, subject to periodic administrative audits by DHRM.

R477-[5]4-10. Hiring Lists.

(1) The hiring list shall include the names of qualified and interested applicants who are eligible to be considered for appointment or conditional appointment to a specific position.

(a) Hiring lists shall be constructed using the DHRM approved recruitment and selection system or another competitive process pre-approved by DHRM. All competitive processes shall be based on job-related criteria.

(b) All applicants included on a hiring list shall be examined with the same examination or examinations.

(c) An individual shall be considered an applicant when he is determined to be both qualified for and interested in a particular position identified through a specific requisition.

(2) An applicant may be removed from further consideration when he, without valid reason, does not pursue appointment to a position.

(3) An individual who falsifies any information in the job application, examination or evaluation processes may be disqualified from further consideration prior to hire, or disciplined if already hired.

(4) Five percent of the total possible score shall be added to the rating or an appropriate adjustment shall be made on the hiring list for any applicant claiming veterans preference who:

(a) has served more than 180 consecutive days of active duty in and honorably discharged or released from the armed forces of the United States; or

(b) is the spouse or unremarried surviving spouse of any veteran.

(5) Ten percent of the total possible score shall be added to the rating or an appropriate adjustment shall be made on the hiring list for any applicant claiming veterans preference who:

(a) Was honorably discharged or released from active duty with a disability incurred in the line of duty or is a recipient of a Purple Heart, whether or not that person completed 180 days of active duty.

(b) Is the spouse or unremarried surviving spouse of any disabled veteran.

(6) The Executive Director, DHRM may enter into delegation agreements with agencies to develop and maintain hiring lists, and certify eligible applicants to their appointing authorities, subject to periodic administrative audits by DHRM.

(7) Selection of intra-departmental RIF employees shall be made in order of their retention points.

(a) The employee with the highest retention points shall be reappointed first, provided that the employee:

(i) Meets job requirements; and

(ii) Previously attained the position level comparable to the vacancy.

(8) When more than one RIF employee is certified by DHRM, the appointment shall be made from the most qualified.

(9) The appointing authority shall demonstrate and document that equal consideration was given to all applicants whose final score or rating is equal to or greater than that of the applicant hired.

(10) The appointing authority shall ensure that any employee hired meets the job requirements as outlined in the official job description.

R477-[5]4-11. Time-Limited Exempt Positions.

The Executive Director, DHRM, may approve the creation and filling of non-career service positions for temporary, emergency, seasonal, intermittent or other special and justified agency needs. These appointments shall be "at will," as described below. See Section 67-19-15 for description of positions exempt from career service employment.

(1) Time-limited, temporary or seasonal non-career appointments, such as schedules AJ and AL may be made without competitive examination, provided job requirements are met.

(a) The following appointments are temporary, and may not receive benefits:

(i) AJ appointments for positions which are half-time or more shall last no longer than 1560 working hours in any 12 consecutive month period.

(b) Appointments under schedules AE, AI and AL shall be non-career positions. AE, AI and AL employees may receive benefits on a negotiable basis.

(i) Schedule AL appointments shall work on time-limited projects for a maximum of two years or on projects with time limited funding.

(ii) Only schedule A appointments made from a hiring list as prescribed by R477-[5]4-10(1) may be considered for conversion to career service.

(2) Appointments to fill an employee's position who is on approved leave-without-pay shall only be made temporarily. A notice of appointment shall be signed by the parties.

R477-[5]4-12. Job Sharing.

Agency management may establish a job sharing program as a means of increasing opportunities for career part-time employment. In the absence of an agency program, individual employees may request approval for job sharing status through agency management.

R477-[5]4-13. Internships and Cooperative Education.

Interns or students in a practicum program may be appointed with or without competitive selection. Intern appointments shall be to temporary, career service exempt positions.

R477-[5]4-14. Reorganization.

(1) When a department or agency is reorganized, but an employee's position does not change substantially, he shall not be required to compete for his current position. However, a reduction in the number of positions in a certain class shall be treated as a reduction-in-force.

R477-[5]4-15. Career Mobility Programs.

Employees and agencies are encouraged to promote career mobility programs.

(1) Agencies may provide career mobility assignments inside or outside state government to qualified employees. Career mobility programs are designed to develop agencies' resources and to enhance the employee's career growth.

(a) Agencies shall establish policies governing career mobility programs.

(b) An eligible employee, the agency or supervisor may initiate a career mobility.

(c) Interested participants shall meet the job requirements of the career mobility position.

(2) Agencies shall develop and use written career mobility contract agreements between employees and supervisors to outline all program provisions and requirements. The career mobility shall be both voluntary and mutually acceptable.

(a) Programs shall conform to equal employment opportunities and practices.

(b) Participating employees shall retain all rights, privileges, entitlements, tenure and benefits from their previous position while on career mobility.

(c) If a reduction in force affects a position vacated by a participating employee, the participating employee shall be treated the same as other RIF employees.

(3) If a career mobility assignment does not become permanent at its conclusion, employees shall return to their previous position or a similar position. They shall receive the same salary rate they would have received without the career mobility assignment.

(a) Employees who have not attained career service status prior to the career mobility program cannot permanently fill a career service position until they have obtained career service status through a competitive process.

R477-[5]4-16. Assimilation.

(1) Employees assimilated by the state from another career service system shall receive career service status after completing a probationary period if they were originally selected through a competitive examination process judged by the Executive Director, DHRM, to be equivalent to the process used in the state career service.

(a) Assimilation agreements shall specify whether there are employees eligible for reemployment under USERRA in positions affected by the agreement.

R477-[5]4-17. 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 3, 2001|2002

Notice of Continuation July 1, 1997

67-19-6



Human Resource Management, Administration

R477-6

(Changed to R477-5)

Employee Status and Probation

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 24850

FILED: 05/15/2002, 15:36

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Renumber the sections of this rule to accommodate the creation of a new Rule R477-7.

SUMMARY OF THE RULE OR CHANGE: The four sections of this rule are renumbered and a nonsubstantive change is made at Subsection R477-6-1(3)(b) to adjust the reference to another rule that is renumbered with this filing. (DAR NOTE: The

repeal of Rule R477-3 is under DAR No. 24847 in this Bulletin. Also, Rule R477-4 is renumbered to R477-3 under DAR No. 24848; Rule R477-5 is renumbered to R477-4 under DAR No. 24849; the current Rule R477-7 is renumbered to R477-6 under DAR No. 24858; and the new proposed Rule R477-7 is under DAR No. 24851 in this Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6 and Subsection 67-19-16(5)(b)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There were no costs to state agencies associated with this rule and thus no savings are anticipated with this amendment.

❖ LOCAL GOVERNMENTS: None--This rule only impacts agencies of the executive branch of state government.

❖ OTHER PERSONS: None--This rule only impacts agencies of the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No additional resources will be necessary to comply with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. 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 savings on to businesses through fees. However, no such costs or saving will accrue with this amendment.

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THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: Karen Suzuki-Okabe, Executive Director

R477. Human Resource Management, Administration.

R477-[6]5. Employee Status and Probation.

R477-[6]5-1. Career Service Status.

(1) Only employees who are appointed through a pre-approved competitive process shall be eligible for appointment to a career service position.

(2) Employees shall complete a probationary period in a competitive career service position prior to receiving career service status.

(3) Exempt employees may only convert to career service status under the following conditions:

(a) They previously held career service status with no break in service between exempt status and the previous career service position.

(b) They were hired from a hiring list as prescribed by R477-[5]4-10(1), and completed a probationary period.

R477-[6]5-2. Probationary Period.

The probationary period allows agency management to evaluate an employee's ability to perform the duties, and responsibilities, skills and other related requirements of the assigned career service position. The probationary period shall be considered part of the selection process.

(1) Employees shall receive full and fair opportunity to demonstrate competence in the job in a career position. As a minimum, a performance plan shall be established and the employee shall receive feedback on performance in relation to that plan.

(a) At the end of the probationary period, employees shall receive performance evaluations. Evaluations shall be entered into HRE as the performance evaluation which reflects successful or unsuccessful completion of probation.

(2) Each career position shall be assigned a probationary period consistent with its job.

(a) The probationary period may not be extended except for periods of leave without pay or workers compensation leave.

(b) The probationary period may not be reduced after appointment.

(c) An employee who has completed a probationary period and obtained career service status shall not be required to serve a new probationary period unless there is a break in service.

(3) Employees in career service positions who work at least 50 percent of the time or more shall acquire career service status after working the same amount of elapsed time in hours as a full-time employee would work with the same probationary period.

(4) Probationary periods may be interrupted by military service covered under USERRA.

(5) An employee serving probation in a competitive career service position may be transferred, reassigned or promoted to another competitive career service position. Each new appointment shall include a new probationary period unless the agency determines that the required duties or knowledge, skills, and abilities of the old and new position are similar enough not to warrant a new probationary period. If an agency determines that a new probationary period is needed, it shall be the full probationary period defined in the job description.

(6) A reemployed veteran shall be required to complete the remainder of the probationary period if it was not completed in his pre-service employment.

R477-[6]5-3. Temporary Transitional Position.

(1) Employees on probation who are temporarily disabled may be placed in another position with lighter duty or reduced responsibility and pay.

(a) This accommodation shall occur for no longer than one year from the date of disability.

(b) Time spent in a transitional position does not reduce the required probationary period in the primary position.

R477-[6]5-4. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to the provisions of this rule, consistent with R477-2-2(1).

KEY: employment, personnel management, state employees

[July 5, 2000]2002

Notice of Continuation July 1, 1997

67-19-6

67-19-16(5)(b)

▼ ————— ▼

**Human Resource Management,
Administration
R477-7
(Changed to R477-6)
Compensation**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 24858

FILED: 05/15/2002, 15:44

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Clarify the treatment of employees in a longevity step or at the end of the pay range, renumber the sections to accommodate the creation of a new Rule R477-7, and clarify the use of the term "executive director."

SUMMARY OF THE RULE OR CHANGE: Amendments to this rule are for clarification purposes and do not represent a significant change in policy. In Subsection R477-7-4(1)(a): this amendment should make it clear that employees may receive more than one step increase when authorized by the legislature. In Subsection R477-7-4(3)(c): this change is necessary for the implementation of the Classification Title Reduction project and coincides with a change made to the definition at Subsection R477-1-1(33). In Subsections R477-7-4(11) and (12): several of the changes in these two subsections clarify the use of the term "executive director" and coincide with the removal of the definition in R477-1-1(49). The distinction between this term and "agency head" will now be made in the context of the rule rather than in definition. The term "equity issues" is removed from two places and will no longer exist anywhere in the Department of Human Resource Management (DHRM) rules. This term is legally vague and creates potential liability for the state. The change at Subsection R477-7-4(11)(f) simply places in rule what is already in law but is more readily accessible to someone not

familiar with DHRM code or rule. Other amendments are renumbering of the sections of this rule or changes to references to other rules that are renumbered with this filing. (DAR NOTE: The amendment to Rule R477-1 is under DAR No. 24845 in this Bulletin. The repeal of Rule R477-3 is under DAR No. 24847 in this Bulletin. Also, Rule R477-4 is renumbered to R477-3 under DAR No. 24848; Rule R477-5 is renumbered to R477-4 under DAR No. 24849; Rule R477-6 is renumbered to R477-5 under DAR No. 24350; and the new proposed Rule R477-7 is under DAR No. 24851 in this Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-19-6 and 67-19-12, and Subsection 67-19-15.1(4)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There were no costs to state agencies associated with this rule and thus no savings are anticipated with this amendment.

❖ LOCAL GOVERNMENTS: None--This rule only impacts agencies of the executive branch of state government.

❖ OTHER PERSONS: None--This rule only impacts agencies of the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No additional resources will be necessary to comply with this 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 savings on to businesses through fees. However, no such costs or saving will accrue with this amendment.

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THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: Karen Suzuki-Okabe, Executive Director

R477-716-1. Human Resource Management, Administration.**R477-716. Compensation.****R477-716-1. Pay Plans.**

(1) DHRM shall develop or modify pay plans for compensating employees.

(2) Market comparability salary range increases shall be legislatively approved.

R477-716-2. Allocation to the Pay Plans.

(1) Each job shall be assigned to a salary range on the applicable pay plan, except where compensation is established by statute.

(2) Salary range determination for benchmark jobs shall be based on salary survey data. The salary ranges for other jobs are determined by relative ranking with the appropriate benchmark job.

R477-716-3. Appointments.

(1) All appointments shall be placed on a salary step in the DHRM approved salary range for the job. Hiring officials shall receive approval from their agency head or agency human resource designee before making appointment offers to individuals.

(2) Re-employed veterans under USERRA shall be placed in their previous position or a similar position at their previous salary range. Reemployment shall include the same seniority status, and any cost of living allowances, reclassification of the veteran's pre-service position, or market comparability adjustments that would have affected the veteran's pre-service position during the time spent by the affected veteran in the uniformed services. Performance related salary increases are not included.

R477-716-4. 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 or more salary steps 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 may not be placed higher than the maximum salary step or lower than the minimum salary step in the new salary range. Placement of employees in longevity shall be consistent with subsection R477-716-4(4).

(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~~ whose positions are reclassified or whose position is changed by administrative adjustment 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.

(f) Agency heads or time-limited exempt employees identified in R477-514-11 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) 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 may 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]~~ agency head 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]~~ agency head 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]~~ agency head or commissioner is the final authority for salary actions authorized within these guidelines. The ~~[executive director]~~ agency head 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.

(f) Employees at the maximum step of their range or on a longevity step may not be granted administrative salary increases.

(12) Administrative Salary Decrease

The ~~[executive director]~~ agency head 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]~~ agency head 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]~~ agency head or commissioner is the final authority for salary actions within these guidelines. The ~~[executive director]~~ agency head or commissioner or designee shall answer any challenge or grievance resulting from an administrative salary decrease.

R477-~~[7]6-5. Incentive Awards.~~

Only agencies with written and published incentive award policies may reward employees with cash incentive awards, and non-cash incentive awards. Policies shall be consistent with standards established in these rules and with 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 \$4,000 per occurrence and \$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.

(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 equivalents such as gift certificates or tickets for admission.

R477-~~[7]6-6. Employee Benefits.~~

(1) Agencies shall explain all benefits provided by the state to new hires or rehires within five working days of the hire date.

(2) Agency payroll or human resource staff shall submit personnel action forms to the appropriate agency levels within ten days of hire date.

(3) Employees must elect to enroll in the life, health and dental plans within 60 days of the hire date to avoid having to provide proof of insurability. Agencies shall submit the enrollment forms to Group insurance within three days of the date entered on the enrollment card.

(4) Flex Benefits

(a) The annual open enrollment period will be held each November for the following FLEX plan year. Exceptions to this rule are as follows:

(i) New employees wishing to participate in the FLEX benefits program shall enroll within the first 60 days of their employment. Coverage becomes effective on their employment date.

(ii) Employees who have a change in family status, such as marriage, divorce, or birth of a child, may enroll or make changes within 60 days of such event. Proper documentation, such as marriage license, divorce decree, or birth certificate, plus a completed FLEX family status change form must be received by the PEHP FLEX Plan Department within 60 days of the change in family status.

(b) Employees must re-enroll each year to participate in the FLEX benefits program.

(c) An employee's designated FLEX payroll deduction shall not be changed during the course of a year unless there is a change in family status.

(d) To be eligible for reimbursement, employees must submit eligible FLEX claims accompanied by documentation to the PEHP FLEX Office no later than the first Thursday of each pay period.

(e) The claim submission deadline for any plan year shall be 90 days following the end of the calendar year. To be eligible for reimbursement, the FLEX claim must be received at the PEHP FLEX Plan Department by close of business on the established plan year deadline.

(5) Employees working less than 40 hours per pay period are ineligible for benefits. Employees working 40 hours, except those identified in R477-[5]4-11, or more per pay period shall be eligible for leave benefits on a pro-rated basis.

(6) Re-employed veterans under USERRA shall be entitled to the same employee benefits given to other continuously employed eligible employees to include seniority based increased pension and leave accrual.

R477-[7]6-7. Employees Converting from Career Service to Schedule AD, AR, or AS.

(1) Career service employees in positions meeting the criteria for career service exempt Schedule AD, AR, or AS shall have 60 days to elect to convert from career service to career service exempt. As an incentive to convert, employees shall be provided the following:

(a) a base salary increase of one (1) to three (3) salary steps, as determined by the agency head. Employees at the maximum of their current salary range or on longevity shall receive, in lieu of the salary step adjustment, a one time bonus of 2.75 percent, 5.5 percent or 8.25 percent to be determined by the agency head;

(b) State paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program, Public Employees Health Plan:

(i) Salaries less than \$50,000 shall receive \$125,000 of term life insurance;

(ii) Salaries between \$50,000 and \$60,000 shall receive \$150,000 of term life insurance;

(iii) Salaries more than \$60,000 shall receive \$200,000 of term life insurance.

(2) Employees electing to convert to career service exempt after their 60 days election period shall not be eligible for the salary increase, but shall be entitled to apply for the insurance coverage through the Group Insurance Office.

(3) Employees electing not to convert to career service exemption shall retain career service even though their position shall be designated as Schedule AD, AR or AS. When these career service employees vacate these positions, subsequent appointments shall be career service exempt.

(4) An agency head may reorganize so that a current career service exempt position no longer meets the criteria for exemption. In this case, the employee shall be designated as career service if he had previously earned career service. However, he shall not be eligible for the severance package or the life insurance. In this situation, the agency and employee shall make arrangements through the Group Insurance Office to discontinue the coverage.

(5) Career service exempt employees without prior career service status shall remain exempt. When the employee leaves the position, subsequent appointments shall be done consistent with R477-[5]4.

(6) Agencies shall communicate to all impacted and future eligible employees the conditions and limitations of this incentive program.

R477-[7]6-8. State Paid Life Insurance.

(1) A benefits eligible career service exempt employee on schedule AA, AB, AD, and AR shall be provided the following benefits:

(a) State paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program Public Employees Health Plan:

(i) Salaries less than \$50,000 shall receive \$125,000 of term life insurance;

(ii) Salaries between \$50,000 and \$60,000 shall receive \$150,000 of term life insurance;

(iii) Salaries more than \$60,000 shall receive \$200,000 of term life insurance.

(2) Employees on schedule AC, AK, AM and AS may be provided these benefits at the discretion of the appointing authority.

R477-[7]6-9. Severance Benefit.

(1) A benefits eligible career service exempt employee on schedule AB, AD and AR who is terminated from state service shall receive a severance benefit equal to one week of pay for each year of consecutive exempt service accrued after January 1, 1993 except as provided in R477-[7]6-9(3).

(2) A benefits eligible career service exempt employee on schedule AB, AD and AR who accepts reassignment to a position with a lower salary range, without a break in service, shall receive a severance benefit equal to the difference between his current hourly rate of pay and his new hourly rate multiplied by the number of accrued annual leave, converted sick leave and excess hours.

(3) A severance benefit shall not be paid to employees:

(a) whose statutory term has expired without reappointment;

(b) who are retiring from state service or are voluntarily separating

from the executive branch;

(c) who are eligible for retirement; or

(d) who are discharged for cause.

(4) Employees on schedule AC, AK, AM and AS may be provided the same severance benefit at the discretion of the appointing authority.

R477-[7]6-10. Human Resource Transactions.

The Executive Director, DHRM, shall publicize procedures for processing payroll/human resource transactions actions and documents.

KEY: salaries, employee benefit plans*, insurance, personnel management

[July 3, 2001]2002

Notice of Continuation July 1, 1997

67-19-6
 67-19-12
 67-19-12.5
 67-19-15.1(4)

▼ ————— ▼

**Human Resource Management,
 Administration
 R477-7
 Leave**

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 24851

FILED: 05/15/2002, 15:37

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Split current large Rule R477-8 into two separate rules. The current Rule R477-7 is renumbered to R477-6.

SUMMARY OF THE RULE OR CHANGE: Although this is filed as a new rule, it is substantially the same language that is being deleted from Rule R477-8. There are some differences however that are noted here. Subsection R477-7-1(3) includes holiday leave in the same category for accrual as annual and sick leave, and it will be accrued in proportion to the time the employee is actually paid in a pay period. In Subsection R477-7-1(7): simply restates what is allowed in IRS regulations and distinguishes what an employee receives when he retires or terminates. Subsection R477-7-2(5) is new and clarifies how the employee is to be paid for holiday leave when he is employed only for part of a pay period in which the holiday falls. This should resolve a problem with this issue. In Subsection R477-7-9(1): adds step-grandparents to the list of eligible relations for which funeral leave is granted. Section R477-7-12 is a new section required by the passage of S.B. 125, Organ Donor Leave for State Employees. In Section R477-7-17: language is removed from Subsection R477-7-17(3)(b) that required agencies to place an individual who returns to work in an available position if one does not exist within the agency. This step is not required by law and creates a substantial administrative and legal burden for agencies. (DAR NOTE: S.B. 125 is found at UT L 2002 Ch 310, and will be effective July 1, 2002. Also, the repeal of Rule R477-3 is under DAR No. 24847; Rule R477-4 is renumbered to R477-3 under DAR No. 24848; Rule R477-5 is renumbered to R477-4 under DAR No. 24849; Rule R477-6 is renumbered to R477-5 under DAR No. 24350; and the current Rule R477-7 is renumbered to R477-6 under DAR No. 24858 in this Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 49-9-203, 63-13-2, 67-19-6, 67-19-12.9, and 67-19-14.5

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There will be some costs associated

with implementation of the Organ Donor Leave section of this rule. It is not anticipated that this will be a frequent need but the costs are estimated to be from \$5,000 to \$10,000 annually.

❖ LOCAL GOVERNMENTS: None--This rule only impacts agencies of the executive branch of state government.

❖ OTHER PERSONS: None--This rule only impacts agencies of the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No additional resources will be necessary to comply with this new rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. 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 savings on to businesses through fees. However, agencies are expected to absorb the estimated costs of the Organ Donor Leave provisions.

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

HUMAN RESOURCE MANAGEMENT
 ADMINISTRATION
 Room 2120 STATE OFFICE BLDG
 450 N MAIN ST
 SALT LAKE CITY UT 84114-1201, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Conroy Whipple at the above address, by phone at 801-538-3067, by FAX at 801-538-3081, or by Internet E-mail at cwhipple.pedhrm@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 PM on 07/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: Karen Suzuki-Okabe, Executive Director

R477. Human Resource Management, Administration.

R477-7. Leave.

R477-7-1. Conditions of Leave.

(1) All employees who regularly work 40 hours or more per pay period, except those identified as "at will" in R477-4-11, are eligible for leave benefits. Employees receive leave benefits in proportion to the time paid.

(a) Eligible employees who work 40 or more hours per pay period shall accrue annual and sick leave in proportion to the time paid.

(b) Employees shall use leave in no less than quarter hour increments.

(2) Seasonal, temporary, or part-time employees working less than 40 hours per pay period are not eligible for paid leave.

(3) Accrual rates for sick, holiday and annual leave are determined on the Annual, Sick and Holiday Leave Accrual table available through DHRM.

(4) An employee may not use annual, sick, excess or holiday leave before he has accrued it.

(5) 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.

(6) Employees on paid leave shall continue to accrue annual and sick leave.

(7) Employees terminating from State service shall be paid in a lump sum for all annual leave and converted sick leave. Retiring employees shall be paid for all accrued annual leave. Employees may transfer this pay out to their 401(k) or 457 account up to the amount allowed by IRS regulation. Leave cannot be used or accrued after the last day worked. No leave-on-leave may accrue or be paid on the cashed out annual leave. Calculations of all leave paid shall be effective through the last day actually worked.

(8) Contributions to benefits may not be paid on cashed out leave, other than FICA tax, except as it applies to converted sick leave in R477-7-5(2) and the Retirement Benefit in R477-7-6.

R477-7-2. Holiday Leave.

(1) The following dates are designated legal holidays:

(a) New Years Day -- January 1

(b) Dr. Martin Luther King Jr. Day -- third Monday of January

(c) Washington and Lincoln Day -- third Monday of February

(d) Memorial Day -- last Monday of May

(e) Independence Day -- July 4

(f) Pioneer Day -- July 24

(g) Labor Day -- first Monday of September

(h) Columbus Day -- second Monday of October

(i) Veterans' Day -- November 11

(j) Thanksgiving Day -- fourth Thursday of November

(k) Christmas Day -- December 25

(l) The Governor may also designate any other day a legal holiday.

(2) If a holiday falls on a Sunday, the following Monday shall be observed as a holiday. If a holiday falls on a Saturday, the preceding Friday shall be observed as a holiday.

(3) If an employee is required to work on an observed holiday, the employee shall receive appropriate holiday leave, or shall receive compensation for the excess hours worked.

(4) The following employees are eligible to receive holiday leave:

(a) Full-time employees shall accrue eight hours of paid holiday leave on holidays:

(b) 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:

(c) 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 workday off, not to exceed eight hours or shall receive compensation for the excess hours at the later date.

(5) Employees receive holiday leave in proportion to the number of hours they are paid during the pay period in which the holiday falls.

(a) New hires shall be in a paid status on or before the holiday in order to receive holiday leave.

(b) Terminating employees shall be in a paid status on or after the holiday in order to receive holiday leave.

(c) Employees in a leave without pay status shall receive holiday leave in proportion to the time paid in the pay period in which the holiday falls.

(6) The first eight hours of annual leave used by an employee in the calendar leave year shall be the employee's personal preference day.

R477-7-3. Annual Leave.

(1) Employees eligible for annual leave shall accrue leave based on the following years of State service:

(a) Zero through five years -- four hours per pay period.

(b) Beginning of sixth year through ten years -- five hours per pay period.

(c) Beginning of eleventh year through twenty years -- six hours per pay period.

(d) Beginning of the twenty-first year or more -- seven hours per pay period.

(2) 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.

(3) Eligible employees may begin to use annual leave time after completing the equivalent of two full pay periods of employment.

(4) 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.

(5) 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.

(a) Only hours accrued in excess of 320 hours after the end of the last pay period of the leave year are eligible for conversion.

(b) 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.

(c) The conversion shall be in whole hour increments.

(d) An employee may convert up to 20 hours or \$250 in value, whichever is less.

(e) 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.

(6) After the conversion in R477-7-3(5), 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.

(7) Department deputy directors and division directors appointed to career service exempt positions shall be eligible for the maximum annual leave accrual rate upon their date of hire.

(a) They shall not be eligible for any transfer of leave from other jurisdictions.

(b) Other provisions of leave shall apply as defined in R477-7-3.

R477-7-4. Sick Leave.

(1) Employees shall accrue sick leave with pay at the rate of four hours each pay period. Sick leave shall accrue without limit.

(2) Employees may begin to use accrued sick leave after completing the equivalent of at least two full pay periods of employment.

(3) 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 the employee, a spouse or dependents living in the employee's home. Exceptions may be granted for other unique medical situations.

(4) Employees shall arrange for a telephone report to supervisors at the beginning of the scheduled workday they are absent due to illness or injury. Management may require reports for serious illnesses or injuries.

(5) Any application for a grant of sick leave to cover an absence that exceeds four successive working days shall be supported by administratively acceptable evidence. If there is reason to believe that an employee is abusing sick leave, a supervisor may require an employee to produce evidence regardless of the number of sick hours used.

(6) 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.

(7) After filing a termination notice, employees must support sick leave requests with a doctor's certificate.

(8) Employees separating from State service may not receive compensation for accrued unused sick leave unless they are retiring.

(a) Employees who are rehired within 12 months of separation to a position that receives sick leave benefits shall have their previously accrued unused sick leave credit reinstated.

(b) Employees who retire from State service and are then rehired may not reinstate their unused sick leave credit.

R477-7-5. Converted Sick Leave.

As an incentive to reduce sick leave abuse, an employee may convert sick leave hours to converted sick leave after the end of any calendar year in which he is eligible.

(1) 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.

(a) 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 unless the employee designates otherwise.

(b) 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.

(c) The maximum hours of converted sick leave an employee may accrue is 320.

(2) 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.

(a) Payment for health and life insurance is the responsibility of the employing agency.

(b) 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.

(c) 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.

R477-7-6. Sick Leave Retirement Benefit.

Employees may be offered a retirement benefit program, according to Section 67-19-14(2).

(1) 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.

(a) If an agency decides to withdraw for the next fiscal year after initially deciding to participate, the agency must notify all employees at least 60 days before the new fiscal year begins.

(b) 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.

(i) 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.

(ii) Life insurance provided shall be the minimum authorized coverage provided for all State employees.

(iii) The participation rate on premium payments shall be the same as the participation rate for current employees on the same plan.

(2) Employee participation in any part of this incentive program shall be voluntary, but the decision to participate shall be made at retirement.

(3) 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.

(4) After the election for cash out is made, 480 hours shall be deducted from the employees remaining sick leave balance.

(5) The employee may use remaining sick leave hours to participate in the following incentive program.

(a) 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.

(i) Health insurance shall be the same coverage carried by the employee at the time of retirement; i.e., family, two-party, or single.

(ii) Life insurance provided shall be the minimum authorized coverage provided for all State employees.

(iii) The purchase rate shall be eight hours of sick leave or converted sick leave for the state paid portion of one month's premium.

(iv) The participation rate on premium payments shall be the same as the participation rate for current employees on the same plan.

(b) 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.

(i) The purchase rate shall be eight hours of sick leave or converted sick leave for one month's premium.

(c) 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.

(d) 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 or converted sick leave for one month's premium.

R477-7-7. Administrative Leave.

(1) Administrative leave may be granted consistent with agency policy for the following reasons:

- (a) corrective action;
- (b) personal decision-making prior to discipline;
- (c) suspension with pay-- during removal from job site-- pending hearing on charges;
- (d) during management decision situations that benefit the organization;
- (e) incentive awards in lieu of cash;
- (f) when no work is available due to unavoidable conditions or influences;
- (g) removal from adverse or hostile work environment situations pending management corrective action;
- (h) educational assistance;
- (i) employee assistance and fitness for duty evaluations.

(2) The 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:

- (a) Administrative leave in excess of 10 consecutive working days per occurrence may be granted by written approval of the agency head.
- (b) Administrative leave taken must be documented in the employee's leave record.

R477-7-8. Jury Leave.

(1) 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:

- (a) 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
- (b) Serve as a witness in a grievance hearing as provided in Section 67-19-31 and Title 67, Chapter 19a, or
- (c) Serve on a jury

(2) Employees who are absent in order to litigate in matters unrelated to their state employment shall use eligible accrued leave or leave without pay.

(3) Employees choosing to use paid 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.

R477-7-9. 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.

(1) 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, step-grandparents, spouse's grandparents, spouse's step-grandparents, step-children, and step-parents, brothers and sisters, step-brothers and step-sisters of the employee.

R477-7-10. Military Leave.

One day of military leave is the equivalent to the employee's normal workday but not to exceed 8 hours.

(1) 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.

(2) After the first fifteen days, 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.

(a) Employees may use accrued leave while on active duty.

(3) Employees shall give notice of active military service as soon as they are notified.

(4) 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:

(a) 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:

(b) 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

(c) For service of more than 180 days, submit an application for reemployment within ninety days of release from service.

R477-7-11. Disaster Relief Volunteer Leave.

(1) 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:

(a) a copy of a written request for the employee's services from an official of the American Red Cross;

(b) the anticipated duration of the absence;

(c) the type of service the employee is to provide for the American Red Cross; and

(d) the nature and location of the disaster where the employee's services will be provided.

R477-7-12. Organ Donor Leave.

Employees who serve as bone marrow or human organ donors shall be granted paid leave for the donation and recovery.

(1) Employees who donate bone marrow shall be granted up to seven days of paid leave.

(2) Employees who donate a human organ shall be granted up to 30 days of paid leave.

R477-7-13. 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, R477-7-15, R477-7-16 or R477-7-17 applies.

(1) 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.

(2) 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.

(a) 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 R477-7-15.

(3) 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.

(4) Leave without pay for non-disability reasons may be granted only when there is an expectation that the employee will return to work.

(5) 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.

R477-7-14. Furlough.

(1) Agency management may furlough employees as a means of saving salary costs in lieu of or in addition to a reduction in force. Furlough plans are subject to the approval of the agency head and the following conditions:

- (a) Employees accrue annual and sick leave.
- (b) Full payment of all fringe benefits continue at agency's expense.
- (c) Employees shall return to their positions.
- (d) Furlough is applied equitably; e.g., to all persons in a given class, all program staff, or all staff in an organization.

R477-7-15. Family and Medical Leave.

(1) This rule conforms to the federal Family and Medical Leave Act, 29 USC 2601. Employees eligible under this rule shall continue to receive medical insurance benefits provided the employee was entitled to medical insurance benefits prior to the commencement of FMLA leave.

(a) Agency management shall authorize up to twelve weeks of leave each calendar year to employees for any of the following reasons:

- (i) birth of a child,
- (ii) adoption of a child,
- (iii) placement of a foster child,
- (iv) a serious health condition of the employee, or
- (v) care of a spouse, dependent child or parent with a serious medical condition.

(2) To be eligible for the twelve weeks of family medical leave, the employee must be--

- (a) Employed by the state for at least 12 months, and
- (b) Employed by the state for a minimum of 1250 compensable work hours as determined under FMLA during the 12-month period immediately preceding the commencement of leave.

(3) Employees (or an appropriate spokesperson) shall submit a leave request

- (a) Thirty days in advance for foreseeable needs;
 - (b) As soon as possible in emergencies.
- (4) Agency Responsibility
- (a) Agency management shall be responsible for:
 - (i) documenting employee leave requests which qualify as FMLA leave; and

- (ii) designating any qualifying leave taken by employees as FMLA leave. All leave requests which qualify as FMLA leave shall be designated as such and shall be subject to all provisions of this rule; and

- (iii) notifying employees in writing of the designation within two business days, or as soon as a determination can be made that the leave request qualifies as FMLA leave if the agency does not initially have sufficient information to make a determination.

(b) Written notification to employees shall include the following information:

- (i) that the leave will be counted against the employee's annual FMLA entitlement;

- (ii) any requirements for the employee to furnish medical certification of a serious health condition and the consequences of failing to do so;

- (iii) a statement explaining that the employee will be required to exhaust unused annual, converted, and/or sick leave, before going into a LWOP status;

- (iv) any requirement for the employee to make any premium payments to maintain health benefits and the arrangements for making such payments, and the possible consequences of failure to make such payments on a timely basis;

- (v) the employee's potential liability for payment of health insurance premiums paid by the employer during the employee's unpaid FMLA leave if the employee fails to return to work after taking FMLA leave;

- (vi) any requirement for the employee to present a fitness-for-duty certificate to be restored to employment; and

- (vii) the employee's rights to restoration to the same or an equivalent job upon return from leave.

(c) Agencies may designate FMLA leave after the fact only:

- (i) if the reason for leave was previously unknown, provided the reason for leave is made within two business days after the employee's return to work; or

- (ii) the agency has preliminarily designated the leave as FMLA leave and is awaiting medical certification.

(d) Agencies shall allow employees at least 15 calendar days to provide medical certification if FMLA leave is not foreseeable.

(e) Agencies shall inform Group Insurance that an employee is approved for FMLA leave.

(5) An employee shall be required to use accrued annual and converted sick leave and excess hours prior to the use of leave without pay for the family and medical leave period. Employees shall be required to use accrued sick leave only in situations considered eligible under R477-7-4(3). Employees who take family and medical leave in a leave without pay status must comply with R477-7-13.

(a) Employees may choose to use compensatory time for an FMLA reason. Any period of leave paid from the employee's accrued compensatory time account may not be counted against the employee's FMLA leave entitlement.

(6) Employees shall be eligible to return to work under R477-7-13.

(a) If an employee fails to return to work after unpaid FMLA leave has ended, an agency may recover, with certain exceptions, the health insurance premiums paid by the agency on the employee's behalf. An employee is considered to have returned to work if he or she returns for at least 30 calendar days.

(b) Exceptions to this provision include:

- (i) FLSA exempt and Schedule AB, AD and AR employees who have been denied restoration upon expiration of their leave time;

(ii) Employees whose circumstances change unexpectedly beyond their control during the leave period and he or she cannot return to work at the end of twelve weeks.

(7) For maternity and child placement leave, time must be taken in no less than 8 hour increments.

(8) Leave taken for purposes of childbirth, adoption, placement for adoption or foster care shall not be taken intermittently unless the employee and employer mutually agree.

(9) Leave required for certified medical reasons may be taken intermittently.

(10) Leave taken for a serious health condition covered under workers' compensation may be counted towards an employee's FMLA entitlement. Use of accrued paid leave shall not be required for FMLA leave at the same time the employee is collecting a workers' compensation benefit.

(11) Medical records created for purposes of FMLA and the Americans with Disabilities Act must be maintained in accordance with confidentiality requirements of R477-2-6(6).

R477-7-16. Workers Compensation Leave.

(1) An employee may use accrued leave benefits to supplement the workers compensation benefit.

(a) The combination of leave benefit and workers compensation benefit shall not exceed the employee's gross salary. Leave benefits shall only be used in increments of one hour in making up any difference.

(b) The use of accrued leave to supplement the worker compensation benefit shall be terminated if:

(i) the employee is declared medically stable by licensed medical authority; or

(ii) the workers compensation fund terminates the benefit; or

(iii) the employee has been absent from work for one year; or

(iv) the employee refuses to accept appropriate employment offered by the state; or

(v) the employee receives Long Term Disability or Social Security Disability benefits.

(c) The employee shall refund to the state any accrued leave paid which exceeds the employee's gross salary for the period for which the benefit was received.

(2) Employees will continue to accrue state paid benefits while receiving a workers compensation time loss benefit for up to one year.

(3) Employees who file fraudulent workers compensation claims shall be disciplined according to the provisions of R477-11.

R477-7-17. Long Term Disability Leave.

(1) 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.

(a) 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.

(b) 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 in

accordance with LTD policy and practice. Upon approval of the LTD claim:

(i) 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.

(ii) The employee shall be paid for remaining balances of annual leave, compensatory hours and excess hours in a lump sum payment. This payment shall be made at the time LTD is approved unless the employee requests in writing to receive it upon 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.

(iii) An employee with a converted sick leave balance at the time of LTD eligibility shall have the option to receive a lump-sum payout of all or part of the balance or to keep the balance intact to pay for health and life insurance upon retirement. The payout shall be at the rate at the time of LTD eligibility.

(iv) An employee who retires from state government directly from LTD may be eligible for up to five years health and life insurance as provided in Subsection 67-19-14(2)(b)(ii).

(v) Unused sick leave balance shall remain intact until the employee retires. At retirement, the employee shall be eligible for the cash payout and the purchase of health and life insurance as provided in Subsection 67-19-14(2)(c)(i).

(2) Employees shall continue to accrue service credit for retirement purposes while receiving long-term disability benefits.

(3) Conditions for return from leave without pay shall include:

(a) If an employee 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.

(b) 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

(c) The agency head 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.

(4) Employees who file fraudulent long-term disability claims shall be disciplined according to the provisions of R477-11.

R477-7-18. Leave Bank.

With the approval of the agency director, agencies may establish a leave bank program as follows:

(1) Only annual leave, excess hours and converted sick leave hours may be donated to a leave bank.

(2) Only employees of agencies with approved leave bank programs may donate leave hours to another agency with a leave bank program, if mutually agreed on by both agencies.

(3) Employees shall not receive donated leave until they use all of their individually accrued leave.

(4) Leave shall be accrued if an employee is on sick leave donated from an approved leave bank program.

R477-7-19. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to the provisions of this rule consistent with R477-2-3(1).

KEY: holidays, leave benefits, vacationJuly 2, 200249-9-20363-13-267-19-667-19-12.967-19-14.5

▼ ————— ▼

Human Resource Management, Administration

R477-8

Working Conditions

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 24852

FILED: 05/15/2002, 15:38

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To split the current large Rule R477-8 into two separate rules, keeping Rule R477-8, titled Working Conditions, and creating a new Rule R477-7 titled Leave.

SUMMARY OF THE RULE OR CHANGE: Sections R477-8-7, Leave; R477-8-8, Leave Bank; and R477-8-9, Family and Medical Leave; are deleted from this rule. The language remains mostly unchanged and becomes part of the new Rule R477-7 with this filing. Subsection R477-8-6(5) is amended to provide more flexibility to agencies when setting policy for overtime compensation for law enforcement employees and fire fighters. Agencies may adopt either of the two schedules allowed by the Fair Labor Standards Act that fit the State's payroll schedule or more generous schedules that comply with standards and criteria set in Subsections R477-8-6(5)(a) and (d). Other changes clarify the use of the term "executive director." (DAR NOTE: The repeal of Rule R477-3 is under DAR No. 24847 in this Bulletin. Also, Rule R477-4 is renumbered to R477-3 under DAR No. 24848; Rule R477-5 is renumbered to R477-4 under DAR No. 24849; Rule R477-6 is renumbered to R477-5 under DAR No. 24350; the current Rule R477-7 is renumbered to R477-6 under DAR No. 24858; and the new proposed Rule R477-7 is under DAR No. 24851 in this Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-19-6 and 67-19-6.7

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There may be some cost increases for agencies that adopt a more generous overtime schedule but it is anticipated that this will be small. Only a few state employees are effected by this change.
- ❖ LOCAL GOVERNMENTS: None--This rule only impacts agencies of the executive branch of state government.
- ❖ OTHER PERSONS: None--This rule only impacts agencies of the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No additional resources will be necessary to comply with this amendment. The changes in the rule are permissive and agencies are not required to adopt more costly overtime schedules.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. 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 savings on to businesses through fees. However, no such costs or saving will accrue with this amendment.

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
Room 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Conroy Whipple at the above address, by phone at 801-538-3067, by FAX at 801-538-3081, or by Internet E-mail at cwhipple.pedhrm@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 PM on 07/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: Karen Suzuki-Okabe, Executive Director

R477. Human Resource Management, Administration.

R477-8. Working Conditions.

R477-8-1. Agency Policies and Exemptions.

(1) Each agency shall write its own policies for work schedules, overtime, leave, and other working conditions consistent with these rules.

(2) The Executive Director, DHRM, may authorize exceptions to this rule, consistent with R477-2-2(1).

R477-8-2. Work Period.

(1) Tasks shall be assigned and wages paid in return for work completed. During the state's standard work week, each employee is responsible for fulfilling the essential functions of his job.

(a) The state's standard work week begins Saturday and ends the following Friday.

(b) State offices are typically open Monday through Friday from 8 a.m. to 5 p.m. Agencies may adopt extended business hours to enhance service to the public, consistent with overtime provisions of R477-8-6.

(c) Employees may negotiate for flexible starting and quitting times with their immediate supervisor as long as scheduling is consistent with overtime provisions of the rules R477-8-6.

(d) Agencies may implement alternative work schedules approved by the Director.

(e) Employees are required to be at work on time. Employees who are late regardless of the reason, including inclement weather, shall make up the lost time by using accrued leave, leave without pay or, with management approval, adjust their work schedule.

R477-8-3. Bus Passes.

Agencies may participate in the purchase of bus passes for employees.

R477-8-4. Telecommuting.

(1) Telecommuting is an agency option, not a universal employee benefit. Agencies utilizing a telecommuting program shall:

(a) Establish a written policy governing telecommuting.

(b) Enter into a written contract with each telecommuting employee to specify conditions, such as use of state or personal equipment, and results such as identifiable benefits to the state and how customer needs are being met.

(c) Not allow telecommuting employees to violate overtime rules.

R477-8-5. Lunch and Break Periods.

(1) Each full-time work day shall include a minimum of 30 minutes non-compensated lunch period. This lunch period is normally scheduled between 11:00 a.m. and 1:00 p.m. for a regular day shift.

(2) Employees may take a 15 minute compensated break period for every four hours worked.

(3) Lunch and break periods shall not be adjusted or accumulated to accommodate a shorter work day. Any exceptions must be approved in writing by the Executive Director, DHRM.

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, DHRM, 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, DHRM, and the Director of Finance, Department of Administrative Services, will determine the date for the agency at the end of one of the following pay periods: Five, Ten, Fifteen, Twenty, or the last pay period of the calendar year.

(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 directors, but overtime shall not be compensated with actual payment.

(5) Law enforcement~~[/]~~, correctional and fire protection employees~~[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 and~~[-]~~

(iv) be POST certified or scheduled for POST training.

(b) Agencies shall select one of the following maximum work-hour thresholds to determine when overtime compensation is granted to [L] 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(l);

— (ii) The State's payroll period;

— (iii) The approval of the Executive Director.]

- (i) 171 hours in a work period of 28 consecutive days; or
- (ii) 86 hours in a work period of 14 consecutive days.
- (c) Agencies shall select one of the following maximum work-hour thresholds to determine when overtime compensation is granted to [Fire]fire protection employees[shall accrue overtime when they work more than 212 hours in 28 consecutive days].
- (i) 212 hours in a work period of 28 consecutive days; or
- (ii) 106 hours in a work period of 14 consecutive days.
- (d) [The work period selection becomes permanent when scheduled and may not be changed to evade overtime compensation rules.]Agencies may designate a lesser threshold in a 14-day or 28-day consecutive work period as long as it conforms to the following:
- (i) The Fair Labor Standards Act, Section 207(k);
- (ii) 29 CFR 553.230;
- (iii) The State's payroll period;
- (iv) The approval of the Executive Director, DHRM.
- (6) Compensatory Time
- (a) Agency management shall arrange for an employee's use of compensatory time as soon as possible without unduly disrupting agency operations or 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 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 employee's 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 paid. They shall also receive funeral, holiday, and paid military leave in proportion to the time 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 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.~~
~~—(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.~~
~~—(g) Department deputy directors and division directors appointed to career service exempt 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. If there is reason to believe that an employee is abusing sick leave, a supervisor may require an employee to produce evidence regardless of the number of sick hours used.~~

— (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 to converted sick leave after the end of any calendar year in which he is eligible.

— (a) 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) 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 unless the employee designates otherwise.

— (ii) 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, 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 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.

— (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.

— (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.

— (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 employee's 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. 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.

—(d) 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.

R477-8-8. Leave Bank.

—With the approval of the agency director, agencies may establish a leave bank program as follows:

—(1) Only annual leave, excess hours and converted sick leave hours may be donated to a leave bank.

—(a) Employees shall not receive donated leave until they use all of their individually accrued leave.

—(b) Only employees of agencies with approved leave bank programs may donate annual leave, excess hours and converted sick leave hours to another agency with a leave bank program, if mutually agreed on by both agencies.

—(c) Leave shall be accrued if an employee is on sick leave donated from an approved leave bank program.

R477-8-9. Family and Medical Leave.

—(1) This rule conforms with the federal Family and Medical Leave Act, 29 USC 2601. Employees eligible under this rule shall continue to receive medical insurance benefits provided the employee was entitled to medical insurance benefits prior to the commencement of FMLA leave.

—(a) Agency management shall authorize up to twelve weeks of leave each calendar year to employees for any of the following reasons:

—(i) birth of a child;

—(ii) adoption of a child;

—(iii) placement of a foster child;

—(iv) a serious health condition of the employee, or

—(v) care of a spouse, dependent child or parent with a serious medical condition.

—(2) To be eligible for the twelve weeks of family medical leave, the employee must be—

—(a) Employed by the state for at least 12 months, and

—(b) Employed by the state for a minimum of 1250 compensable work hours as determined under FMLA during the 12-month period immediately preceding the commencement of leave.

—(3) Employees (or an appropriate spokesperson) shall submit a leave request

~~— (a) Thirty days in advance for foreseeable needs; or~~
~~— (b) As soon as possible in emergencies.~~
~~— (4) Agency Responsibility~~
~~— (a) Agency management shall be responsible for:~~
~~— (i) documenting employee leave requests which qualify as FMLA leave; and~~
~~— (ii) designating any qualifying leave taken by employees as FMLA leave. All leave requests which qualify as FMLA leave shall be designated as such and shall be subject to all provisions of this rule. No other leave shall be granted until the employee has exhausted his 12-week entitlement under FMLA.; and~~
~~— (iii) notifying employees in writing of the designation within two business days, or as soon as a determination can be made that the leave request qualifies as FMLA leave if the agency does not initially have sufficient information to make a determination.~~
~~— (b) Written notification to employees shall include the following information:~~
~~— (i) that the leave will be counted against the employee's annual FMLA entitlement;~~
~~— (ii) any requirements for the employee to furnish medical certification of a serious health condition and the consequences of failing to do so;~~
~~— (iii) a statement explaining that the employee will be required to exhaust unused annual, converted, and/or sick leave, before going into a LWOP status;~~
~~— (iv) any requirement for the employee to make any premium payments to maintain health benefits and the arrangements for making such payments, and the possible consequences of failure to make such payments on a timely basis;~~
~~— (v) any requirement for the employee to present a fitness-for-duty certificate to be restored to employment;~~
~~— (vi) the employee's rights to restoration to the same or an equivalent job upon return from leave; and~~
~~— (vii) the employee's potential liability for payment of health insurance premiums paid by the employer during the employee's unpaid FMLA leave if the employee fails to return to work after taking FMLA leave.~~
~~— (c) Agencies may designate FMLA leave after the fact only:~~
~~— (i) if the reason for leave was previously unknown, provided the reason for leave is made within two business days after the employee's return to work; or~~
~~— (ii) the agency has preliminarily designated the leave as FMLA leave and is awaiting medical certification.~~
~~— (d) Agencies shall allow employees at least 15 calendar days to provide medical certification if FMLA leave is not foreseeable.~~
~~— (e) Agencies shall inform Group Insurance that an employee is approved for FMLA leave.~~
~~— (5) An employee shall be required to use accrued annual and converted sick leave and excess hours prior to the use of leave without pay for the family and medical leave period. Employees shall be required to use accrued sick leave only in situations considered eligible under R477-8-7(4)(c). Employees who take family and medical leave in a leave without pay status must comply with R477-8-7(11).~~
~~— (a) Employees may choose to use compensatory time for an FMLA reason. Any period of leave paid from the employee's accrued compensatory time account may not be counted against the employee's FMLA leave entitlement.~~
~~— (6) Employees shall be eligible to return to work under R477-8-7(11).~~
~~— (a) If an employee fails to return to work after unpaid FMLA leave has ended, an agency may recover, with certain exceptions, the~~

~~health insurance premiums paid by the agency on the employee's behalf. An employee is considered to have returned to work if he or she returns for at least 30 calendar days.~~

~~— (b) Exceptions to this provision include:~~
~~— (i) FLSA exempt and Schedule AB, AD and AR employees who have been denied restoration upon expiration of their leave time;~~
~~— (ii) Employees whose circumstances change unexpectedly beyond their control during the leave period and he or she cannot return to work at the end of twelve weeks.~~
~~— (7) For maternity and child placement leave, time must be taken in no less than 8 hour increments.~~
~~— (8) Leave taken for purposes of childbirth, adoption, placement for adoption or foster care shall not be taken intermittently unless the employee and employer mutually agree.~~
~~— (9) Leave required for certified medical reasons may be taken intermittently.~~
~~— (10) Leave taken for a serious health condition covered under workers' compensation may be counted towards an employee's FMLA entitlement. Use of accrued paid leave shall not be required for FMLA leave at the same time the employee is collecting a workers' compensation benefit.~~
~~— (11) Medical records created for purposes of FMLA and the Americans with Disabilities Act must be maintained in accordance with confidentiality requirements of R477-2-5(6).]~~

R477-8-[40]7. 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).

R477-8-[41]8. Reasonable Accommodation.

Reasonable accommodation for qualified individuals with disabilities may be a factor in any employment action. Before notifying an employee of denial of reasonable accommodation, the agency shall consult with the Division of Risk Management.

R477-8-[42]9. Fitness For Duty Evaluations.

Fitness for duty medical evaluations may be performed under any of the following circumstances:

- (1) Return to work from injury or illness;
- (2) When management determines that there is a direct threat to the health or safety of self or others;
- (3) In conjunction with corrective action, performance or conduct issues, or discipline;
- (4) When a fitness for duty evaluation is a bona fide occupational qualification for selection, retention, or promotion.

R477-8-[43]10. Temporary Transitional Assignment.

Temporary transitional assignments may be part of any of the following:

- (1) Return to work from injury or illness;
- (2) When management determines that there is a direct threat to the health or safety of self or others;
- (3) In conjunction with corrective action, performance or conduct issues, or discipline;
- (4) Where there is a bona fide occupational qualification for retention in a position;
- (5) As a temporary measure while an employee is being evaluated to determine if reasonable accommodation is appropriate.

R477-8-[44]11. Change in Work Location.

- (1) A change in work location shall not be permitted if this requires the employee to commute or relocate 50 miles or more, one way, beyond his current one way commute, unless:
 - (a) The policy is communicated to the employee at employment;
 - (b) The agency shall either pay to move the employee consistent with R25-6-8 and Department of Administrative Services, Division of Finance Policy 05-04.03, or reimburse commuting expenses up to the cost of a move.

KEY: ~~[compensatory time, disability insurance, leave, vacations]~~ breaks, telecommuting, overtime, dual employment
~~[July 3, 2001]~~ 2002

Notice of Continuation July 1, 1997

~~[63-13-2]~~

67-19-6

67-19-6.7

~~[67-19-12.5]~~

~~67-19-12-9]~~

▼ ————— ▼

Human Resource Management,
Administration
R477-9
Employee Conduct

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 24853

FILED: 05/15/2002, 15:39

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Clarification of language, the term "Executive Director."

SUMMARY OF THE RULE OR CHANGE: Subsection R477-9-4(6) is unclear about who shall investigate allegations of inappropriate political activity by state employees. The amendment makes it clear that this is the responsibility of the Executive Director of the Department of Human Resource Management.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-19-6 and 67-19-19

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** There were no costs to state agencies associated with this rule and thus no savings are anticipated with this amendment.
- ❖ **LOCAL GOVERNMENTS:** None--This rule only impacts agencies of the executive branch of state government.
- ❖ **OTHER PERSONS:** None--This rule only impacts agencies of the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No additional resources will be necessary to comply with this 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 savings on to businesses through fees. However, no such costs or saving will accrue with this amendment.

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
Room 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Conroy Whipple at the above address, by phone at 801-538-3067, by FAX at 801-538-3081, or by Internet E-mail at cwhipple.pedhrm@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 PM on 07/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: Karen Suzuki-Okabe, Executive Director

R477. Human Resource Management, Administration.

R477-9. Employee Conduct.

R477-9-1. Standards of Conduct.

Employees shall comply with the standards of conduct established in these rules and the policies and rules established by their agency management.

(1) Employees shall apply themselves to and shall fulfill their assigned duties during the full time for which they are compensated.

(a) Employees shall --

(i) Comply with the standards established in their individual performance plans;

(ii) Maintain an acceptable level of performance and conduct on all other verbal and written job expectations;

(iii) Report conditions and circumstances, including controlled substances or alcohol impairment, that may prevent them from performing their job effectively and safely.

(iv) Inform their supervisor of any unclear instructions or procedures.

(2) Employees shall make prudent and frugal use of state funds, equipment, buildings, and supplies.

(3) Employees who report for duty or attempt to perform the duties of their positions while under the influence of alcohol or nonprescribed controlled substances, shall be subject to corrective actions or discipline in accordance with R477-10-2, R477-11 and R477-14.

(a) The agency may decline to defend and indemnify employees found violating this rule, in accordance with 63-30-36 section (c)(ii) of the Utah Governmental Immunity Act.

(4) Employees shall not drive a state vehicle, or any other vehicle, on state time while under the influence of alcohol or controlled substances.

(a) Employees who violate this rule shall be subject to corrective action or discipline pursuant to R477-10-2, R477-11 and R477-14.

(b) The agency may decline to defend or indemnify employees who violate this rule, according to section 63-30-36(3)(c)(i) of the Utah Governmental Immunity Act.

R477-9-2. Outside Employment.

(1) State employment shall be the principal vocation for full-time employees governed by these rules. An employee may engage in outside employment under the following conditions:

(a) Outside employment must not interfere with an employees' efficient performance in his state position.

(b) Outside employment must not conflict with the interests of the agency or the State of Utah.

(c) Outside employment must not give reasons for criticism or suspicion of conflicting interests or duties.

(d) Employees shall notify agency management in writing if the outside employment has the potential or appears to conflict with Title 67, Chapter 16 Employee Ethics Act.

(e) Agency management may deny employees permission to engage in outside employment or to receive payment if they determine the outside activity causes a real or potential conflict of interest.

(i) Employees may grieve this decision.

(ii) Failure to notify the employer and to gain approval for outside employment is grounds for disciplinary action if the secondary employment is found to be a conflict of interest.

R477-9-3. Conflict of Interest.

(1) An employee may receive honoraria or paid expenses for activities outside of state employment under the following conditions:

(a) Outside activities must not interfere with our employees' efficient performance in his state position.

(b) Outside activities must not conflict with the interests of the agency or the State of Utah.

(c) Outside activities must not give reasons for criticism or suspicion of conflicting interests or duties.

(2) An employee shall not use his state position or any influence, power, authority or confidential information he receives in that position, or state time, equipment, property, or supplies for private gain.

(3) An employee shall not receive outside compensation for performing state duties, except for the following:

(a) Awards for meritorious public contribution.

(b) Honoraria or expenses paid for papers, speeches, or appearances on an employee's own time with the approval of agency management, which are not compensated by the state or prohibited by rule.

(c) Usual social amenities, ceremonial gifts, or non-substantial advertising gifts.

(4) An employee shall declare a potential conflict of interest when he is required to do or decide something that could be interpreted as a conflict of interest. Agency management shall then excuse the employee from making decisions or taking actions that may cause a conflict of interest.

R477-9-4. Political Activity.

State career service employees may voluntarily participate in political activity according to the provisions in this rule or other federal laws. The following rules apply to career service employees in all salary ranges and positions.

(1) Any state career service employee elected to any partisan or full-time non-partisan political office shall be granted a leave of absence without pay while being monetarily compensated for service in political office. Employees shall not receive annual leave while serving in a political office.

(2) During work time, no career service employee may engage in any political activity. No person shall solicit political contributions from employees of the executive branch during hours of employment. However, state employees may voluntarily contribute to any party or any candidate.

(3) Decisions regarding employment, promotion, demotion or dismissal or any other human resource actions shall not be based on partisan political activity.

(4) Regardless of other provisions in these rules, no member of the Utah State Highway Patrol may use official authority or influence to interfere with an election or to affect election results. No person may induce or attempt to induce any member of the Utah State Highway Patrol to participate in any prohibited activity.

(5) This rule shall not apply to employees who are restricted or prevented from engaging in political activity through the provisions of the federal Hatch Act. To determine whether an employee shall adhere to the federal Hatch Act, employees may contact DHRM or the employing agency's Human Resource office for guidelines.

(6) Violations of law governing political activity shall be reported in writing to the Executive Director [~~The Executive Director~~], DHRM,

who shall investigate the validity of any allegation and assess the extent to which any activity was knowingly and willfully conducted in violation of law.

R477-9-5. Employee Indebtedness to the State.

(1) Employees indebted to the state because of an action or performance in their official duties may have a portion of their pay that exceeds the minimum federal wage withheld. Overtime pay shall not be withheld.

(a) The following three conditions must be met before withholding of pay may occur:

(i) The debt must be a legitimately owed amount which can be validated through physical documentation or other evidence.

(ii) The employee must know about and, in most cases, acknowledge the debt. As much as possible, the employee should provide written authorization to withhold the pay.

(iii) Employees must be notified of this rule which allows the state to withhold pay.

(b) Employees terminating from state service will have pay withheld from the last paycheck.

(c) Employees going on leave without pay for more than two pay periods may have pay withheld from their last paycheck.

(d) The state may withhold an employee's pay to satisfy the following specific obligations:

(i) Travel advances where travel and reimbursement for the travel has already occurred;

(ii) State credit card obligations where the state's share of the obligation has been reimbursed to the employee but not paid to the credit card company by the employee;

(iii) Evidence that the employee negligently caused loss or damage of state property;

(iv) Payroll advance obligations that are signed by the employee and that the Division of Finance authorizes;

(v) Misappropriation of state assets for unauthorized personal use or for personal financial gain. This includes reparation for employee theft of state property or use of state property for personal financial gain or benefit;

(vi) Overpayment of pay determined by evidence that an employee did not work the hours for which they received pay or was not eligible for the benefits received and paid for by the state.

(e) Excessive reimbursement of funds from flexible reimbursement accounts.

(f) Other obligations that satisfy the requirements of R477-9-4.(1) above.

(2) This rule does not apply to state employee obligations to other state agencies where the obligation was not caused by their actions or performance as an employee.

R477-9-6. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to the provisions of this rule, consistent with R477-2-2(1).

KEY: conflict of interest, government ethics, Hatch Act, personnel management

~~January 4, 2002~~

Notice of Continuation July 1, 1997

67-19-6

67-19-19



Human Resource Management,
Administration
R477-10
Employee Development

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 24854

FILED: 05/15/2002, 15:40

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Change educational assistance to match IRS allowance and change from fiscal to calendar year for budgetary reasons.

SUMMARY OF THE RULE OR CHANGE: The nontaxable limit for employer-provided education assistance is raised from \$3,500 to the new IRS cap of \$5,250. The accounting period is changed from a fiscal year to a calendar year to help employees keep track of their amounts.

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: It is not anticipated that additional cost will result from this change as most employees were not receiving the maximum amount allowed under the previous cap.

❖ LOCAL GOVERNMENTS: None--This rule only impacts agencies of the executive branch of state government.

❖ OTHER PERSONS: None--This rule only impacts agencies of the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No additional resources will be necessary to comply with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. 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 savings on to businesses through fees. However, no such costs or saving will accrue with this amendment.

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
Room 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Conroy Whipple at the above address, by phone at 801-538-3067, by FAX at 801-538-3081, or by Internet E-mail at cwhipple.pedhrm@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 PM on 07/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: Karen Suzuki-Okabe, Executive Director

R477. Human Resource Management, Administration.

R477-10. Employee Development.

R477-10-1. Performance Evaluation.

Agency management shall develop an employee performance management system consistent with these rules and subject to approval by the Executive Director, DHRM. The Executive Director, DHRM, may authorize exceptions to provisions of this rule consistent with R477-2-2. For this rule, the word employee refers to career service employees, unless otherwise indicated.

(1) An acceptable performance management system shall satisfy the following criteria:

(a) Performance standards and expectations for each employee shall be specifically written in a performance plan by August 30 of each fiscal year.

(b) Managers or supervisors provide employees with regular verbal and written feedback based on the standards of performance and conduct outlined in the performance plan.

(c) Each employee shall be informed concerning the actions to be taken, time frames, and the supervisor's role in providing assistance to improve performance and increase the value of service.

(d) Each employee shall have the right to include written comment with his performance evaluation.

(e) Agency management shall select a performance management rating system or a combination of systems by August 30 to be effective for the entire fiscal year. The rating system shall be one or more of the following:

TABLE

SYSTEM	# RATING	POINTS
1	Pass	2
	Fail	0
2	Exceptional	3
	Successful	2
	Unsuccessful	0
3	Exceptional	3
	Highly Successful	2.5
	Successful	2
	Unsuccessful	0
4	Exceptional	3
	Highly Successful	2.5
	Successful	2
	Marginal	1
	Unsuccessful	0

(2) In addition to the above ratings, agency management may establish a rating category for highest level performers under the following conditions:

(a) Each employee who receives this rating shall receive a performance rating of 4.

(b) Agencies shall devise and publish the criteria they will use to select the highest level performers by August 30 of each year. Selection criteria for non-supervisory employees shall be comparable to the Utah Code 67-19c-101(3)(c). Selection criteria for supervisory/management employees shall be comparable to "The Manager of the Year Award."

(3) Each state employee shall receive a performance evaluation effective on or before the beginning of the first pay period of each fiscal year.

(a) Probationary employees shall receive a performance evaluation at the end of their probationary period and again prior to the beginning of the first pay period of the fiscal year.

(4) The employee shall sign the evaluation. Signing the evaluation only means that the employee has reviewed the evaluation. Refusal to sign the evaluation shall constitute insubordination, subject to discipline.

(a) The evaluation form shall include a space for employees' comments. The employee shall check a space indicating either agreement or disagreement with the evaluation. The employee may comment in writing, either in the space provided or on a separate attachment.

R477-10-2. Corrective Action.

When an employee's performance does not meet established standards due to failure to maintain skills, 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 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.

R477-10-3. Employee Development and Training.

Agency management may establish a program for training and staff development consistent with these rules.

(1) All agency sponsored training shall be agency specific or designed for highly specialized or technical jobs and tasks.

(2) Agency management shall consult with the Executive Director, DHRM, when proposed training and development activities may have statewide impact or may be offered more cost effectively on a statewide basis. The Executive Director, DHRM, shall determine whether DHRM will be responsible for the training standards.

(3) The Executive Director, DHRM, shall work with agency management to establish standards to guide the development of statewide activities and to facilitate sharing of resources statewide.

(4) When an agency directs an employee to participate in an educational program, the agency shall pay full costs before the course begins.

(5) Agencies are required to provide refresher training and make reasonable efforts to re-qualify veterans reemployed under USERRA, as long as it does not cause an undue hardship to the employing agency.

R477-10-4. Liability Prevention Training.

Agencies shall provide liability prevention training to their employees. The curriculum shall be approved by DHRM and Risk Management. Topics shall include but not be limited to: new employee orientation, prevention of sexual harassment; and supervisor training on prevention of workplace violence.

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 [~~\$3,500~~]\$5,250 per employee in any one [~~fiscal~~]calendar 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 3, 2001]~~2002

Notice of Continuation July 1, 1997

67-19-6

67-19-12.4

Human Resource Management, Administration **R477-11** Discipline

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 24855

FILED: 05/15/2002, 15:41

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Adds language allowing reduction in pay for demotions.

SUMMARY OF THE RULE OR CHANGE: Current language in Subsection R477-11-1(3) does not make it clear that an employee who is moved to a lower salary range for disciplinary purposes may also receive a reduction in salary. The new language in Subsection R477-11-1(3)(c)(i) now makes it clear that management has the discretion to also reduce actual pay.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63, Chapter 2; and Sections 67-19-6 and 67-19-18

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There were no costs to state agencies associated with this rule and thus no savings are anticipated with this amendment.

❖ LOCAL GOVERNMENTS: None--This rule only impacts agencies of the executive branch of state government.

❖ OTHER PERSONS: None--This rule only impacts agencies of the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No additional resources will be necessary to comply with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. 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 savings on to businesses through fees. However, no such costs or saving will accrue with this amendment.

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THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: Karen Suzuki-Okabe, Executive Director

R477. Human Resource Management, Administration.

R477-11. Discipline.

R477-11-1. Disciplinary Action.

(1) Agency management may discipline any employee for any of the following causes or reasons:

(a) noncompliance with these rules, agency or other applicable policies, including but not limited to safety policies, agency professional standards 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 salary range and may receive a reduction in pay.

(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.

(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 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 3, 2001~~ 2002

Notice of Continuation July 1, 1997

67-19-6

67-19-18

63-2

▼ ————— ▼

**Human Resource Management,
Administration
R477-12
Separations**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 24856

FILED: 05/15/2002, 15:42

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Clarification of language for the Exempt Reappointment register.

SUMMARY OF THE RULE OR CHANGE: The exempt reappointment register is created by Section 67-19-17 for career service employees who accept appointment to an exempt position and then later are not retained. They are placed on this register for an undetermined amount of time. The current rule requires the employee to apply annually in writing to stay on this register. The amendment requires the Department of Human Resource Management (DHRM) to contact the employee for a declaration of intent to remain on the register. This is more consistent with the intent of the law.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-19-6, 67-19-17, and 67-19-18

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There were no costs to state agencies associated with this rule and thus no savings are anticipated with this amendment.

❖ LOCAL GOVERNMENTS: None--This rule only impacts agencies of the executive branch of state government.

❖ OTHER PERSONS: None--This rule only impacts agencies of the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No additional resources will be necessary to comply with this 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 savings on to businesses through fees. However, no such costs or saving will accrue with this amendment.

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THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: Karen Suzuki-Okabe, Executive Director

**R477. Human Resource Management, Administration.
R477-12. Separations.
R477-12-1. Resignation.**

Employees may resign by giving written or verbal notice to the appointing authority. In this rule, the word employee refers to career service employees, unless otherwise indicated.

(1) Agency management may accept an employee's resignation without prejudice when the resignation is received at least ten working days before its effective date.

(2) After submitting a resignation, employees may withdraw their resignation on the next working day. After the close of the next working day following its submission, withdrawal of a resignation may occur only with the consent of the appointing authority.

R477-12-2. Abandonment of Position.

Employees who are absent from work for three consecutive working days and are capable of providing proper notification to their supervisor, but do not, shall be considered to have abandoned their position.

(1) Management may terminate an employee who has abandoned his position. Management shall inform the employee of the action in writing.

(a) The employee shall have the right to appeal to the agency head within five working days of receipt or delivery of the notice of abandonment to the last known address.

(b) If the termination action is appealed, management may not be required to prove intent to abandon the position.

R477-12-3. Reduction in Force.

Reductions in force shall be required when there are inadequate funds, or a change of workload, or lack of work. Reductions in force shall be governed by DHRM business practices, standards and the following rules:

(1) When staff will be reduced in one or more classes, agency management shall develop a work force adjustment plan (WFAP). Career service employees shall only be given formal written notification of separation after a WFAP has been reviewed and approved by the Executive Director, DHRM or designee. The following items shall be considered in developing the work force adjustment plan:

(a) The categories of work to be eliminated, including positions impacted through bumping, as determined by management.

(b) A decision by agency management allowing or disallowing bumping.

(c) Specifications of measures taken to facilitate the placement of affected employees through normal attrition, retirement, reassignment, relocation, and movement to vacant positions based on interchangeability of skills.

(d) A list of all affected employees showing the retention points for each employee.

(2) Eligibility for RIF

(a) Only career service employees who have been identified in an approved WFAP and given an opportunity for a hearing with the agency head may be RIF'd.

(b) Employees covered by USERRA and in a leave without pay status must be identified, assigned retention points and notified of the RIF of their previous position in the same manner as career service employees.

(3) Retention points shall be calculated for all affected employees within a category of work as follows:

(a) Seniority shall be determined by the length of total state career service, which commenced in a competitive career service position for which the probationary period was successfully completed.

(i) For part-time work, length of service shall be determined in proportion to hours actually worked.

(ii) Exempt service time subsequent to attaining career service tenure with no break in service shall also be counted for purposes of seniority.

(iii) In the event of ties in retention points, the amount of time employed in the affected agency/department serves as the tie breaker.

(b) Length of state service shall be measured in years and additional days shown as a fraction of a year.

(c) Time spent in a leave without pay status for service in the uniformed services covered under USERRA shall be counted for purposes of seniority.

(d) Any time spent in leave without pay status, to include worker's compensation leave, may not be counted for purposes of seniority.

(e) All affected employees including employees covered under USERRA in a leave without pay status within a category of work shall be assigned a job proficiency rating. The job proficiency rating shall be an average of the last three annual performance evaluation ratings as described in R477-10-1.(1)(e). If employees have had fewer than three annual performance evaluations, the proficiency ratings shall be an average of the all ratings received as of that time.

(f) The numeric values of each employee's job proficiency rating and that employee's actual length of service shall be added together to produce the retention points.

(g) Retention points shall be calculated for employees covered under USERRA and in a leave without pay status in the same manner as for current employees in the affected class. If there are no performance evaluation ratings for an employee covered under USERRA, no proficiency rating shall be included in the retention points.

(4) The order of separation shall be:

(a) Non-career service employees

(b) Probationary employees

(c) Career service employees in the order of their retention points with the lowest points are released first. In the event of ties in retention points, the amount of seniority in the affected agency serves as the tie breaker.

(5) Employees, including those covered under USERRA in a leave without pay status, who are separated due to a reduction in force shall be given formal written notification of separation, allowing for a minimum of 20 working days prior to the effective date of the RIF.

(6) Appeals

(a) An employee separated due to a reduction in force may appeal to the agency head for an administrative review. Employees must submit notice of appeal within 20 working days after the receipt of written notification of separation.

(b) The employee may appeal the decision of the agency head according to the appeals procedure of the Career Service Review Board.

(7) Reappointment of RIF'd employee

(a) A RIF'd employee is eligible for reappointment into a half time or greater career service position for which he qualifies in a salary range comparable to or less than the last career service position held, for a period of one year following the date of separation. See R477-5-4 for selection of employees from the reappointment register.

(i) The Executive Director, DHRM, shall maintain a reappointment register and shall make the final determination on whether an eligible RIF meets the job requirements for position vacancies.

(ii) A RIF'd employee shall remain on the state reappointment register for twelve months from the date of separation, unless reappointed sooner.

(b) During a statewide mandated freeze on hiring wherein the Governor disallows increases in each department's FTEs, eligibility for the reappointment register shall be extended for the entire length of time covered by a freeze.

(c) When determining comparable salary ranges in cases of RIF eligibility or bumping eligibility, a comparison of the previous to the new salary range maximum step is required. The previous salary range shall be considered comparable if the maximum step is equal to or greater than the maximum step of the new salary range.

(d) A RIF'd employee who is reappointed to a career service position shall not be required to serve a probationary period. The employee shall enjoy all the rights and privileges of a regular career service employee.

(e) At agency discretion, employees reappointed from a reappointment register may buy back part or all accumulated annual and converted sick leave that was cashed out when RIF'd.

(8) Appeal rights of RIF'd employee * An individual whose name is on the reappointment register as a result of a reduction in force may use the grievance procedure regarding their reappointment rights.

(9) Career service employees in exempt positions * Any career service employee accepting an exempt position without a break in service, who is later not retained by the appointing officer, unless discharged for cause as provided for by these regulations, shall:

(a) Be placed on a reappointment register [~~for one year from the date of separation~~] and shall be [re]appointed to any half time or greater career service position for which the employee qualifies in a pay range comparable to the employee's last position in the career service, provided an opening exists; or

(b) Be [re]appointed to any lesser career service position for which the employee qualifies pending the opening of a position at the last career service salary range held. The Executive Director, DHRM, shall maintain a reappointment register for this purpose, and shall make the final determination on whether an eligible RIF meets the job requirements for position vacancies.

(c) [~~If the employee has not been reappointed as outlined, his placement on the reappointment register shall be renewed on a yearly basis upon his written request~~] The employee shall declare his desire to remain on the reappointment register upon inquiry by DHRM.

R477-12-4. Exceptions.

The Executive Director, DHRM, may authorize exceptions to provisions of this rule consistent with R477-2-2(1).

KEY: administrative procedure, employees' rights, grievances, retirement

~~July 5, 2000~~ 2002

Notice of Continuation July 1, 1997

67-19-6

67-19-17

67-19-18

▼ ————— ▼

**Human Resource Management,
Administration
R477-14
Substance Abuse and Drug-Free
Workplace**

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 24857

FILED: 05/15/2002, 15:43

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Clarification on the use of the term "executive director," and correction and update of references to the Code of Federal Regulations.

SUMMARY OF THE RULE OR CHANGE: Use of the term "executive director" is clarified in Subsection R477-14-1(4) and Section R477-14-4. Incorporated references to the Code of Federal Regulations are updated from 1999 to 2001 in Subsection R477-14-1(3) and an erroneous citation is corrected in Subsection R477-14-1(3)(e). These are the federal standards for drug and alcohol testing by employers.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-19-6, 67-19-18, 67-19-34, and 67-19-38

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** There were no costs to state agencies associated with this rule and thus no savings are anticipated with this amendment.

❖ **LOCAL GOVERNMENTS:** None--This rule only impacts agencies of the executive branch of state government.

❖ **OTHER PERSONS:** None--This rule only impacts agencies of the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No additional resources will be necessary to comply with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. 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 savings on to businesses through fees. However, no such costs or saving will accrue with this amendment.

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
Room 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Conroy Whipple at the above address, by phone at 801-538-3067, by FAX at 801-538-3081, or by Internet E-mail at cwhipple.pedhrm@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 PM on 07/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: Karen Suzuki-Okabe, Executive Director

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 the State of Utah will use the same cut off levels for positive drug tests as the federal government. This rule incorporates by reference the requirements of 49CFR40.29([1999]2001), Laboratory Analysis Procedures.

(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 positions, 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 [42]49CFR40.29([1999]2001), Laboratory Analysis Procedures, 49CFR382.107 ([1999]2001), Definitions, 49CFR382.201([1999]2001), Alcohol Concentration and 49CFR382.505 ([1999]2001), Other Alcohol Related Conduct.

(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 meet[s] or exceed[s] 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 [##], 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 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 required to participate at his expense in a rehabilitation program, as provided for in section 67-19-38.(3). 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.

R477-14-3. Rule Distribution.

(1) The Department of Human Resource Management shall distribute this rule to every state agency for communication to its employees.

R477-14-4. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to the provisions of this rule consistent with R477-2-3(1).

KEY: personnel management, drug/alcohol education, drug abuse, discipline of employees

~~July 3, 2001~~ 2002

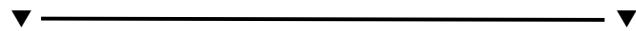
Notice of Continuation December 11, 2001

67-19-6

67-19-18

67-19-34

67-19-38



Human Services, Child and Family Services

R512-43

Adoption Assistance

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE No.: 24831

FILED: 05/14/2002, 14:33

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The U.S. Department of Health and Human Services has changed

polices governing adoption assistance. This rule will make the requirements of adoption assistance for children in the custody of the Division of Child and Family Services consistent with Federal requirements and, in addition, this rule will implement changes made in Utah statute during the 2001 legislative session.

SUMMARY OF THE RULE OR CHANGE: This rule clarifies and establishes definitions, criteria, and procedures for adoption assistance that are consistent with U.S. Department of Health and Human Services regulations and State statutory changes (S.B. 97, 2001 Legislature). (DAR NOTE: S.B. 97 is found at UT L 2002 ch 115, and was effective April 30, 2001. Also, a corresponding 120-day (emergency) rule that is effective as of May 14, 2002, is found under DAR No. 24829 in this Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-4a-801 through 62A-4a-806, and 8 USC 1641(b)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There should be no impact on the State budget because the number of individual children who qualify for adoption assistance should be within the number forecast in the current budget.
- ❖ LOCAL GOVERNMENTS: After careful analysis, this is no cost to local government. This rule does not affect local government.
- ❖ OTHER PERSONS: Parents who disagree with the amount of adoption assistance granted or denied may incur the cost of legal counsel to represent them at an administrative hearing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Parents who disagree with the amount of adoption assistance granted or denied may incur the cost of legal counsel to represent them at an administrative hearing.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After careful analysis of any possible impact on businesses, the department has concluded that there will not be any impact.

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

HUMAN SERVICES
CHILD AND FAMILY SERVICES
Room 225
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Steven Bradford at the above address, by phone at 801-538-8210, by FAX at 801-538-3993, or by Internet E-mail at sbradfor@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 PM on 07/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: Richard Anderson, Director

R512. Human Services, Child and Family Services.

R512-43. Adoption Assistance.

R512-43-1. Definitions.

In addition to terms defined in Section 62A-4a-902, the following terms are defined for purposes of this rule:~~(4) Definitions of adoption assistance, child with a special need, monthly subsidy, nonrecurring adoption expenses, state medical assistance, and supplemental adoption assistance are as stated in Section 62A-4a-802.]~~

~~(1)(2)~~ Initiation of adoption proceedings means the earlier of
(a) the date an Adoption Agreement is signed with the Division of Child and Family Services for placement of a child in the home, or
(b) the date an adoption petition is filed.

~~(2)(3)~~ Child in public foster care ~~[for the purpose of adoption assistance]~~ means a judicially removed child whose placement ~~resulting [that results]~~ in adoption was immediately preceded by protective, temporary, or legal custody with a State IV-E agency, or a child who was placed with a State IV-E agency through a Voluntary Placement Agreement, or the child of a minor parent in foster care.

~~(3)(4)~~ State IV-E agency means ~~[Human Services,] the Division of Child and Family Services or a [other] public agency or tribal organization with whom the Division of Child and Family Services has an agreement [a Title IV-E agreement is] in effect for foster care maintenance payments in accordance with Title IV-E, Section 42 USC 672.~~

~~(4)(5)~~ AFDC means the Aid to Families with Dependent Children~~[AFDC]~~ program that was in effect on July 16, 1996.

~~(5)(6)~~ Child with a previous IV-E agreement means a child who was Title IV-E eligible in a previous adoption with a fully executed adoption assistance agreement originating in any state, and the previous adoption was legally dissolved or ended due to the death of both of the adoptive parents.

R512-43-2. Purpose and Authority.

(1) The purpose of the Adoption Assistance program is to aid [assist] an adoptive family to establish and maintain a permanent adoptive living arrangement [placement] for a [qualifying] child ~~[who meets the definition of a child with a special need and]~~ who qualifies for the program under state and federal law.

(2) The Adoption assistance program is intended to provide a permanent family [permanency] for a child in public foster care or who receives [receiving] SSI by providing financial and medical assistance for [on] the child's benefit and best interest [behalf] to the family who adopts the child.

(3) Title 62A, Chapter 4a, Part 9 [Part 8] authorizes the state to provide adoption assistance and supplemental adoption assistance and Section 473, Social Security Act, authorizes federal adoption assistance. Section 473, Social Security Act (2001), and 45 CFR 1356.40 (2000) [(1995)] and 45 CFR 1356.41 (2000) [(1995)] are incorporated by reference.

R512-43-3. General Requirements for Adoption Assistance.

(1) Qualification for adoption assistance is based upon the child meeting qualifying factors, not the adoptive family.

(2) A child qualifies for adoption assistance if all of the following are met:~~[Qualifying factors for adoption assistance include:]~~

(a) The State has determined that the child cannot or should not be returned home~~[-]~~.

(b) The State can document that reasonable efforts were made to place the child for adoption without providing adoption assistance. An exception applies if the child has significant emotional ties with the adoptive family and it is not in the child's best interest to consider a different adoptive placement.

(c) The State determines the child meets the definition of a child with a special need in accordance with Section 62A-4a-901, et seq.

(i) A child under age five in public foster care meets the special need definition of "a child with a physical, emotional or mental disability" when the child is at risk to develop such a condition due to specific factors identified in the child's or birth parents' health and social histories.

(3) In determining eligibility for adoption assistance, there is no income eligibility requirement or means test for the adoptive parents.

~~(3)(4)~~ A child must be a U.S. citizen or qualified alien to receive adoption assistance.

~~(4)(5)~~ An application for adoption assistance is submitted to the regional adoption subsidy committee on a form provided by the Division.

~~(5)(6)~~ Application for adoption assistance, approval, and completion of the adoption assistance agreement, including signatures of an adoptive parent and a representative from the Division, are to be completed prior to finalization of the adoption.

~~(6)(7)~~ Adoptive parents may request adoption assistance after an adoption is finalized by requesting a fair hearing through the Office of Administrative Hearings. Adoption assistance may only be granted after finalization when the conditions stated in R512-43-11-2(a) are met.

~~(7)(8)~~ Adoption assistance usually begins after finalization of an adoption. However, adoption assistance may be initiated at the time of placement if the child is legally free for adoption, the adoptive home is approved, adoption proceedings are initiated, an adoption assistance agreement is fully executed prior to placement, and foster care maintenance payments are not being provided for the child.

~~(8)(9)~~ An adoption assistance agreement shall be approved and have all required signatures before any payments may be made to an adoptive family or before state medical assistance may be initiated.

~~(9)(10)~~ A qualified child shall continue to be eligible to receive adoption assistance until a child reaches age 18 unless causes for termination apply as stated in R512-43-11. Assistance may be extended until a child reaches age 21 when the regional adoption subsidy committee has determined that the child has a mental or physical disability that warrants continuing assistance.

(a) An extension of adoption assistance beyond age 18 is warranted if the child meets the criteria for services in the Department of Human Services, Division of Services for People with Disabilities.

~~(40)(11)~~ The Division is responsible for notifying a prospective adoptive family of the availability of adoption assistance when the family begins an adoptive placement of [adopts] a qualified child in public foster care.

(12) The adoptive parents are responsible to notify the Division of any circumstances that may affect the child's eligibility for adoption assistance or eligibility for adoption assistance in a different amount.

R512-43-4. Reimbursement of Non-Recurring Adoption Expenses.

(1) A parent who adopts a child meeting all of the qualifying factors for adoption assistance listed in R512-43-3(2) may be reimbursed for non-recurring adoption expenses on behalf of the child.

(2) A parent may be reimbursed up to \$2,000 per child for allowable non-recurring expenses directly related to the legal adoption of a child with a special need. Reimbursement shall be limited to costs approved by the regional adoption subsidy committee.

(3) Expenses may include reasonable and necessary adoption fees, court costs, adoption-related attorney fees, adoption home study, health and psychological examinations of adoptive parents, supervision of the placement prior to adoption, and transportation and reasonable costs of lodging and food for the child and/or adoptive parents during the placement or adoption process.

(4) Adoptive parents are responsible to provide necessary receipts for reimbursement.

(5) Only costs that are incurred in accordance with State and Federal law and that have not been reimbursed from other sources or funds may be included.

(6) Non-recurring adoption expenses are reimbursable through Title IV-E Adoption Assistance. The child does not have to be determined Title IV-E eligible for the parents to receive this reimbursement.

R512-43-5. Monthly Subsidy.

(1) Qualifying for a Monthly Subsidy.

~~[(4)]~~—A child qualifies for a monthly subsidy when the following requirements are met:

(a) The child meets all of the qualifying factors for adoption assistance listed in R512-43-3(2), and

(b) The child meets the definition of child in public foster care, qualifies for Supplemental Security Income (SSI), or meets the definition of a child with a previous IV-E agreement.

(i) The child's eligibility for SSI benefits is established no later than the time adoption proceedings are initiated.

(2) Guiding Principles for Monthly Subsidies~~(2) Determination of Level and Amount of Subsidy.~~

(a) The amount of monthly subsidy to be paid for a child is based on the child's present and long-term treatment and care needs and available resources, including the family's ability to meet the needs of the child. A combination of the parents' resources and subsidy should cover the ordinary and special needs expenses of the child projected over an extended period of time.

~~[(b) For a child in public foster care, the requested amount of monthly subsidy is negotiated between the adoptive parent and caseworker.~~

~~—](b)[(e)]~~ The amount of the monthly subsidy may not exceed the payment that would be made if the child was placed in a foster family home at the point in time when the agreement is being initiated or revised.

~~(c)[(d)]~~ The amount of monthly subsidy may increase or decrease when the child's level of need or the family's ability to meet those needs changes. The family or the caseworker may initiate a

change in the amount of subsidy at any time when needs or resources change.

(d) For a child in public foster care, the requested amount of monthly subsidy is negotiated between the adoptive parent and caseworker. The Adoptive Parent Statement of Disclosure items must be reviewed in depth by the caseworker and adoptive parent prior to subsidy negotiation.

~~(e) [Approval for the]~~The amount of the monthly subsidy is subject to the approval of the regional adoption subsidy committee. If the requested amount is not granted, the adoptive parent has a right to appeal as stated in R512-43-11.

(3) Process for Determining Monthly Subsidy Amount.

(a) Utilizing the level of need criteria specified in R512-43-5(4), the caseworker and adoptive family identify the child's level of need.

(b) The caseworker and adoptive family identify the applicable monthly subsidy payment range, according to the child's specified level of need, as specified in R512-43-5(5).

(c) The caseworker and adoptive family negotiate the amount of monthly subsidy to be requested from the regional adoption subsidy committee. The requested monthly subsidy amount may not exceed the maximum amount for the specific level of need identified for the child nor the maximum amount that the child would receive if placed in a foster family home.

(d) The identified need level for the child and requested amount of monthly subsidy is presented to the regional adoption subsidy committee for approval. If the requested amount is not approved or is reduced by the committee, the Division must send a written notice to the adoptive parents within 30 days informing them of the process to request a fair hearing.

(4) Determining Child's Level of Need.

(a) The level of need is determined by considering the child's age, history, physical, mental, emotional, and social functioning and needs, and any other relevant factors. Frequency of occurrence, duration, severity, and number of needs or problem areas are also considered.

(b) The presence of a particular issue listed within a designated level does not mandate that the child be categorized at that level. The child's needs, taken as a whole, determine the level selected for the child.

(c) Level of need is classified into three categories.

(i) Level One applies to a child with a minimal number and severity of needs. It is expected that most of these issues will improve with time, and significant improvement may be anticipated over the course of the adoption. For children ages five and under issues may include, but are not limited to: feeding problems, aggressive or self destructive behavior, victimization from sexual abuse, victimization from physical abuse; or no more than one developmental delay in fine motor, gross motor, cognitive or social/emotional domains. For children ages 6-18, issues may include but are not limited to: social conflict, physical aggression, minor sexual reactivity, need for education resource classes or tutoring, some minor medical problems requiring ongoing monitoring, or mental health issues requiring time limited counseling.

(ii) Level Two applies to a child with a moderate number and severity of needs. It is expected that a number of these issues are long-term in nature and the adoptive family and child will be working with them over the course of the adoption, and some may intensify or worsen if not managed carefully. Outside provider support will probably continue to be needed during the course of the

adoption. For children ages five and under, issues may include, but are not limited to: developmental delays in two or more areas of fine motor, gross motor, cognitive or social/emotional domains; diagnosis of failure to thrive; moderate genetic disease or physical handicapping condition; or physical aggression expressed several times a week, including superficial injury to self or others. For children ages 6-18, issues may include, but are not limited to: daily social conflict or serious withdrawn behavior; moderate risk of harm to self or others due to physically aggressive behavior; emotional or psychological issues with a DSM-IV diagnosis requiring ongoing counseling sessions over an extended period of time; moderate sexual reactivity or perpetration; chronic patterns of being destructive to items or property; cruelty to animals; mild mental retardation or autism, with ongoing need for special education services; and physical disabilities requiring ongoing attendant care or other caretaker support

(iii) Level Three applies to a child with a significant number or high severity of needs. It is expected that these issues will not moderate and may become more severe over time. The child's level of need may at some time require personal attendant care or specialized care outside of the home, when prescribed by a professional. For children ages five and under issues may include, but are not limited to: severe life threatening medical issues; moderate or severe retardation or autism; serious developmental delays in three or more areas of fine or gross motor, cognitive or social/emotional domains; anticipated need for ongoing support for activities of daily living, such as feeding, dressing and self care; or high levels of threat for harm to self or others due to aggressive behaviors. For children ages 6-18 issues may include, but are not limited to: moderate or severe retardation or autism; life threatening medical issues; severe physical disabilities not expected to improve over time; predatory sexual perpetration; high risk of serious injury to self or others due to aggressive behavior; serious attempts or threats of suicide; severely inhibiting DSM-IV diagnosed mental health disorders diagnosed within the past year that limit normal social and emotional development, such as an Axis 5 GAF score under 50; or need for ongoing self contained or special education services.

(d) The adoption subsidy committee must approve the level of need identified for the child.

(5) Identifying Amount for Monthly Subsidy Based Upon the Child's Level of Need.

(a) Each level of need corresponds to a dollar range in the amount of monthly subsidy that may be paid for a child, with the specific amount based upon the individual child's needs and the family's ability to meet those needs.

(b) The monthly subsidy amount for an individual child may not exceed the maximum amount for the payment range applicable to the child's level of need. A family may choose to defer receipt of a monthly subsidy for which a child qualifies, with the option to initiate a monthly subsidy at a later date, or to receive a lesser amount than would be allowable for the level of need at a given point in time.

(c) Monthly subsidy payments for a child's needs categorized as Level One range from zero to 40 percent of the maximum maintenance payment that may be paid for a child in a foster family home.

(d) Monthly subsidy payments for a child's needs categorized as Level Two range from 40 to 70 percent of the maximum maintenance payment that may be paid for a child in a foster family home.

(e) Monthly subsidy payments for a child's needs categorized as Level Three range from 70 to 100 percent of the maximum maintenance payment that may be paid for a child in a foster family home.

(f) For extraordinary, infrequent, or uncommon documented needs that cannot be covered by a monthly subsidy or state medical assistance, refer to supplemental adoption assistance in R512-43-7. ~~(f) The rates specified below shall be used to determine the level of need of the child and the amount of monthly subsidy appropriate for the need. The descriptions of need are not exhaustive, but serve as examples. The regional adoption committee may approve amounts above those described for each level when determined appropriate.~~

(g) The amount shall be determined by the needs of the child and based upon the relevant foster care payment that would be paid at the point in time at which the agreement amount is being initiated or revised. Title IV-E funds shall be limited to the maximum foster care rate that would be paid on behalf of the child if in state custody and placed in a foster family home. Additional state funds may be granted when warranted by exceptional circumstances, not to exceed the amount the state would pay on behalf of the child if in custody.

(h) Rates:

(i) Level I. Up to 33% of the basic foster care rate. Child with minimal specialized needs such as child needing identified orthodontia work; infant without numerous placements and no identifiable physical, mental, or emotional disabilities.

(ii) Level II. From 34% to 66% of the basic foster care rate. Child with moderate specialized needs such as child requiring outpatient therapy; child having special needs due to past emotional and social trauma; child expected to be mainstreamed after placement adjustments.

(iii) Level III. From 67% to the maximum basic foster care rate. Child with multiple, moderate specialized needs such as child having a cluster of mild or moderate disabilities; child who can be mainstreamed with additional educational programs and therapy; sibling groups; child requiring speech therapy and specialized preschool; child requiring enrichment programs to compensate for social and emotional delays.

(iv) Level IV. From 67% to 85% of the specialized payment rate for foster care. Child with serious specialized needs such as child with prior residential placements; learning disabilities; DSM IV diagnoses such as attention deficit hyperactivity disorder, posttraumatic stress disorder, dysthymic, oppositional, attachment disorder; child with identified physical disabilities, learning problems including low IQ; child receiving specialized payment for foster care.

(v) Level V. From 86% of the specialized payment rate to the maximum payment rate for care in a foster home. Child with severe specialized needs such as child with severe physical disability; child with prior hospitalization for psychiatric diagnosis; prior adoption disruption, or dissolution of adoptive placement.]

(6) ~~(3)~~ Funding Sources and Eligibility for Monthly Subsidy.

(a) The two funding sources for the monthly subsidy are Title IV-E adoption assistance and state adoption assistance funds. The child's eligibility determines which funding source is used for payment.

(b) Title IV-E Adoption Assistance shall be considered first for the monthly subsidy. To receive Title IV-E Adoption Assistance, a child with special needs shall meet at least one of the following Federal requirements:

(i) A child is determined eligible for SSI by the Social Security Administration prior to the initiation of adoption proceedings.

(ii) The removal home for the child in public foster care received, or would have been eligible to receive, AFDC prior to removal, and the child was removed from the home as a result of a judicial determination that remaining in the home would be contrary to the child's welfare. In addition, the child meets AFDC requirements in the month adoption proceedings are initiated.

(iii) The child was voluntarily placed for foster care with the state and:

(A) ~~was~~ Was or would have been AFDC eligible at the time of removal if application had been made,

(B) ~~The~~ The child lived with a specified relative within the six months prior to the voluntary placement,

(C) Title IV-E foster care maintenance payments were made on behalf of the child, and

(D) The child continues to meet AFDC requirements in the month adoption proceedings are initiated.

(iv) The child's needs were met through foster care maintenance payments made to and for the child's minor parents as provided by Subsection 475(4)(B) of the Social Security Act.

(v) The child meets the definition of a child with a previous IV-E agreement.

(c) State Adoption Assistance funds may be used for the monthly subsidy if the qualified child is not eligible for Title IV-E adoption assistance.

~~(7)~~ ~~(5)~~ Use of the monthly subsidy.

The monthly subsidy may be used according to the parents' discretion. Some examples of the uses of the monthly subsidy payment are medical, dental, or mental health services not paid for by the state medical assistance or family insurance, special equipment for physically or mentally challenged children, respite, day care, therapeutic equipment, minor renovation of the home to meet special needs of the child, damage and repairs, speech therapy, tutoring, specialized preschool based on needs of the child, private school, exceptional basic needs such as special food, clothing, and/or shelter, visitations with biological relatives, cultural and heritage activities and information.

R512-43-6. State Medical Assistance.

(1) A child qualifies for state medical assistance as a component of adoption assistance when all of the following requirements are met:

(a) The child meets all of the qualifying factors for adoption assistance listed in R512-43-3(2), and

(b) The child meets the definition of child in public foster care, qualifies for Supplemental Security Income (SSI), or meets the definition of a child with a previous IV-E agreement.

(i) The child's eligibility for SSI benefits is established no later than the time adoption proceedings are initiated.

(c) The child meets state medical assistance citizenship requirements.

(2) A qualified child may receive state medical assistance through an adoption assistance agreement without also receiving a monthly subsidy payment.

R512-43-7. Supplemental Adoption Assistance.

(1) A child meeting all qualifying criteria for a monthly subsidy and for whom an adoption assistance agreement for a monthly subsidy or state medical assistance is in effect may qualify for supplemental adoption assistance.

(2) Supplemental adoption assistance may only be used for extraordinary, infrequent, or uncommon documented needs not otherwise covered by a monthly subsidy, state medical assistance, or other public benefits for which a child who has a special need is eligible.

(3) Supplemental adoption assistance is not an entitlement, and will be granted only when justified by unique needs of the child and when all other resources for which a child is eligible have been exhausted.

(4) Supplemental adoption assistance requests up to \$3,000 will be considered and are subject to the approval of the regional adoption subsidy committee.

(5) Supplemental adoption assistance requests from \$3,000 to \$10,000 ~~exceeding \$3,000~~ shall be considered by the appropriate regional advisory committee established under Subsection 62A-4a-905(2) ~~62A-4a-805(2)~~.

(6) Supplemental adoption assistance requests exceeding \$10,000 shall be considered by a state level advisory committee with the same membership composition as the regional advisory committees established under Subsection 62A-4a-905(2).

~~(7)~~ ~~(6)~~ Recommendations from the advisory committee are subject to the approval of the regional director or designee.

~~(8)~~ ~~(7)~~ Any obligation made or expense incurred by a family prior to approval shall not be reimbursed with supplemental adoption assistance funds unless approval is granted by the regional director.

~~(9)~~ ~~(8)~~ A request for an amendment or extension of an existing supplemental adoption assistance agreement will be reviewed by the same committee that reviewed the initial request. If the total amount of multiple requests in a year is \$3,000 to \$10,000 ~~exceeds \$3,000~~, the request shall be submitted to the appropriate regional advisory committee ~~committee~~ established under Subsection 62A-4a-905(2) ~~62A-4a-805(2)~~. If the request exceeds \$10,000, the request shall be submitted to the state level advisory committee.

~~(10)~~ ~~(9)~~ Supplemental adoption assistance is subject to the availability of state funds appropriated for adoption assistance.

R512-43-8. Regional Adoption Subsidy Committee.

(1) Each region shall establish at least one regional adoption subsidy committee.

(2) The regional adoption subsidy committee shall be comprised of at least five ~~three~~ members, and a minimum of three members must be present for making decisions regarding adoption assistance. Decisions shall be made by consensus.

(3) Members of the committee may include the following:

(a) Chairperson;

(b) Clinical consultant or casework supervisor;

(c) Regional budget officer or fiscal representative;

(d) Allied agency representative from agencies such as a community mental health center, private adoption agency, or other agencies within the department;

(e) Regional administrator or other staff with relevant responsibilities;

(f) Adoptive or foster parent.

(4) Responsibilities of the regional adoption assistance committee include:

(a) Verification that a child qualifies for adoption assistance,

(b) Approval for reimbursement of allowable, reasonable non-recurring costs,

- (c) Approval of level of need and amount of monthly subsidy for initial requests, changes, and renewals,
- (d) Approval of supplemental adoption assistance up to \$3,000,
- (e) Extension of adoption assistance up to age 21 for a qualifying child,
- (f) Renewal of adoption assistance, and
- (g) Documentation of committee decisions.

R512-43-9. Renewal and Review of Adoption Assistance.

The adoption assistance agreement for a monthly subsidy or state medical assistance shall be renewed at least once every three years and reviewed periodically by regional staff. An agreement for supplemental adoption assistance exceeding \$3,000 shall be reviewed according to a time frame determined on a case by case basis by the appropriate regional advisory committee established under Subsection 62A-4a-905(2)~~[62A-4a-805(2)]~~.

R512-43-10. Termination of Adoption Assistance.

(1) An adoption assistance agreement for a monthly subsidy or state medical assistance shall be terminated if any of the following occur:

- (a) The terms of the adoption assistance agreement are concluded.
 - (b) The adoptive parents request termination.
 - (c) The child reaches age 18, unless approval has been given by the adoption subsidy committee to continue until age 21 due to mental or physical disability.
 - (d) The child dies.
 - (e) The adoptive parents die.
 - (f) The adoptive parents' legal responsibility for the child ceases.
 - (g) The state determines that the child is no longer receiving financial support from the adoptive parents.
 - (h) The child enters the military.
 - (i) The child marries.
 - (j) The adoptive parents fail to respond to a renewal request.
- (2) Termination of state medical assistance is subject to the policies of the Division of Health Care Financing.

(3) Supplemental adoption assistance shall terminate when an adoption assistance agreement for a monthly subsidy or state medical assistance is terminated, the terms of the agreement are concluded, the authorizing committee determines that the services funded with supplemental funds are no longer effective or appropriate based upon an independent review by a qualified provider, or if lack of availability of state funding prevents continuation. Written notice as described in R512-43-10(4) shall be provided at least 30 days before funding is discontinued due to lack of availability of state funding appropriated for adoption assistance or due to determination that services are no longer effective or appropriate.

(4) Adoption assistance shall not be terminated for an adoptive parent's failure to respond to a renewal request for the agreement unless the Division has given the adoptive parents adequate notice of the potential termination. Adequate notice means that a letter shall be sent to the adoptive parents notifying them of the need to renew the adoption assistance agreement, specifying a date by which the adoptive parents shall respond. If the adoptive parents do not respond to the original request, the Division shall send a certified letter to the family explaining the importance of renewing the adoption assistance agreement and the potential consequences of failing to renew the agreement. If the certified letter is returned

unclaimed, additional efforts shall be pursued to locate the family such as a phone call or home visit before the assistance may be terminated. If the certified letter is returned undeliverable~~[unknown]~~, the adoption assistance may be terminated.

R512-43-11. Fair Hearings.

(1) Fair Hearing Request.

A written request for a fair hearing may be submitted to the Department of Human Services if:

- (a) The adoption assistance application is denied;
- (b) The adoption assistance application is not acted upon within reasonable promptness;
- (c) Adoption assistance or supplemental adoption assistance is reduced, terminated, or changed without the concurrence of the adoptive parents;
- (d) The amount of adoption assistance or supplemental adoption assistance approved was less than the amount requested by adoptive parents;
- (e) Adoption assistance was not requested prior to finalization of the adoption and one of the criteria in R512-43-11(2)(a) applies.

(2) Post Finalization Request Fair Hearing.

(a) The fair hearing officer may approve appropriate state or federal adoption assistance for post finalization requests if one of the following is met:

- (i) Relevant facts regarding the child, the biological family, or child's background were known but not presented to adoptive parents prior to finalization.
 - (ii) A denial of assistance was based upon a means test of the adoptive family.
 - (iii) An erroneous state determination was utilized to find a child ineligible for assistance.
 - (iv) The state or adoption agency failed to advise adoptive parents of the availability of assistance.
- (b) The adoptive parents bear the burden of documenting that the child meets the definition of a child with a special need and that one of the criteria in R512-43-11(2)(a) applies. The state may provide corroborating facts to the family or the fair hearing officer.

R512-43-12.~~[R512-43-13.] Interstate Adoption Assistance.~~

(1) The Division is responsible to determine if a child in Utah public foster care qualifies for adoption assistance when the child is placed in an adoptive home in another State. If the child qualifies, the Division provides adoption assistance regardless of the State of residence of the adoptive family and child.

(2) If a child with a previous IV-E adoption assistance agreement enters public foster care because the adoption was dissolved or ended due to the result of the death of the parents, the State in which the child is taken into custody in public foster care is responsible to provide adoption assistance in a subsequent adoption.

(3) If a child with a previous IV-E adoption assistance agreement does not enter public foster care when the adoption dissolved or ended due to the death of both~~[the]~~ parents, the new adoptive parent is responsible to apply for adoption assistance in the new adoptive parent's State of residence.

(4) A parent desiring to adopt an out-of-state~~[out of State]~~ child who is not in public foster care but is receiving SSI shall apply~~[applies]~~ for adoption assistance in the parent's State of residence.

(5) An adoption assistance agreement remains in effect regardless of the State of residence of the adoptive parents as long as the child continues to qualify for adoption assistance.

(6) If a needed service specified in the agreement is not funded by the new State of residence, the state making the original adoption assistance payment remains financially responsible for paying for the specific service.

KEY: adoption, child welfare, foster care
~~January 11, 2002~~
Notice of Continuation March 14, 2002
62A-4a-106
62A-4a-901 through 907~~[62A-4a-801 through 807]~~

▼ ————— ▼

Human Services, Mental Health

R523-1-15

Funding Formula

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE NO.: 24835
 FILED: 05/15/2002, 12:56

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule change is needed to ensure an annual application of the funding formula, with adjustments based on the most current population data. It also provides that application may be phased-in over a three-year period, in order to prevent drastic budget shifts among local mental health authorities. It will also make the rule consistent with state statute.

SUMMARY OF THE RULE OR CHANGE: Requires the State Board of Mental Health to adjust the funding formula annually, allows the Board to consider criteria other than population for the determination of need in establishing a formula, and allows a three-year phase-in of the most current formula, not to extend beyond fiscal year 2006. (DAR NOTE: A corresponding 120-day (emergency) rule that is effective as of May 15, 2002, is under DAR No. 24842 in this Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-12-104 and 62A-12-105

ANTICIPATED COST OR SAVINGS TO:

- ❖ **THE STATE BUDGET:** None--This is a reallocation of existing funds.
- ❖ **LOCAL GOVERNMENTS:** The funding formula determines how state and federal funds will be allocated. This may change the amount of federal and state dollars that are passed through to any one local mental health authority, thereby impacting the 20% local match required by state statute.
- ❖ **OTHER PERSONS:** None--This is a reallocation of existing funds. There are no new requirements associated with the rule change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule does not change compliance regulations or create new compliance regulations. This is a reallocation of existing funds.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule could have fiscal impact on local mental health authorities and the providers they have contracted with to provide mental health services.

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

HUMAN SERVICES
 MENTAL HEALTH
 120 N 200 W 4TH FL
 SALT LAKE CITY UT 84103-1500, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Janina Chilton at the above address, by phone at 801-538-4072, by FAX at 801-538-3993, or by Internet E-mail at jchilton@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 PM on 07/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: Robin Arnold-Williams, Executive Director

R523. Human Services, Mental Health.

R523-1. Policies and Procedures.

R523-1-15. Funding Formula.

A. The Board shall establish by rule a formula for the annual allocation of funds to local mental health authorities through contracts (Section 62A-12-105).

B. The funding formula shall be applied annually to state and federal funds appropriated by the legislature to the Division and is intended for the equitable distribution of these funds to the state's local mental health authorities.

1. Appropriated funds will be distributed annually on a per capita basis, according to the most current population data available from the Office of Planning and Budget. New funding and/or decreases in funding shall be processed and distributed through the funding formula.

2. The funding formula ~~will~~ shall utilize a population density {rural} differential ~~based upon~~ to compensate for additional costs of providing services in a rural area which may consider: the total population of each county, the total population base served by the local mental health center and/or population density.

3. In accordance with UCA Section 62A-12-105 the funding formula may utilize a determination of need other than population if the board establishes by valid and acceptable data, that other defined factors are relevant and reliable indicators of need.

~~3. The population density differential is part of the base amount allocated to the local mental health authority and will be recalculated in successive years only when a documented need arises.~~

~~4. The local mental health authorities' "equalized base" is defined as the state and federal funds which were expended in budget year fy 89-90, and which were distributed according to (1)~~

~~population density differential by county and (2) on a per capita basis.]~~

~~[5]4. [State funds allocated for mental health services and distributed through the formula to local mental health authorities shall be matched by the local mental health authority by at least 20%.]Each Local Mental Health Authorities shall provide funding equal to at least 20% of the state funds that it receives to fund services described in that local mental health authority's annual plan in accordance with UCA Section 17A-3-602.[~~

~~6. New funds will be distributed on a per capita basis, according to the most current population data available from the Office of Planning and Budget. New funds will be added to each local authorities equalized base.~~

~~7. Decreases in state and federal revenues will be distributed on a per capita basis.]~~

~~5. Application of the formula for allocation of state and federal funds may be subject to a phase-in plan for FY 03 through FY 06. At the latest, appropriations for FY 06 shall be allocated in accordance with the funding formula without any phase-in provisions.~~

[8]6. The formula does not apply to:

- a. Funds that local mental health authorities receive from sources other than the Division.
- b. Funds that local mental health authorities receive from the Division to operate a specific program within its jurisdiction that is available to all residents of the state.
- c. Funds that local mental health authorities receive from the Division to meet a need that exists only within the jurisdiction of that local mental health authority.
- d. Funds that local mental health authorities receive from the Division ~~[of]~~for research projects.

KEY: bed allocations, due process, prohibited items and devices, fees

~~[July 2, 1999]2002~~

Notice of Continuation December 17, 1997

62A-12-102

62A-12-104

62A-12-209.6(2)

62A-12-283.1(3)(a)(i)

62A-12-283.1(3)(a)(ii)



Insurance, Administration

R590-212

Requirements for Interest Bearing Accounts Used by Title Insurance Agencies for Trust Fund Deposits

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 24827

FILED: 05/14/2002, 10:10

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The title industry requested more flexibility in the sweep account option of the rule.

SUMMARY OF THE RULE OR CHANGE: A definition for "Money Market mutual fund" is added to Section R590-212-4 of the rule and becomes an additional sweep account option. The amendment also clarifies the disclosure obligations when using the sweep account.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201 and 31A-23-310

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: This rule will not increase or decrease anticipated costs to the State's budget. These changes will not increase the department's workload or require insurers to file forms with filing fees.
- ❖ LOCAL GOVERNMENTS: This rule will not affect local government since the rule applies only to licensees of the department.
- ❖ OTHER PERSONS: With the inclusion of the money market mutual fund, as defined in the rule, lending institutions now have another option for sweep accounts. This especially affects smaller banks that were not as able to participate before. The rule changes create additional options for the title business without creating a fiscal impact on them or their consumers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: With the inclusion of the money market mutual fund, as defined in the rule, lending institutions now have another option for sweep accounts. This especially affects smaller banks that were not as able to participate before. The rule changes create additional options for the title business without creating a fiscal impact on them or their consumers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule is merely a deposit option and has no fiscal impact on businesses.

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

INSURANCE
ADMINISTRATION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@insurance.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 PM on 07/01/2002

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 6/19/2002 at 10:00 AM, Room 1112, State Office Building, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.

R590-212. Requirements for Interest Bearing Accounts Used by Title Insurance Agencies for Trust Fund Deposits.

R590-212-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-201(1) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title. Authority to promulgate rules defining the type of accounts to be used for deposited trust funds is provided in Subsection 31A-23-310(2)(b).

R590-212-2. Purpose.

This rule specifies the characteristics of a depository account that may be used by a title insurance agency to deposit trust funds.

R590-212-3. Scope.

This Rule applies to all title insurers, title insurance agencies and title insurance agents and all employees, representatives and any other party working for or on behalf of said entities, whether as a full time or part time employee, or as an independent contractor.

R590-212-4. Definitions.

For the purpose of this rule the commissioner adopts the definitions as set forth in Section 31A-1-301, 31A-23-102 and the following:

(1) "Demand deposit account" refers to a federally insured deposit account from which withdrawals may be made by check and the depositor or a holder of a check drawn on the account has a legal right to immediate payment from the bank upon presentment of the check or other withdrawal request.

(2) "Depositor" refers to a title insurance agency that has deposited, in a qualifying trust account, funds it holds in trust in connection with a real estate transaction.

(3) "Repurchase agreement" is an agreement in which a bank agrees to sell to a depositor a security or other asset at a specified price with a commitment to repurchase the security, or other asset, at a later date for a specified price.

(4) "Sweep account" refers to a demand deposit account subject to an agreement authorizing the bank to withdraw from the account funds exceeding a specified amount and deposit those funds into an interest bearing account, purchase specified securities subject to a repurchase agreement, or purchase shares of a mutual fund, then redeposit those funds into the demand account, when needed, to pay checks presented for payment or other request for withdrawal.

(5) "Trust account" means an account denominated as a trust account in which the depositor is trustee.

(6) "Money market mutual fund" means a mutual fund that is registered and authorized under applicable federal and state securities laws to sell its shares to the public and managed to maintain a par value of \$1 per share.

R590-212-5. Account Requirements.

(1) Authority to Retain Earnings on Funds Held in Trust. Subsection 31A-23-307(2) permits a title insurance agency to retain earnings on funds held in a qualifying trust account if authorized by the contract between the trustee and the person on whose behalf the funds are held.

(2) Responsibility for Compliance. Each depositor is responsible for determining that the terms and conditions of an account, in which it deposits funds held in trust, comply with the requirements of this rule.

(3) Records Required. Each title insurance agency must retain adequate records of all deposits in a trust account, including those utilizing a sweep feature, to establish individual account balances for all persons whose funds are held in trust.

(4) Qualified Accounts. Funds subject to this rule must be deposited or held in:

(a) a deposit account insured by the Federal Deposit Insurance Corporation or the National Credit Union Share Insurance Fund or any successor federal deposit insurance; or

(b) a sweep account if it meets all of the following qualifications:

(i) funds are initially deposited into a federally insured demand deposit account;

(ii) the bank, in accordance with an agreement with the depositor, withdraws funds exceeding a specific balance in the account to purchase:

(A) U.S. Government securities on behalf of the depositor that are held in a segregated account in the bank subject to a repurchase agreement with the bank[?].

(B) shares in a money market mutual fund that only holds obligations of the U.S. Treasury or Agencies of the U.S. Government, and

(iii) the bank is obligated and able to repurchase the securities or sell or redeem the shares or interest at any time at par and deposit the funds in the demand deposit account to maintain a minimum balance and pay withdrawals.

(5) Obligation of Depositor for Losses. A depositor may only deposit funds into a sweep account if it agrees to reimburse a trust beneficiary for any decline in value below par of the funds deposited, regardless of the cause of the decline in value.

(6) Authorization and Disclosure Obligation[~~of Depositor~~]. Any depositor who uses an account described in Subsection R590-212-5.(4)(b) must~~[provide full]~~:

(a) receive written [disclosure by the depositor to all] authorization from those persons on whose behalf the funds are deposited state that the depositor may receive all earnings which may be realized from the trust fund deposit; and

(b) provide full written disclosure to all persons on whose behalf the funds are deposited, explaining the characteristics [and risks associated with that type of account.]of a sweep account deposit as described in U.A.C. Rule R590-212-5(4)(b).

R590-212-6. Penalties.

Subject to the provisions of the Utah Administrative Procedures Act, violators of this rule shall be subject to forfeitures, suspension or revocation of their insurance license or Certificate of Authority, and any other penalties or measures as are determined by the commissioner in accordance with law.

R590-212-7. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance, title
[January 10, 2002]2002
31A-2-201
31A-23-310

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Natural Resources, Wildlife Resources

R657-2

Adjudicative Proceedings

NOTICE OF PROPOSED RULE (Amendment)

DAR FILE No.: 24839
 FILED: 05/15/2002, 13:20

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council meetings and the Wildlife Board meeting conducted for taking public input and reviewing the standards and procedures for administering adjudicative proceedings.

SUMMARY OF THE RULE OR CHANGE: Section R657-2-6 is being amended to allow: 1) the presiding officer (i.e., the Wildlife board Chairman) to refuse acceptance of the request for agency action if the request fails to comply with the procedural requirements of this rule; 2) the presiding officer to determine when to schedule a matter before the Wildlife Board, and that the presiding officer may consider holding an emergency meeting, if the matter involves a serious or irreparable harm to a person; and 3) the presiding officer to schedule a request for agency action on the Wildlife Board agenda without Regional Advisory Council (RAC) input, if the delay in seeking RAC input will result in serious or irreparable harm to the person. The provisions of Section R657-2-6 and Section R657-2-8, which require formalities in making requests for agency action, are being deleted (i.e., required titled heading, docket number, 10 copies). Section R657-2-7 is being amended to designate all adjudicative proceedings as informal proceedings, unless converted to a formal proceeding by the presiding officer. The provisions of Section R657-2-16, which govern hearsay evidence and judicial notice, are being deleted as hearsay evidence and judicial notice are appropriately covered under the Utah Rules of Evidence and the Utah Rules of Civil Procedure. Section R657-2-22, Request for Reconsideration, is being deleted and replaced with Judicial Review. Other changes are being made for consistency and clarity.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 63-46b-5 and 23-14-2.1

ANTICIPATED COST OR SAVINGS TO:

❖ **THE STATE BUDGET:** These amendments are for clarification and to ensure the rule complies with applicable provisions of the Administrative Procedures Act, Title 63, Chapter 46b. Therefore, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget.

❖ **LOCAL GOVERNMENTS:** None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the amendment. Nor are local governments indirectly impacted because the amendment does not create a situation requiring services from local governments.

❖ **OTHER PERSONS:** These amendments are for clarification and to ensure the rule complies with applicable provisions of the Administrative Procedures Act, Title 63, Chapter 46b. The amendments do not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--These amendments are for clarification and to ensure the rule complies with applicable provisions of the Administrative Procedures Act, Title 63, Chapter 46b. There are not any additional compliance costs associated with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

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

NATURAL RESOURCES
 WILDLIFE RESOURCES
 1594 W NORTH TEMPLE
 SALT LAKE CITY UT 84116-3154, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Debbie Sundell at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at dsundell.nrdwr@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 PM on 07/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: Kevin Conway, Director

R657. Natural Resources, Wildlife Resources.

R657-2. Adjudicative Proceedings.

R657-2-1. Purpose and Authority.

(1) This rule sets forth the standards and procedures governing all adjudicative proceedings before the Wildlife Board and the division, except as provided in subsection (2), and ~~shall~~ specifically ~~govern~~ governs the following adjudicative proceedings:

- (a) requests for agency action;
- (b) declaratory orders brought pursuant to Section 63-46b-21;
- (c) requests for species reclassification under Section R657-3[-46];
- (d) requests for a variance under Section R657-3[-47];

~~[(e) actions seeking]~~ (e) post-issuance requests for a variance or amendment to a license, permit, tag or certificate of registration.

(f) request for review of a division action taken to deny a certificate of registration under Section R657-3[-48(8)];

~~[(f)]~~ (g) requests for agency action brought to contest the division's [initial] determination of eligibility for issuance or renewal of a license, permit, tag, or certificate of registration;

~~[(g)]~~ (h) appeals of divisions actions taken pursuant to Section 23-16-4; and

~~[(h)]~~ (i) a petition brought requesting the making, amendment, or repeal of a rule brought pursuant to Section 63-46a-12.

(2)(a) Unless otherwise specifically provided, this rule does not govern [:

~~—(i) division actions relating to the initial issuance of a wildlife license, permit, tag, or certificate of registration; or~~

~~—(ii)] actions taken under Sections 23-19-9 and R657-26 to suspend [or revoke] a wildlife license, permit, tag, or certificate of registration.~~

(b) The hearing officer or Wildlife Board hearing an appeal of a hearing officer's decision to revoke a person's license, permit, tag, or certificate of registration, or to suspend receipt of privileges granted thereunder, may use any of the provisions established in this rule in conducting an adjudicative proceeding to the extent ~~[that]~~ such provisions do not conflict with any of the procedural provisions of Section 23-19-9 or R657-26 and where conducting the proceeding according to this rule would promote fairness and equity to the parties.

(3) All rights, powers, and authorities provided in Chapter 46b, Title 63 are hereby reserved to the division and Wildlife Board in conducting adjudicative proceedings under this rule and to the extent this rule does not address a specific procedural matter, the provisions of Chapter 46b, Title 63 shall govern.

R657-2-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and 63-46b-2.

(2) In addition:

(a)(i) "Adjudicative proceeding" means:

(A) a division or Wildlife Board action or proceeding that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all division or Wildlife Board actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and

(B) judicial review of any action provided in Subsection (A).

(ii) "Adjudicative proceeding" does not mean any matter not governed by Title 63, Chapter 46b, Utah Administrative Procedures Act.

(b) "Assistant director" means the assistant director of the division.

(c) "Director" means the director of the division.

(d) "Division" means the Utah Division of Wildlife Resources.

(e) "Petitioner" means a person or entity who files a request for agency action initiating an adjudicative proceeding.

(f) "Presiding Officer" means the director, chairman of the Wildlife Board, or an individual or body of individuals designated

by the director, the chairman of the Wildlife Board, or by statute or division rule to conduct an adjudicative proceeding.

(g) "Regional advisory council" means the entities created by Section 23-14-2.6.

(h) "Respondent" means any person or entity against whom a proceeding is initiated or whose property interest may be affected by a proceeding initiated by the division, the Wildlife Board or any other person.

R657-2-3. Construction - Deviation From Rule.

(1) This rule shall be construed in accordance with Title 63, Chapter 46b.

(2) This rule shall be liberally construed to secure a just, speedy, and economic determination of issues.

(3)(a) The presiding officer may, for good cause, deviate from the provisions of this rule if:

(i) the presiding officer finds that strict compliance with this rule is impractical or unnecessary; or

(ii) a deviation from the rule promotes the furtherance of justice or the statutory purposes for which the action is brought.

(b) All parties shall be notified by the presiding officer of any deviation from this rule.

R657-2-4. Computation of Time.

The time within which any act shall be done, as provided in this rule, shall be computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or State holiday, in which case it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday, or State holiday.

R657-2-5. Commencement of Adjudicative Proceedings.

(1) ~~[A]n~~ An adjudicative ~~[proceedings shall]~~ proceeding may be commenced by either:

(a) a notice of agency action, if the proceeding is commenced by the division or the Wildlife Board; or

(b) a request for agency action, if the proceeding is commenced by a person other than the division or Wildlife Board.

(2) A notice of agency action shall be filed and served according to the requirements of ~~[Sections]~~ Section 63-46b-3(2) ~~[and R657-2-5]~~.

(3) A request for agency action brought by a person other than the division or Wildlife Board shall be filed and served in accordance with the requirements of Section 63-46b-3(3) and R657-2-6.

R657-2-6. Request for Agency Action.

(1) A request for agency action must be filed with the presiding officer of the entity that has authority to provide relief to the petitioner. The presiding officer may refuse acceptance of any request for agency action if ~~[he has]~~ there is reason to believe ~~[that]~~:

(a) the request ~~[was not made in good]~~ is frivolous or brought in bad faith;

(b) the matter has already been acted upon and further consideration ~~[would not be beneficial; or]~~ is unnecessary;

(c) the relief sought is beyond the agency's jurisdiction; or

(d) the request fails to comply with the procedural requirements of this rule.

(2) At the time the request for agency action is filed, the petitioner shall also file any motions, affidavits, briefs, or memoranda in support of the request for agency action.

(3) The presiding officer shall review the request for agency action.

(a) If the request for agency action is made to the division, the person designated as the presiding officer shall take action upon the request within a reasonable time.

(b)(i) If the request for agency action is made to the Wildlife Board, and the request concerns a matter ~~[that is within the authority of]~~over which the Wildlife Board has authority, the presiding officer ~~[, at the presiding officer's discretion, shall] may~~:

(A) have the request for agency action placed on the Wildlife Board's agenda for action;

(B) submit the request for agency action to the appropriate regional advisory council or councils, requesting the council or councils to hold public hearings, take input, and make recommendations to the Wildlife Board as provided in Section 23-14-2.6; or

(C) deny the request and notify the requesting party in writing of the denial and that the party may request a hearing before the Wildlife Board to challenge the denial.

(ii) In determining when to schedule the matter for hearing before the Wildlife Board, the ~~[chair]~~presiding officer may consider the following:

(A) If the matter is general in nature, and the Wildlife Board's agenda allows, the matter may be brought at the next regularly-scheduled Wildlife Board meeting;

(B) If the matter involves a serious or irreparable harm to a person or entity that may ~~[only]~~be resolved by holding a hearing before the next regularly-scheduled meeting, the Wildlife Board may hold an emergency meeting; or

(C) If the matter involves an issue that is part of ~~[a]~~an annual decision making process, the matter may be scheduled at the next annual meeting where such decisions are made, but no later than one year after the date the request is received.

(4)(a) The presiding officer may schedule the request for agency action on the Wildlife Board agenda for action without ~~[first allowing the]~~regional advisory ~~[council's to provide]~~council input if:

(i) the presiding officer determines that the public interest in deciding the matter without seeking input from the regional advisory councils outweighs the benefit of considering recommendations of the regional advisory councils; ~~[or]~~

(ii) the request for agency action seeks a remedy that affects only one person or a small number of persons, thus making broad public input unnecessary; or

(iii) the delay associated with seeking regional advisory council input will result in serious or irreparable harm to the petitioner or the respondent, provided the petitioner or respondent has not been negligent in filing the request for agency action in a timely fashion.

(b) Upon a majority vote of the Wildlife Board, any request for agency action submitted to it by the presiding officer that has not been considered by the regional advisory councils may be referred to the regional advisory councils for the purpose of gathering input ~~[without further action taken by]~~prior to the Wildlife Board taking further action.

(5) The petitioner shall provide a copy of the request for agency action to any person known by the petitioner to have a

direct interest in the proceeding or who will be directly affected by its outcome.

~~[(6) A request for agency action will contain a title substantially in the following form, with the heading modified, as appropriate:~~

TABLE

BEFORE THE UTAH WILDLIFE BOARD
DEPARTMENT OF NATURAL RESOURCES
STATE OF UTAH

In the Matter of the Request) Docket No.
for Agency Action of John Doe) Type of Pleading
Petitioner for)

R657-2-7. Designation of Adjudicative Proceedings.

(1) Except as otherwise provided in this rule or at the discretion of the presiding officer, all adjudicative proceedings before the division and the Wildlife Board are designated as ~~[formal]~~informal.

(2) Any time before a final order is issued in any adjudicative proceeding, the presiding officer may convert an informal adjudicative proceeding to a formal adjudicative proceeding or a formal adjudicative proceeding to an informal adjudicative proceeding ~~[or an informal adjudicative proceeding to a formal adjudicative proceeding]~~ if:

(a) conversion of the proceeding is in the public interest; and
(b) conversion of the proceeding does not unfairly prejudice the rights of any party.

(3) Any party to an adjudicative proceeding, including the division, may by motion request ~~[an informal]~~a formal hearing.

R657-2-8. Pleadings.

(1) Pleadings shall consist of a notice of agency action, a request for agency action, responses, motions and affidavits, briefs, and memoranda of law and fact in support thereof.

(2) A notice of agency action, request for agency action, and any pleadings relative thereto must be double-spaced, typewritten or legibly handwritten, and presented on standard 8 1/2 by 11 inch paper. Pleadings filed relative to a notice of agency action or request for agency action shall contain a clear and concise statement of the matter that is the basis of the pleading, with an appropriate ~~[prayer for]~~description of the relief sought.

(3) The presiding officer may allow pleadings to be amended at any time. Initiatory pleadings may be amended without leave of the presiding officer at any time before a responsive pleading has been filed. Defects in pleadings which do not affect substantial rights of the parties shall be disregarded.

(4) Motions may be submitted either by written motion or oral argument and the filing of affidavits in support or contravention thereof may be permitted. A written motion must be accompanied by a supporting memorandum of fact and law.

(5) Pleadings shall be signed by the party or the party's representative and shall show the signer's address. The signature shall be deemed to certify that the signer has read the pleading and that, to the best of the signer's knowledge and belief, there is good ground to support it.

(6) Exhibits must be clearly marked to show the ~~[docket number, the]~~party proffering the exhibit, and the exhibit number.

(7) All pleadings shall be submitted to the presiding officer at least 20 days prior to the date upon which the matter that is the subject of the pleadings will be decided.

(8) An original ~~and 10 copies~~ of all pleadings, affidavits, briefs, memoranda, and exhibits will be filed with the division. The presiding officer may direct any party to provide additional copies as needed.

(9)(a) Upon the issuance of a notice of agency action or after receipt of a request for agency action, the presiding officer shall provide notice to all parties of the pending adjudicative proceeding.

(b) Any response to a notice of agency action or request for agency action must be submitted within 30 days of the mailing date of the notice of agency action or the notice required under Subsection 63-46b-3(3)(d), which shall include:

- (i) the docket number or other reference number;
- (ii) the name of the adjudicative proceeding;
- (iii) a statement of the relief that the respondent seeks;
- (iv) a statement of the facts; and
- (v) a statement summarizing the reasons that the relief requested should be granted.

(10) The presiding officer may extend the response time for good cause.

R657-2-9. Parties.

(1) Parties to an adjudicative proceeding shall be persons who have a statutory right to be parties and persons who have a legally-protected interest or right in the subject matter which may be affected by the proceeding.

(2) The division will be considered a party to all adjudicative proceedings conducted by the Wildlife Board.

R657-2-10. Appearances and Representation.

(1) Parties shall enter their appearances at the beginning of the hearing or at such time as may be designated by the presiding officer by stating:

- (a) the party's full name and address; and
- (b) the party's position or interest in the proceeding.

(2) Any individual or an agent designated by an individual, partnership, corporation, association, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character, or another agency, may represent his, her, or its interest in the proceeding.

(3) Any party may be represented by an attorney ~~licensed to practice in Utah or an attorney licensed to practice in another jurisdiction who meets the rules of the Utah State Bar for practicing law before the courts of the state of Utah~~ or legal representative as authorized and permitted by the Utah State Bar and state law.

(4) Subject to the limitations imposed by the presiding officer to ensure the adjudicative proceeding is conducted in an orderly and efficient manner, each party to an adjudicative proceeding may participate in the hearing and may introduce evidence, examine and cross-examine each witness, make arguments, and participate generally in the proceeding.

R657-2-11. Notice and Service.

(1) Timely notice of ~~the proceeding~~ all proceedings shall be given to all parties and any other person who, in the opinion of the presiding officer, has a direct interest in the proceeding.

(2) When a party is represented by an attorney or other authorized representative, service upon the attorney or representative shall constitute service upon the party.

(3) Any person desiring notification by mail from the Wildlife Board or division of specific matters may request to be notified by filing the name, address, telephone number, and specific matters for which the person seeks notification.

R657-2-12. Discovery.

(1)(a) Discovery for informal hearings is prohibited and the division or Wildlife Board may not issue subpoenas or other discovery orders.

(b) Upon motion by a party to a formal hearing, and for good cause shown, the presiding officer may authorize discovery against another party to a formal hearing, including the division, as provided in the Utah Rules of Civil Procedure.

(2) All parties ~~shall~~ may have access, upon request, to information contained in division files and all materials and information gathered in any investigation pertinent to the adjudicative proceeding, to the extent permitted under Title 63, Chapter 2 - Governmental Records Access and Management Act and under Title 63, Chapter 46b - Administrative Procedures Act.

(3) Subpoenas and other orders to secure the attendance of witnesses or the production of evidence in formal adjudicative proceedings shall be issued by the presiding officer when requested by any party, or may be issued by the presiding officer at the presiding officer's discretion in the interest of just, fair, and economic decision making.

R657-2-13. Prehearing Procedure.

The presiding officer may, upon written notice to all parties of record, hold a prehearing conference to:

- (1) formulate or simplify the issues;
- (2) obtain admission of fact and documents that will avoid unnecessary introduction of evidence or other efforts of establishing proof of a matter asserted;
- (3) arrange for the exchange of proposed exhibits; and
- (4) agree to matters that may expedite the orderly conduct of the proceedings or its settlement.

R657-2-14. Continuance.

(1) Any party may, by filing a motion, request the presiding officer to continue an adjudicative proceeding, provided the motion is filed within a reasonable time prior to the date of the hearing and proper notice is given to the other parties to the proceeding. The presiding officer ~~will~~ may grant such a request and continue the proceeding until the next regularly scheduled meeting, or another more convenient time, unless in the presiding officer's judgement, it would be contrary to the just and fair resolution of the proceeding.

(2) The Wildlife Board, on its own motion, or on the motion of the division, may order the continuance of any proceeding until the next regularly scheduled meeting of the Wildlife Board in order to allow adequate time for division staff to evaluate any evidence presented during a hearing.

R657-2-15. Intervention.

(1) A person may not intervene in an informal adjudicative proceeding, unless allowed by the presiding officer for good cause.

(2) A person may file a petition for an order granting leave to intervene in a formal adjudicative proceeding as provided in Section 63-46b-9 and in accordance with the following:

(a) Any petition to intervene or materials filed after the date a response is due may be considered at the next regularly scheduled meeting only upon separate motion of the intervenor made at or before the hearing for good cause shown.

(b) Any party to a formal adjudicative proceeding in which intervention is sought may make an oral or written response to the petition for intervention. The response shall:

(i) state the basis for opposition to intervention and may suggest limitations to be placed upon the participation of the intervenor if intervention is granted; and

(ii) be presented or filed at or before the hearing.

(3) The presiding officer will consider the petition for an order granting leave to intervene and any response in determining whether to allow a party to intervene.

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

(5) Where two or more intervenors have substantially the same interests and positions in the proceeding the presiding officer may at any time during the proceeding limit the number of intervenors who will be permitted to testify, cross-examine witnesses, or make and argue motions and objections.

R657-2-16. Hearings, Evidence, and Argument.

(1)(a) After the commencement of an adjudicative proceeding, the presiding officer ~~shall~~ may hold a hearing if:

(i) a hearing is required by statute or rule; or

(ii) a hearing is requested by a party within 30 days after the commencement of the adjudicative proceeding.

(b) The presiding officer may, at the presiding officer's discretion, initiate a hearing to determine matters within the presiding officer's authority.

(2) Notice of the hearing shall be served on all parties by regular mail at least 10 days prior to the hearing.

(3) If the hearing is informal, it shall be conducted in accordance with the provisions of Section 63-46b-5. If the hearing is formal it shall be conducted in accordance with the provisions of Section 63-46b-8.

(4)(a) An informal hearing may be conducted without adherence to the rules of evidence required in judicial proceedings. The Utah Rules of Evidence shall be used as a guide for evidentiary matters in formal hearings.

(b) The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence from the hearing.

(c) The weight given to evidence shall be determined by the presiding officer.

~~[(d) Any relevant evidence may be admitted if it is the type of evidence upon which a reasonable person under similar circumstances would rely.~~

~~—(e) Hearsay evidence may be used in an informal hearing to supplement or explain other evidence, but it shall not be sufficient by itself to support a finding unless the evidence would be admissible in a judicial proceeding.~~

~~—(5) In a formal hearing, the presiding officer may not exclude evidence solely because it is hearsay. No finding of fact that was contested, however, may be based solely on hearsay evidence unless the evidence is admitted under the Utah Rules of Evidence.](5) Hearsay evidence is admissible in informal and~~

formal hearings consistent with Utah law governing the admissibility of such in administrative adjudicative proceedings.

(6) Documentary evidence may be received in the form of copies or excerpts and, upon request, parties shall be given an opportunity to compare the copy with the original.

~~(7) [The presiding officer may take official notice of the following matters:~~

~~—(a) proclamations, rules, regulations, official reports, memoranda of understanding, contracts, and written decisions, orders, or policies of the Wildlife Board, division, or any other state or federal regulatory agency;~~

~~—(b) official documents introduced into the record by proper reference; provided, however such documents shall be made available so the parties to the hearing may examine the documents and present rebuttal testimony if so desired;~~

~~—(c) matters of common knowledge and generally recognized technical or scientific facts within the division or Wildlife Board's specialized knowledge; and~~

~~—(d) any factual information which the presiding officer may have gathered from a field inspection.~~

~~—(8)] Upon the conclusion of taking evidence, the presiding officer may, in the presiding officer's discretion, permit the parties to make closing oral arguments.~~

R657-2-17. Burden of Proof.

The petitioner shall have the burden of proof by preponderance of the evidence in all adjudicative proceedings.

R657-2-18. Record of Hearing.

(1) The division or Wildlife Board may record any informal hearing. The division or Wildlife Board shall record formal hearings.

(2)(a) Any party, at the party's own expense, may have a reporter, approved by the division or Wildlife Board, prepare a transcript from the record of the hearing and shall furnish a transcript of the testimony to the division or Wildlife Board free of charge.

(b) This transcript shall be available at the Salt Lake division office to any party to the hearing.

R657-2-19. Failure to Appear - Default.

(1) When a party or the party's authorized representative to a proceeding fails to appear at a hearing after due notice has been given, the presiding officer may:

(a) continue the matter;

(b) enter an order of default as provided by Section 63-46b-11; or

(c) hear the matter in the absence of the defaulting party.

R657-2-20. Decisions and Orders.

(1) After the presiding officer has reached a final decision upon the adjudicative proceeding, the presiding officer shall issue a signed order in writing:

(a) in accordance with Section 63-46b-5(1)(c) for orders issued at the conclusion of an informal hearing; and

(b) in accordance with Section 63-46b-10 for orders issued at the conclusion of a formal hearing.

R657-2-21. Agency Review.

(1)(a) When a division action is taken by a division employee, other than the director acting as the presiding officer, any aggrieved party may seek review of the order.

(b) The request for review shall be made to the director in accordance with Section 63-46b-12(1).

(c) Except as provided in Section 63-46b-14(2), review by the director is a prerequisite for judicial review.

(2) Requests for review of an action within the statutory or regulatory purview of the division shall:

(a) be filed with the director within 30 days after the issuance of the order; and

(b) be sent to each party.

(3) The request for review shall be reviewed by the director or the assistant director, when designated by the director.

(4)(a) Unless otherwise provided by law, all reviews shall be based on the record before the presiding officer.

(b) In order to assist in review, parties, upon request, may be allowed to file briefs or other documents explaining their position.

(5) Parties are not entitled to a hearing on review unless:

(a) specifically allowed by statute; or

(b) the director grants a hearing to assist the review.

(6) Notice of any hearing shall be mailed to all parties within 10 days of the hearing.

(7)(a) Within a reasonable time after the filing of any response, other filings, or after any hearing, the director shall issue a written order on review and mail a copy of the order on review to each party.

(b) The order on review shall contain the items, findings, conclusions, and notices set forth in Subsection 63-46b-12(6)(c).

~~R657-2-22]. Request for Reconsideration.~~

~~(1) Within 20 days after the date an order is issued under Section R657-2-20, any aggrieved party may file a request for reconsideration as provided in Section 63-46b-13.~~

~~(2)(a) The presiding officer shall issue a written order granting or denying the request for reconsideration.~~

~~(b) If such an order is not issued within 20 days after the filing of the request, the request for reconsideration shall be considered denied.~~

~~(3) Any order granting a reconsideration shall be strictly limited to the matter specified in the order.~~

~~R657-2-23]. Judicial Review.~~

~~(1) Any party aggrieved by final division or Wildlife Board action may obtain judicial review of such action pursuant to Sections 63-46b-14, 63-46b-15, and 63-46b-16, except where judicial review is expressly prohibited by statute.~~

~~(2) A petition for judicial review shall be filed within 30 days after the date the order constituting final agency action is issued.~~

~~(3) A party may seek judicial review of an action taken by the division or Wildlife Board only after exhausting all administrative remedies available, including those available through the Wildlife Board and the regional advisory councils, as required herein, unless a court of competent jurisdiction makes a finding that requiring exhaustion:~~

~~(a) would result in irreparable injury; or~~

~~(b) would serve no useful purpose.~~

R657-2-[24]23. Declaratory Orders.

(1) Pursuant to Section 63-46b-21, any person may file a request for agency action requesting that the division or Wildlife Board issue a declaratory order determining the applicability of any statute, rule, or order within the primary jurisdiction of the division or Wildlife Board.

(2) A request for a declaratory order shall set forth:

(a) the specific statute, rule, or order which is in question;

(b) the specific facts for which the order is requested;

(c) the manner in which the person making the request claims the statute, rule, or order may affect him or her; and

(d) the specific questions for which a declaratory order is requested.

(3) The division or Wildlife Board may, in their discretion, decline to issue declaratory orders where they deem the facts presented to be conjectural, or where the public interest would best be served by not issuing such an order.

R657-2-[25]24. Emergency Orders.

The division or Wildlife Board may issue an order on an emergency basis without complying with this rule under the circumstances and procedures set forth in Section 63-46b-20.

KEY: wildlife, administrative procedures

~~[June 18, 1997] 2002~~

Notice of Continuation May 15, 2002

63-46b-5

23-14-2.1



Natural Resources, Wildlife Resources

R657-5

Taking Big Game

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 24838

FILED: 05/15/2002, 13:19

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council meetings and the Wildlife Board meeting conducted for taking public input and reviewing the big game antlerless and doe limited entry hunts and drawing as approved by the Wildlife Board.

SUMMARY OF THE RULE OR CHANGE: Section R657-5-50 is being amended to delete provisions specific to antlerless elk control permits. Section R657-5-59 is being amended to clarify the standards and procedures for processing late applications. Section R657-5-64 is being amended to allow a person to withdraw their application and reapply in the antlerless drawing or to amend their application for the antlerless drawing provided the withdrawal, reapplication, or amendment is completed by the initial application deadline. Other changes are being made for consistency.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-14-18 and 23-14-19

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: These amendments are for clarification and to allow the withdrawal, re-application or amendment to an application in the antlerless drawing. Therefore, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or DWR's budget.

❖ LOCAL GOVERNMENTS: None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

❖ OTHER PERSONS: These amendments are for clarification and to allow the withdrawal, reapplication, or amendment to an application in the antlerless drawing. Therefore, the amendments do not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These amendments are for clarification and to allow the withdrawal, re-application or amendment to an application in the antlerless drawing. DWR determines that there are no additional compliance costs associated with these amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Debbie Sundell at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at dsundell.nrdwr@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 PM on 07/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: Kevin Conway, Director

R657. Natural Resources, Wildlife Resources.

R657-5. Taking Big Game.

R657-5-50. Antlerless Elk Hunts.

(1) To hunt an antlerless elk, a hunter must obtain an antlerless elk permit.

(2)(a) An antlerless elk permit allows a person to take one antlerless elk using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless elk permit for a cooperative wildlife management unit as specified on the permit.

(3)(a) A person may obtain two elk permits each year, provided one or both of the elk permits is an antlerless elk permit[~~or an antlerless elk control permit~~].

(b) For the purposes of obtaining two elk permits, a hunter's choice elk permit may not be considered an antlerless elk permit.

(4)(a) A person who obtains an antlerless elk permit[~~, except an antlerless elk control permit as provided in Subsection (5),~~] and any of the permits listed in Subsection (b) may use the antlerless elk permit during the established season for the antlerless elk permit and during the established season for the permits listed in Subsection (b) provided:

(i) the permits are both valid for the same area;

(ii) the appropriate archery equipment is used if hunting with an archery permit;

(iii) the appropriate muzzleloader equipment is used if hunting with a muzzleloader permit.

(b)(i) General archery deer;

(ii) general archery elk;

(iii) general muzzleloader deer;

(iv) general muzzleloader elk;

(v) limited entry archery deer;

(vi) limited entry archery elk;

(vii) limited entry muzzleloader deer; or

(viii) limited entry muzzleloader elk.

[~~(5)(a) Antlerless elk control permits have been established to provide harvest of sufficient antlerless elk to maintain populations at management objective levels on units where this has proven difficult.~~

[~~(b) Any person who obtains a general elk permit may purchase an antlerless elk control permit provided no other antlerless elk permit has been obtained.~~

[~~(i) Antlerless elk control permits are available at Division offices beginning on the date published in the Antlerless Addendum to the Bucks, Bulls and Once In A Lifetime Proclamation of the Wildlife Board for taking big game.~~

[~~(e) A person who obtains an antlerless elk control permit may use the antlerless elk control permit only during the established general season for which they have a general elk permit provided:~~

[~~(i) the appropriate archery equipment is used if hunting with a general elk archery permit;~~

[~~(ii) the appropriate muzzleloader equipment is used if hunting with a general elk muzzleloader permit (includes ML300 and general muzzleloader spike bull permits); or~~

[~~(iii) a legal weapon is used if hunting with a general season elk permit; and~~

[~~(iv) the person has both the general elk permit and antlerless elk control permit in their possession.~~

[~~(d) Antlerless elk control permits are valid only on the following general elk units:~~

[~~(i) Chalk Creek;~~

[~~(ii) East Canyon;~~

- (iii) ~~Nine Mile, Range Creek;~~
- (iv) ~~Plateau; and~~
- (v) ~~South Slope, Yellowstone.]~~

R657-5-59. Antlerless Application - Deadlines.

(1) Applications are available from license agents, division offices, and through the division's Internet address.

(2) Residents may apply for, and draw the following permits, except as provided in Subsection (4):

- (a) antlerless deer;
- (b) antlerless elk;
- (c) doe pronghorn; and
- (d) antlerless moose.

(3) Nonresidents may apply in the drawing for, and draw the following permits, except as provided in Subsection (4):

- (a) antlerless deer;
- (b) antlerless elk;
- (c) doe pronghorn; and
- (d) antlerless moose, if permits are available during the current year.

(4) Any person who has obtained any elk permit, a pronghorn permit, or a moose permit may not apply for an antlerless elk permit, doe pronghorn permit, or antlerless moose permit, respectively, except as provided in Section R657-5-63.

(5) A person may not submit more than one application in the initial drawing per each species as provided in Subsections (2) and (3).

(6) Only a resident may apply for or obtain a resident permit and only a nonresident may apply for or obtain a nonresident permit, except as provided in Subsections R657-5-61(3) and R657-5-63(4).

(7)(a) Applications must be mailed by the date prescribed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game. Applications filled out incorrectly or received later than the date prescribed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game may be rejected.

(b) If an error is found on an application, the applicant may be contacted for correction.

(8)(a) Late applications, received by the date published in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation, will not be considered in the drawing, but will be processed for the purpose of entering data into the division's draw data base to provide:

- (i) future pre-printed applications;
- (ii) notification by mail of late application and other draw opportunities; and
- (iii) re-evaluation of division or third-party errors.

(b) The \$5 handling fee will be used to process the late application. Any permit fees submitted with the application will be refunded.

(c) Late applications received after the date published in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation shall not be processed and shall be returned to the applicant.

(9) Any person who applies for a hunt that occurs on private land is responsible for obtaining written permission from the landowner to access the property. To avoid disappointment and wasting the permit and fee if access is not obtained, hunters should get written permission before applying. The division does not

guarantee access and does not have the names of landowners where hunts occur.

(10) To apply for a resident permit, a person must establish residency at the time of purchase.

(11) The posting date of the drawing shall be considered the purchase date of a permit.

R657-5-60. Fees for Antlerless Applications.

Each application must include the permit fee and a nonrefundable handling fee for each species applied for, except when applying with a credit card, the permit fees and handling fees must be paid pursuant to Rule R657-42-8(5)(~~4~~).

R657-5-64. Application Withdrawal.

(1)(a) A person may withdraw their application for premium limited entry, limited entry, cooperative wildlife management unit and once-in-a-lifetime, and general buck deer and general muzzleloader elk permits from the big game drawing, or antlerless drawing by requesting such in writing by the date published in the Bucks, Bulls and Once-In-A-Lifetime Proclamation or Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

~~[(2)]~~(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the Salt Lake Division office.

~~[(3) A person may not amend a withdrawn application, nor reapply after the application has been withdrawn.]~~(c) An applicant may reapply in the antlerless drawing provided:

- ~~[(4)]~~(i) the original application is withdrawn;
- (ii) the new application is submitted with the request to withdraw the original application;
- (iii) both the new application and request to withdraw the original application are received by the initial application deadline; and
- (iv) both the new application and request to withdraw the original application are submitted to the Salt Lake Division office.

(d) Handling fees will not be refunded.

(2)(a) An applicant may amend their application for the antlerless drawing by requesting such in writing by the initial application deadline.

(b) The applicant must send their notarized signature with a statement requesting that their application be amended to the Salt Lake Division office.

(c) The applicant must identify in their statement the requested amendment to their application.

KEY: wildlife, game laws, big game seasons*

~~[March 5,]2002~~

Notice of Continuation November 30, 2000

23-14-18

23-14-19

23-16-5

23-16-6



Natural Resources, Wildlife Resources
R657-29
 Government Records Access
 Management Act

NOTICE OF PROPOSED RULE

(Amendment)
 DAR FILE NO.: 24837
 FILED: 05/15/2002, 13:19

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council meetings and the Wildlife Board meeting conducted for taking public input and reviewing the procedures for access to Division of Wildlife Resources' records.

SUMMARY OF THE RULE OR CHANGE: Section R657-29-2 is being amended to define "Department" and "Division." Sections R657-29-4 and R657-29-9 are being amended to require that any request for a private, controlled, or protected record and any appeal of access determination must be in writing. Other changes are being made for consistency and clarity.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63-2-204(2)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: These amendments are for clarification only. Therefore, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or the DWR's budget.
- ❖ LOCAL GOVERNMENTS: None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the amendment. Nor are local governments indirectly impacted because the amendment does not create a situation requiring services from local governments.
- ❖ OTHER PERSONS: These amendments are for clarification. The amendments do not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--These amendments are for clarification. There are not any additional compliance costs associated with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule do not create an impact on businesses.

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

NATURAL RESOURCES
 WILDLIFE RESOURCES
 1594 W NORTH TEMPLE
 SALT LAKE CITY UT 84116-3154, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Debbie Sundell at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at dsundell.nrdwr@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 PM on 07/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: Kevin Conway, Director

R657. Natural Resources, Wildlife Resources.
R657-29. Government Records Access Management Act.
R657-29-1. Purpose and Authority.

(1) This rule prescribes where and to whom requests for information shall be directed and provides procedures for access to division records as allowed under Subsection 63-2-204(2).

(2) Specific procedures for requesting division records are provided in Chapter 2, Title 63, Government Records Access and Management Act.

R657-29-2. Definitions.

(1) Terms used in this rule are defined in Section 63-2-103.

(2) In addition:

(a) "Department" means the Department of Natural Resources.

(b) "Division" means the Division of Wildlife Resources

(c) "Records officer" means the individual located in the Salt Lake division office designated by the director of the division to work with state archives in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records.

~~[(b) "Division" means the Division of Wildlife Resources.]~~

R657-29-3. Allocation of Responsibility Within the Division.

The division is considered a governmental entity and the director of the division is considered the head of the governmental entity.

R657-29-4. Requesting Information.

(1) A person making a request for any private, controlled or protected record shall furnish the division with a written request as provided in Subsection 63-2-204(1) on a form provided by the division.

(2)(a) A request for any record shall be made only to the records officer in the Salt Lake division office located at ~~[4596]~~1594 West North Temple, Salt Lake City, Utah 84114.

(b) Response to a request submitted to any person other than the records officer in the Salt Lake division office may be delayed.

(3)(a) The records officer shall respond to each request according to Section 63-2-204.

(b) Under authority of Subsection 63-2-201(5)(b) the director may, in his discretion, disclose records that are private under Subsection 63-2-302(2) or protected under Section 63-2-304 to persons other than those specified in Section 63-2-202 or 63-2-206 if he determines there is no interest in restricting access to the record, or that the interests favoring access outweighs the interest favoring restriction of access.

R657-29-5. Requests for Access for Research Purposes.

(1) Access to private or controlled records for research purposes is allowed under Section 63-2-202(8).

(2) Requests for access to private or controlled records for research purposes may be made to the records officer in the Salt Lake division office.

R657-29-6. Intellectual Property Records.

(1) The division may duplicate and distribute an intellectual property right that is owned by the division in accordance with Section 63-2-201(10).

(2) Decisions with regard to these rights shall be made by the records officer in the Salt Lake division office.

(3) Any request regarding the duplication and distribution of such materials shall be made in writing to the records officer in the Salt Lake division office.

R657-29-7. Fees.

(1) The division, pursuant to Section 63-2-203, may charge a reasonable fee to cover the actual cost of duplicating a record or compiling a record in a form other than that maintained by the division.

(2) The division shall establish fees ~~[according to]~~ in accordance with Subsection 63-38-~~[3(3)]~~ 3.2.

(3) Fees must be paid at the time of the request or before the records are provided to the requester.

(4) The records officer may fulfill a record request without charge according to the guidelines established in Subsection 63-2-203(3).

(5) Requests for a fee waiver may be made to the records officer in the Salt Lake division office.

R657-29-8. Denials.

(1) If the records officer denies a request in whole or in part, he shall send a notice of denial to the requester either in person or by sending the notice to the requester's address.

(2) The notice of denial shall contain the information required in Subsection 63-2-205(2).

R657-29-9. Appeal of Access Determination.

(1) Any person aggrieved by an access determination made by the records officer, including a person not a party to the division proceeding may, within 30 days after the determination, appeal the determination ~~[to the director]~~ by submitting a notice of appeal ~~[on a form provided by the division]~~ in writing to the department executive director.

(2) The notice of appeal shall contain the information provided in Subsection 63-2-401(2).

(3) Upon receiving the notice of appeal, the department executive director shall make a determination according to the guidelines and within the time periods specified in Section 63-2-401.

R657-29-10. Appeal of Request to Amend a Record.

(1) Any individual contesting the accuracy or completeness of any public, private, or protected record concerning him may request the division amend the record according to the guidelines specified in Subsection 63-2-603(2).

(2) The request to amend shall be considered a request for agency action as prescribed in Subsection 63-46b-3 and the adjudicative proceeding shall be conducted informally according to

the procedures prescribed in Section 63-46b-5 and R657-2, Adjudicative Proceedings.

(3) Any request to amend a record must be made to the records officer in the Salt Lake division office on a form provided by the division.

KEY: government documents, freedom of information, public records

~~[1992]~~ 2002

Notice of Continuation May 15, 2002

63-2-204



Natural Resources, Wildlife Resources

R657-42

Accepted Payment of Fees, Late Fees, Exchanges, Surrenders, Refunds and Reallocation of Licenses, Certificates of Registration and Permits

NOTICE OF PROPOSED RULE

(Amendment)

DAR FILE NO.: 24836

FILED: 05/15/2002, 13:18

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended pursuant to Regional Advisory Council meetings and the Wildlife Board meeting conducted for taking public input and reviewing the division's antlerless big game species program and drawing process, and providing the standards and procedures for allowing refunds of license or permit fees if the license holder is deployed or mobilized in the interest of national defense or emergency, pursuant to H.B. 223 adopted by the 2002 Utah Legislature. (DAR NOTE: H.B. 223 is found at UT L 2002 Ch 245, and was effective May 6, 2002.)

SUMMARY OF THE RULE OR CHANGE: Section R657-42-5 is being amended to provide the standards and procedures for issuing refunds for license or permit fees if the license holder is deployed or mobilized in the interest of national defense or emergency, pursuant to H.B. 223 adopted by the 2002 Utah Legislature. The provisions of this rule allow for refunds retroactive to September 11, 2001, and for future military actions and provide that: 1) a person who provides military or emergency services and who is deployed or mobilized in the interest of national defense or emergency, and has orders from their employer may request a refund; 2) a refund may be made if the license, certificate, or permit is surrendered within one year of the conclusion of the season and if the person no longer has the license, certificate, or permit in their possession, the person may provide an affidavit; and 3) the person must verify that they were precluded from participating in the activity as a result of the mobilization. Clarification if being made to provisions, which allow persons who die prior to participating in the hunting or fishing activity may have a

refund issued to the person entitled to administer their estate.

The person entitled to administer the deceased estate must provide documentation of the death and evidence that the person is authorized to administer the estate. Section R657-42-9 is being added for the assessment of late fees when submitting applications associated with commercial hunting areas, commercial harvesting, and Cooperative Wildlife Management Areas. An application received within 30 days of the due date may only be processed with a \$10 late fee. Other changes are made for consistency and clarity.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 23-19-1 and 23-19-38

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This amendment provides the standards and procedures for issuing refunds for license or permit fees if the license holder is deployed or mobilized in the interest of national defense or emergency, pursuant to H.B. 223 adopted by the 2002 Utah Legislature. The Division of Wildlife Resources (DWR) determines that this amendment may create a cost impact to the division by issuing these refunds, however, the number of refunds that will be issued is unknown. The other amendments to this rule do not create a cost or savings impact to the state budget or DWR's budget.

❖ LOCAL GOVERNMENTS: None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the rule. Nor are local governments indirectly impacted because the rule does not create a situation requiring services from local governments.

❖ OTHER PERSONS: This amendment provides the standards and procedures for issuing refunds for license or permit fees if the license holder is deployed or mobilized in the interest of national defense or emergency, pursuant to H.B. 223 adopted by the 2002 Utah Legislature. This amendment also allows the Division to assess a \$10 late fee for commercial permit applications. Therefore, this amendment does not impose any additional requirements on other persons, nor generate a cost or savings impact to other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: A person who submits a late application for a certificate of registration for a commercial hunting area, commercial harvesting, or for operating a Cooperative Wildlife Management Unit will be charged a \$10 late fee. Other changes are for clarification or for allowing the Division to issue refunds. DWR determines that there are not any other compliance costs associated with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendments to this rule may create an impact on businesses associated with commercial hunting areas, commercial harvesting, and operating a Cooperative Wildlife Management area if the application for the respective certificate of registration is received late and the \$10 late fee is assessed. However, by allowing the late application to be submitted and processed the businesses should not have any negative fiscal impact.

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

NATURAL RESOURCES
WILDLIFE RESOURCES
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Debbie Sundell at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at dsundell.nrdwr@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 PM on 07/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: Kevin Conway, Director

R657. Natural Resources, Wildlife Resources.

R657-42. Accepted Payment of Fees, Late Fees, Exchanges, Surrenders, Refunds and Reallocation of Licenses, Certificates of Registration and Permits.

R657-42-1. Purpose and Authority.

(1) Under the authority of Sections 23-19-1 and 23-19-38[,] the division may issue licenses, permits, tags and certificates of registration in accordance with the rules of the Wildlife Board.

(2) This rule provides the standards and procedures for the:

- (a) exchange of permits;
- (b) surrender of licenses, certificates of registration and permits;
- (c) refund of licenses, certificates of registration and permits;[~~and~~]
- (d) reallocation of permits; and
- (e) assessment of late fees.

R657-42-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and the applicable rules and proclamations of the Wildlife Board.

(2) In addition:

(a) "Alternate drawing lists" means a list of persons who have not already drawn a permit and would have been the next person in line to draw a permit.

(b) "Deployed or mobilized" means that a person provides military or emergency services in the interest of national defense or national emergency pursuant to the demand, request or order of their employer.

R657-42-3. Permit Exchanges.

(1)(a) Any person who has obtained a general buck deer or a general bull elk permit may exchange that permit for any other available general permit if both permits are for the same species and sex.

(b) A person must make general buck deer and general bull elk permit exchanges at any division office prior to the season opening date of the permit to be exchanged.

(2) Any person who has obtained a cougar harvest objective unit permit may exchange that permit for any other available cougar harvest objective unit permit as provided in Rule R657-10.

(3) The division may charge a handling fee for the exchange of a permit.

R657-42-4. Surrender of Licenses, Certificates of Registration and Permits.

(1) Any person who has obtained a license, certificate of registration or permit and decides not to use it, may surrender the license, certificate of registration or permit to any division office.

(2) Any person who has obtained a license, certificate of registration or permit may surrender the license, certificate of registration or permit prior to the season opening date of the license, certificate of registration or permit for the purpose of:

(a) waiving the waiting period normally assessed and reinstating the number of bonus points, including a bonus point for the current year as if a permit had not been drawn, if applicable; or

(b) purchasing a reallocated permit or any other permit available for which the person is eligible.

(3) A Cooperative Wildlife Management Unit permit must be surrendered before the following dates:

(a) the opening date for the respective general archery season for buck deer, bull elk or spike bull elk;

(b) September 1 for pronghorn and moose;

(c) August 15 for antlerless deer and elk;

(d) prior to the applicable season date for small game and waterfowl; and

(e) prior to the applicable season date of any variance approved by the Wildlife Board in accordance with Rules R657-21 and R657-37.

(4) Dedicated hunter participants must surrender their permits prior to the general archery deer season.

(5) The division may not issue a refund, except as provided in Section R657-42-5.

R657-42-5. Refunds of Licenses, Certificates of Registration and Permits.

(1) The refund of a license, certificate of registration or permit shall be made in accordance with ~~Section 23-19-38;~~

~~(2)(a) Section 23-19-38 and Rule R657-50;~~

~~(b) Section 23-19-38.2 and Subsection (3); or~~

~~(c) Section 23-19-38 and Subsection (4).~~

(2)(a) An application for a refund may be obtained from any division office.

(b) All refunds must be processed through the Salt Lake Division office.

(3) A person may receive a refund in accordance with Subsection (3) for a license, permit, or certificate of registration if that person was deployed or mobilized on or after September 11, 2001, in the interest of national defense or national emergency and is thereby completely precluded from participating in the hunting or fishing activity authorized by the license, permit or certificate of registration, provided:

(a) the refund request is made to the division within one year of the end of the hunting or fishing season authorized by the license, permit or certificate of registration;

(b) the person surrenders the license, permit or certificate of registration to the division, or signs an affidavit stating the license, permit or certificate of registration is no longer in the person's possession; and

(c) the person verifies that the deployment or mobilization completely precluded them from participating in the activity authorized by the license, permit or certificate of registration, except as provided in Subsection (5); and

(d) the person provides military orders, or a letter from an employment supervisor on official public health or public safety organization letterhead stating:

(i) the branch of the United States Armed Forces, or name of the public health organization or public safety organization from which they were deployed or mobilized; and

(ii) the nature and length of their duty while deployed or mobilized.

(4) The division may issue a refund for a license, permit or certificate of registration if the person to whom it was issued dies prior to participating in the hunting or fishing activity authorized by the license, permit or certificate of registration, provided:

(a) The person legally entitled to administer the decedent's estate provides the division with:

(i) picture identification;

(ii) letters testamentary, letters of administration, or such other evidence establishing the person is legally entitled to administer the affairs of the decedent's estate;

(iii) a photocopy of the decedent's certified death certificate; and

(iv) the license, permit or certificate of registration for which a refund is requested.

(5) The director may determine that a person deployed or mobilized, or a decedent did not have the opportunity to participate in the activity authorized by the license, permit or certificate of registration.

(6) The division may reinstate a bonus point or preference point, whichever is applicable, and waive waiting periods, if applicable, when issuing a refund in accordance with Subsection (3).

R657-42-6. Reallocation of Permits.

(1)(a) The division may reallocate surrendered limited entry, once-in-a-lifetime and Cooperative Wildlife Management Unit permits.

(b) The division shall not reallocate resident and nonresident big game general permits.

(2) Permits shall be reallocated through the Salt Lake Division office.

(3)(a) Any limited entry, once-in-a-lifetime or public Cooperative Wildlife Management Unit permit surrendered to the division shall be reallocated through the drawing process by contacting the next person listed on the alternate drawing list or as provided in Subsection (b).

(b) A person who is denied a permit due to an error in issuing permits may be placed on the alternate drawing list to address the error, if applicable, in accordance with the Division Error Policy.

(c) The alternate drawing lists are classified as private and therefore, protected under the Government Records Access Management Act.

(d) The division shall make a reasonable effort to contact the next person on the alternate list by telephone or mail.

(e) If the next person, who would have drawn the limited entry, once-in-a-lifetime or public Cooperative Wildlife Management Unit permit, does not accept the permit or the division is unable to contact that person, the reallocation process will continue until the division has reallocated the permit or the season ~~opens~~ closes for that permit.

(4) If the next person, who would have drawn the limited entry, once-in-a-lifetime or public Cooperative Wildlife Management Unit permit has obtained a permit, that person may be required to surrender the previously obtained permit in accordance with Section R657-42-4(2) and any other applicable rules and proclamations of the Wildlife Board.

(5) Any private Cooperative Wildlife Management Unit permit surrendered to the division will be reallocated by the landowner through a voucher, issued to the landowner by the division in accordance with Rule R657-37.

(6)(a) The division may allocate additional general deer permits and limited entry permits, if it is consistent with the unit's biological objectives, to address errors in accordance with the Division Error Policy.

(b) The division shall not allocate additional Cooperative Wildlife Management Unit and Once-In-A-Lifetime permits.

(c) The division may extend deadlines to address errors in accordance with the Division Error Policy.

R657-42-7. Reallocated Permit Cost.

(1) Any person who accepts the offered reallocated permit must pay the applicable permit fee.

(2) The division may not issue a refund, except as provided in Section R657-42-5.

R657-42-8. Accepted Payment of Fees.

(1) Personal checks, money orders, cashier's checks, and cards are accepted for payment of licenses, permits or certificates of registration.

(2) Personal checks drawn on an out-of-state account are not accepted.

(3) Third-party checks are not accepted.

(4) All payments must be made payable to the Utah Division of Wildlife Resources.

(5)(a) Credit cards must be valid at least 30 days after any drawing results are posted.

(b) Checks and credit cards will not be accepted as combined payment on single or group applications.

(c) If applicable, if applicants are applying as a group, all fees for all applicants in that group must be charged to one credit card.

(d) Handling fees and donations are charged to the credit card when the application is processed. Applicable license and permit fees are charged after the drawings, if successful.

(6)(a) An application is voidable if the check is returned unpaid from the bank or the credit card is invalid or refused.

(b) The division charges a returned check collection fee for any check returned unpaid.

(7) A license or permit received by a person shall be deemed invalid if payment for that license or permit is not received, or a check is returned unpaid from the bank, or the credit card is invalid or refused.

(8) Hunting with a permit where payment has not been received for that permit constitutes a violation of hunting without a valid permit.

(9) The division may require a money order or cashier's check to correct payment for a license, permit, or certificate of registration.

(10) Any person who fails to pay the required fee for any license, permit or certificate of registration, shall be ineligible to obtain any other license, permit, tag, or certificate of registration until the delinquent fees and associated collection costs are paid.

R657-42-9. Assessment of Late Fees.

(1) Any wildlife application submitted under the Utah Administrative Code Rules provided in Subsection (a) through (e), within 30 days of the applicable application deadline established in such rules, in the proclamations of the Wildlife Board, or by the division may be processed only upon payment of a \$10.00 late fee.

(a) R657-14, Commercial Harvesting of Protected Aquatic Wildlife;

(b) R657-21, Cooperative Wildlife Management Units for Small Game;

(c) R657-22, Commercial Hunting Areas;

(d) R657-37, Cooperative Wildlife Management Units for Big Game; or

(e) R657-43, Landowner Permits.

KEY: wildlife, permits

[July 18, 2001]2002

Notice of Continuation November 30, 2000

23-19-1

23-19-38



Public Safety, Peace Officer Standards and Training

R728-405

Drug Testing Requirement

NOTICE OF PROPOSED RULE

(New Rule)

DAR FILE NO.: 24859

FILED: 05/15/2002, 15:55

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Former rule expired due to computer software error.

SUMMARY OF THE RULE OR CHANGE: Reenact former rule; no changes in text.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 53-6-105, 53-6-203, and 53-6-211

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--This new rule simply reenacts the previous Rule R728-405 which expired May 14, 2002. No new costs or savings are associated with the new rule.

❖ LOCAL GOVERNMENTS: None--This new rule simply reenacts the previous Rule R728-405 which expired May 14, 2002. No new costs or savings are associated with the new rule.

❖ OTHER PERSONS: None--This new rule simply reenacts the previous Rule R728-405 which expired May 14, 2002. No new costs or savings are associated with the new rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This new rule simply reenacts the previous Rule R728-405 which expired May 14, 2002. No new costs or savings are associated with the new rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No impact on businesses.

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

PUBLIC SAFETY
PEACE OFFICER STANDARDS AND TRAINING
 4525 S 2700 W
 SALT LAKE CITY UT 84119, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Bonnie Braegger or Kenneth R. Wallentine at the above address, by phone at 801-965-4099 or 801-957-8531, by FAX at 801-965-4619 or 801-965-4519, or by Internet E-mail at bbraegge@dps.state.ut.us or kwallent@dps.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 PM on 07/01/2002.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2002

AUTHORIZED BY: Sidney P. Groll, Director

R728. Public Safety, Peace Officer Standards and Training.

R728-405. Drug Testing Requirement.

R728-405-1. Authority.

This rule is authorized by Sections 53-6-105, 53-6-203, and 53-6-211.

R728-405-2. Purpose.

A. Peace Officer Standards and Training has a compelling interest in ensuring that every student attending a basic peace officer

training course, who may become certified and sworn to uphold the law, be drug free.

B. When peace officers and potential peace officers participate in illegal drug use and drug activity, the integrity of the police profession is diminished and public confidence is destroyed.

C. In order to protect the citizens of the State of Utah, to preserve public trust and confidence in a fit and drug free peace officer profession, and to maintain the credibility of peace officer training academies, Peace Officer Standards and Training shall implement a drug testing program.

R728-405-3. Procedure.

A. Applicants accepted to a POST approved basic peace officer training program will be tested some time during the POST training curriculum.

B. Testing will be done by following the POST drug testing policy. The policy outlines the specimen collection procedures, drug testing methodology, and other information and requirements pertinent to such a policy.

R728-405-4. Failure to Pass Drug Test.

A. Students attending an academy will be dismissed if drug testing indicates a positive result considered by a medical review officer to be a result of intentional ingestion of an illegal drug.

B. Students who are dismissed may appeal the denial or dismissal by following the procedures outlined in the POST policy and procedure manual. Appeal procedures may be obtained in written form at POST.

KEY: law enforcement officers, drug testing, drug testing programs

2002

53-6-105

53-6-203



End of the Notices of Proposed Rules Section

Notices of 120-Day (Emergency) Rules Begin on the Following Page

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) (2001)).

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 (2001); and *Utah Administrative Code* Section R15-4-8.

Human Services, Child and Family Services **R512-43** Adoption Assistance

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 24829
FILED: 05/14/2002, 12:07

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The U.S. Department of Health and Human Services has changed its policies governing adoption assistance. This rule will make the requirements of adoption assistance for children in the custody of the Division of Child and Family Services consistent with Federal requirements and, in addition, this rule implements changes made in Utah statute during the 2001 legislative session.

SUMMARY OF THE RULE OR CHANGE: This rule clarifies and establishes definitions, criteria, and procedures for adoption assistance that are consistent with the U.S. Department of Health and Human Services regulations and State statutory changes (S.B. 97 2001 Legislature). (DAR NOTE: S.B. 97 is found at UT L 2002 Ch 115, and was effective April 30, 2001. Also, a corresponding proposed amendment is found under DAR No. 24831 in this Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-4a-801 through 62A-4a-806; and 8 USC 1641(b)

ANTICIPATED COST OR SAVINGS TO:

- ❖ THE STATE BUDGET: There should be no impact on State

budget because the number of individual children who qualify for adoption assistance should be within the number forecast in the current budget.

❖ LOCAL GOVERNMENTS: After careful analysis, there is no cost to local government. This rule does not affect local governments.

❖ OTHER PERSONS: Parents who disagree with the amount of adoption assistance granted or denied may incur the cost of legal counsel to represent them at an administrative hearing.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Parents who disagree with the amount of adoption assistance granted or denied may incur the cost of legal counsel to represent them at an administrative hearing.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: After careful analysis of any possible impact on businesses, the department has concluded that there will not be any impact.

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.

The U.S. Department of Health and Human Services has issued a series of regulations with which the Division of Child and Family Services must comply. This rule makes adoption assistance consistent between Federal law and regulations and State statute.

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

HUMAN SERVICES
CHILD AND FAMILY SERVICES
Room 225
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Steven Bradford at the above address, by phone at 801-538-8210, by FAX at 801-538-3993, or by Internet E-mail at sbradfor@hs.state.ut.us

THIS RULE IS EFFECTIVE ON: 05/14/2002

AUTHORIZED BY: Richard Anderson, Director

R512. Human Services, Child and Family Services.

R512-43. Adoption Assistance.

R512-43-1. Definitions.

In addition to terms defined in Section 62A-4a-902, the following terms are defined for purposes of this rule:~~(+) Definitions of adoption assistance, child with a special need, monthly subsidy, nonrecurring adoption expenses, state medical assistance, and supplemental adoption assistance are as stated in Section 62A-4a-802.~~

~~(1)(2)~~ Initiation of adoption proceedings means the earlier of (a) the date an Adoption Agreement is signed with the Division of Child and Family Services for placement of a child in the home, or (b) the date an adoption petition is filed.

~~(2)(3)~~ Child in public foster care ~~[for the purpose of adoption assistance]~~ means a judicially removed child whose placement ~~resulting [that results]~~ in adoption was immediately preceded by protective, temporary, or legal custody with a State IV-E agency, or a child who was placed with a State IV-E agency through a Voluntary Placement Agreement, or the child of a minor parent in foster care.

~~(3)(4)~~ State IV-E agency means ~~[Human Services,] the Division of Child and Family Services or a [other] public agency or tribal organization with whom the Division of Child and Family Services has an agreement [a Title IV-E agreement is]~~ in effect for foster care maintenance payments in accordance with Title IV-E, Section 42 USC 672.

~~(4)(5)~~ AFDC means the Aid to Families with Dependent Children~~[AFDC]~~ program that was in effect on July 16, 1996.

~~(5)(6)~~ Child with a previous IV-E agreement means a child who was Title IV-E eligible in a previous adoption with a fully executed adoption assistance agreement originating in any state, and the previous adoption was legally dissolved or ended due to the death of both of the adoptive parents.

R512-43-2. Purpose and Authority.

(1) The purpose of the Adoption Assistance program is to aid~~[assist]~~ an adoptive family to establish and maintain a permanent adoptive living arrangement~~[placement]~~ for a [qualifying-]child ~~[who meets the definition of a child with a special need and]~~ who qualifies for the program under state and federal law.

(2) The Adoption assistance program is intended to provide a permanent family~~[permanency]~~ for a child in public foster care or who receives~~[receiving]~~ SSI by providing financial and medical assistance for~~[on]~~ the child's benefit and best interest~~[behalf]~~ to the family who adopts the child.

(3) Title 62A, Chapter 4a, Part 9~~[Part 8]~~ authorizes the state to provide adoption assistance and supplemental adoption assistance and Section 473, Social Security Act, authorizes federal adoption assistance. Section 473, Social Security Act (2001), and 45 CFR

1356.40 (2000)~~(1995)~~ and 45 CFR 1356.41 (2000)~~(1995)~~ are incorporated by reference.

R512-43-3. General Requirements for Adoption Assistance.

(1) Qualification for adoption assistance is based upon the child meeting qualifying factors, not the adoptive family.

(2) A child qualifies for adoption assistance if all of the following are met:~~[Qualifying factors for adoption assistance include:]~~

(a) The State has determined that the child cannot or should not be returned home~~[-]~~.

(b) The State can document that reasonable efforts were made to place the child for adoption without providing adoption assistance. An exception applies if the child has significant emotional ties with the adoptive family and it is not in the child's best interest to consider a different adoptive placement.

(c) The State determines the child meets the definition of a child with a special need in accordance with Section 62A-4a-901, et seq.

(i) A child under age five in public foster care meets the special need definition of "a child with a physical, emotional or mental disability" when the child is at risk to develop such a condition due to specific factors identified in the child's or birth parents' health and social histories.

(3) In determining eligibility for adoption assistance, there is no income eligibility requirement or means test for the adoptive parents.

~~(3)(4)~~ A child must be a U.S. citizen or qualified alien to receive adoption assistance.

~~(4)(5)~~ An application for adoption assistance is submitted to the regional adoption subsidy committee on a form provided by the Division.

~~(5)(6)~~ Application for adoption assistance, approval, and completion of the adoption assistance agreement, including signatures of an adoptive parent and a representative from the Division, are to be completed prior to finalization of the adoption.

~~(6)(7)~~ Adoptive parents may request adoption assistance after an adoption is finalized by requesting a fair hearing through the Office of Administrative Hearings. Adoption assistance may only be granted after finalization when the conditions stated in R512-43-11-2(a) are met.

~~(7)(8)~~ Adoption assistance usually begins after finalization of an adoption. However, adoption assistance may be initiated at the time of placement if the child is legally free for adoption, the adoptive home is approved, adoption proceedings are initiated, an adoption assistance agreement is fully executed prior to placement, and foster care maintenance payments are not being provided for the child.

~~(8)(9)~~ An adoption assistance agreement shall be approved and have all required signatures before any payments may be made to an adoptive family or before state medical assistance may be initiated.

~~(9)(10)~~ A qualified child shall continue to be eligible to receive adoption assistance until a child reaches age 18 unless causes for termination apply as stated in R512-43-11. Assistance may be extended until a child reaches age 21 when the regional adoption subsidy committee has determined that the child has a mental or physical disability that warrants continuing assistance.

(a) An extension of adoption assistance beyond age 18 is warranted if the child meets the criteria for services in the

Department of Human Services, Division of Services for People with Disabilities.

~~(40)~~(11) The Division is responsible for notifying a prospective adoptive family of the availability of adoption assistance when the family begins an adoptive placement of~~adopts~~ a qualified child in public foster care.

(12) The adoptive parents are responsible to notify the Division of any circumstances that may affect the child's eligibility for adoption assistance or eligibility for adoption assistance in a different amount.

R512-43-4. Reimbursement of Non-Recurring Adoption Expenses.

(1) A parent who adopts a child meeting all of the qualifying factors for adoption assistance listed in R512-43-3(2) may be reimbursed for non-recurring adoption expenses on behalf of the child.

(2) A parent may be reimbursed up to \$2,000 per child for allowable non-recurring expenses directly related to the legal adoption of a child with a special need. Reimbursement shall be limited to costs approved by the regional adoption subsidy committee.

(3) Expenses may include reasonable and necessary adoption fees, court costs, adoption-related attorney fees, adoption home study, health and psychological examinations of adoptive parents, supervision of the placement prior to adoption, and transportation and reasonable costs of lodging and food for the child and/or adoptive parents during the placement or adoption process.

(4) Adoptive parents are responsible to provide necessary receipts for reimbursement.

(5) Only costs that are incurred in accordance with State and Federal law and that have not been reimbursed from other sources or funds may be included.

(6) Non-recurring adoption expenses are reimbursable through Title IV-E Adoption Assistance. The child does not have to be determined Title IV-E eligible for the parents to receive this reimbursement.

R512-43-5. Monthly Subsidy.

(1) Qualifying for a Monthly Subsidy.

~~(4)~~—A child qualifies for a monthly subsidy when the following requirements are met:

(a) The child meets all of the qualifying factors for adoption assistance listed in R512-43-3(2), and

(b) The child meets the definition of child in public foster care, qualifies for Supplemental Security Income (SSI), or meets the definition of a child with a previous IV-E agreement.

(i) The child's eligibility for SSI benefits is established no later than the time adoption proceedings are initiated.

(2) Guiding Principles for Monthly Subsidies~~(2) Determination of Level and Amount of Subsidy.~~

(a) The amount of monthly subsidy to be paid for a child is based on the child's present and long-term treatment and care needs and available resources, including the family's ability to meet the needs of the child. A combination of the parents' resources and subsidy should cover the ordinary and special needs expenses of the child projected over an extended period of time.

~~(b) For a child in public foster care, the requested amount of monthly subsidy is negotiated between the adoptive parent and caseworker.~~

~~—(b)(e)]~~ The amount of the monthly subsidy may not exceed the payment that would be made if the child was placed in a foster family home at the point in time when the agreement is being initiated or revised.

~~(c)(4)]~~ The amount of monthly subsidy may increase or decrease when the child's level of need or the family's ability to meet those needs changes. The family or the caseworker may initiate a change in the amount of subsidy at any time when needs or resources change.

~~(d) For a child in public foster care, the requested amount of monthly subsidy is negotiated between the adoptive parent and caseworker. The Adoptive Parent Statement of Disclosure items must be reviewed in depth by the caseworker and adoptive parent prior to subsidy negotiation.~~

~~(e) [Approval for the]~~The amount of the monthly subsidy is subject to the approval of the regional adoption subsidy committee. If the requested amount is not granted, the adoptive parent has a right to appeal as stated in R512-43-11.

(3) Process for Determining Monthly Subsidy Amount.

~~(a) Utilizing the level of need criteria specified in R512-43-5(4), the caseworker and adoptive family identify the child's level of need.~~

~~(b) The caseworker and adoptive family identify the applicable monthly subsidy payment range, according to the child's specified level of need, as specified in R512-43-5(5).~~

~~(c) The caseworker and adoptive family negotiate the amount of monthly subsidy to be requested from the regional adoption subsidy committee. The requested monthly subsidy amount may not exceed the maximum amount for the specific level of need identified for the child nor the maximum amount that the child would receive if placed in a foster family home.~~

~~(d) The identified need level for the child and requested amount of monthly subsidy is presented to the regional adoption subsidy committee for approval. If the requested amount is not approved or is reduced by the committee, the Division must send a written notice to the adoptive parents within 30 days informing them of the process to request a fair hearing.~~

(4) Determining Child's Level of Need.

~~(a) The level of need is determined by considering the child's age, history, physical, mental, emotional, and social functioning and needs, and any other relevant factors. Frequency of occurrence, duration, severity, and number of needs or problem areas are also considered.~~

~~(b) The presence of a particular issue listed within a designated level does not mandate that the child be categorized at that level. The child's needs, taken as a whole, determine the level selected for the child.~~

(c) Level of need is classified into three categories.

~~(i) Level One applies to a child with a minimal number and severity of needs. It is expected that most of these issues will improve with time, and significant improvement may be anticipated over the course of the adoption. For children ages five and under issues may include, but are not limited to: feeding problems, aggressive or self destructive behavior, victimization from sexual abuse, victimization from physical abuse; or no more than one developmental delay in fine motor, gross motor, cognitive or social/emotional domains. For children ages 6-18, issues may include but are not limited to: social conflict, physical aggression, minor sexual reactivity, need for education resource classes or tutoring, some minor medical problems requiring ongoing~~

monitoring, or mental health issues requiring time limited counseling.

(ii) Level Two applies to a child with a moderate number and severity of needs. It is expected that a number of these issues are long-term in nature and the adoptive family and child will be working with them over the course of the adoption, and some may intensify or worsen if not managed carefully. Outside provider support will probably continue to be needed during the course of the adoption. For children ages five and under, issues may include, but are not limited to: developmental delays in two or more areas of fine motor, gross motor, cognitive or social/emotional domains; diagnosis of failure to thrive; moderate genetic disease or physical handicapping condition; or physical aggression expressed several times a week, including superficial injury to self or others. For children ages 6-18, issues may include, but are not limited to: daily social conflict or serious withdrawn behavior; moderate risk of harm to self or others due to physically aggressive behavior; emotional or psychological issues with a DSM-IV diagnosis requiring ongoing counseling sessions over an extended period of time; moderate sexual reactivity or perpetration; chronic patterns of being destructive to items or property; cruelty to animals; mild mental retardation or autism, with ongoing need for special education services; and physical disabilities requiring ongoing attendant care or other caretaker support

(iii) Level Three applies to a child with a significant number or high severity of needs. It is expected that these issues will not moderate and may become more severe over time. The child's level of need may at some time require personal attendant care or specialized care outside of the home, when prescribed by a professional. For children ages five and under issues may include, but are not limited to: severe life threatening medical issues; moderate or severe retardation or autism; serious developmental delays in three or more areas of fine or gross motor, cognitive or social/emotional domains; anticipated need for ongoing support for activities of daily living, such as feeding, dressing and self care; or high levels of threat for harm to self or others due to aggressive behaviors. For children ages 6-18 issues may include, but are not limited to: moderate or severe retardation or autism; life threatening medical issues; severe physical disabilities not expected to improve over time; predatory sexual perpetration; high risk of serious injury to self or others due to aggressive behavior; serious attempts or threats of suicide; severely inhibiting DSM-IV diagnosed mental health disorders diagnosed within the past year that limit normal social and emotional development, such as an Axis 5 GAF score under 50; or need for ongoing self contained or special education services.

(d) The adoption subsidy committee must approve the level of need identified for the child.

(5) Identifying Amount for Monthly Subsidy Based Upon the Child's Level of Need.

(a) Each level of need corresponds to a dollar range in the amount of monthly subsidy that may be paid for a child, with the specific amount based upon the individual child's needs and the family's ability to meet those needs.

(b) The monthly subsidy amount for an individual child may not exceed the maximum amount for the payment range applicable to the child's level of need. A family may choose to defer receipt of a monthly subsidy for which a child qualifies, with the option to initiate a monthly subsidy at a later date, or to receive a lesser amount than would be allowable for the level of need at a given point in time.

(c) Monthly subsidy payments for a child's needs categorized as Level One range from zero to 40 percent of the maximum maintenance payment that may be paid for a child in a foster family home.

(d) Monthly subsidy payments for a child's needs categorized as Level Two range from 40 to 70 percent of the maximum maintenance payment that may be paid for a child in a foster family home.

(e) Monthly subsidy payments for a child's needs categorized as Level Three range from 70 to 100 percent of the maximum maintenance payment that may be paid for a child in a foster family home.

(f) For extraordinary, infrequent, or uncommon documented needs that cannot be covered by a monthly subsidy or state medical assistance, refer to supplemental adoption assistance in R512-43-7. ~~(f) The rates specified below shall be used to determine the level of need of the child and the amount of monthly subsidy appropriate for the need. The descriptions of need are not exhaustive, but serve as examples. The regional adoption committee may approve amounts above those described for each level when determined appropriate.~~

~~(g) The amount shall be determined by the needs of the child and based upon the relevant foster care payment that would be paid at the point in time at which the agreement amount is being initiated or revised. Title IVE funds shall be limited to the maximum foster care rate that would be paid on behalf of the child if in state custody and placed in a foster family home. Additional state funds may be granted when warranted by exceptional circumstances, not to exceed the amount the state would pay on behalf of the child if in custody.~~

~~(h) Rates:~~

~~(i) Level I. Up to 33% of the basic foster care rate. Child with minimal specialized needs such as child needing identified orthodontia work; infant without numerous placements and no identifiable physical, mental, or emotional disabilities.~~

~~(ii) Level II. From 34% to 66% of the basic foster care rate. Child with moderate specialized needs such as child requiring outpatient therapy; child having special needs due to past emotional and social trauma; child expected to be mainstreamed after placement adjustments.~~

~~(iii) Level III. From 67% to the maximum basic foster care rate. Child with multiple, moderate specialized needs such as child having a cluster of mild or moderate disabilities; child who can be mainstreamed with additional educational programs and therapy; sibling groups; child requiring speech therapy and specialized preschool; child requiring enrichment programs to compensate for social and emotional delays.~~

~~(iv) Level IV. From 67% to 85% of the specialized payment rate for foster care. Child with serious specialized needs such as child with prior residential placements; learning disabilities; DSM IV diagnoses such as attention deficit hyperactivity disorder, posttraumatic stress disorder, dysthymic, oppositional, attachment disorder; child with identified physical disabilities, learning problems including low IQ; child receiving specialized payment for foster care.~~

~~(v) Level V. From 86% of the specialized payment rate to the maximum payment rate for care in a foster home. Child with severe specialized needs such as child with severe physical disability; child with prior hospitalization for psychiatric diagnosis; prior adoption disruption, or dissolution of adoptive placement.]~~

(6) ~~(3)~~ Funding Sources and Eligibility for Monthly Subsidy.

(a) The two funding sources for the monthly subsidy are Title IV-E adoption assistance and state adoption assistance funds. The child's eligibility determines which funding source is used for payment.

(b) Title IV-E Adoption Assistance shall be considered first for the monthly subsidy. To receive Title IV-E Adoption Assistance, a child with special needs shall meet at least one of the following Federal requirements:

(i) A child is determined eligible for SSI by the Social Security Administration prior to the initiation of adoption proceedings.

(ii) The removal home for the child in public foster care received, or would have been eligible to receive, AFDC prior to removal, and the child was removed from the home as a result of a judicial determination that remaining in the home would be contrary to the child's welfare. In addition, the child meets AFDC requirements in the month adoption proceedings are initiated.

(iii) The child was voluntarily placed for foster care with the state and:

(A) ~~Was~~ Was or would have been AFDC eligible at the time of removal if application had been made,

(B) ~~The~~ The child lived with a specified relative within the six months prior to the voluntary placement,

(C) Title IV-E foster care maintenance payments were made on behalf of the child, and

(D) The child continues to meet AFDC requirements in the month adoption proceedings are initiated.

(iv) The child's needs were met through foster care maintenance payments made to and for the child's minor parents as provided by Subsection 475(4)(B) of the Social Security Act.

(v) The child meets the definition of a child with a previous IV-E agreement.

(c) State Adoption Assistance funds may be used for the monthly subsidy if the qualified child is not eligible for Title IV-E adoption assistance.

~~(7)~~ Use of the monthly subsidy.

The monthly subsidy may be used according to the parents' discretion. Some examples of the uses of the monthly subsidy payment are medical, dental, or mental health services not paid for by the state medical assistance or family insurance, special equipment for physically or mentally challenged children, respite, day care, therapeutic equipment, minor renovation of the home to meet special needs of the child, damage and repairs, speech therapy, tutoring, specialized preschool based on needs of the child, private school, exceptional basic needs such as special food, clothing, and/or shelter, visitations with biological relatives, cultural and heritage activities and information.

R512-43-6. State Medical Assistance.

(1) A child qualifies for state medical assistance as a component of adoption assistance when all of the following requirements are met:

(a) The child meets all of the qualifying factors for adoption assistance listed in R512-43-3(2), and

(b) The child meets the definition of child in public foster care, qualifies for Supplemental Security Income (SSI), or meets the definition of a child with a previous IV-E agreement.

(i) The child's eligibility for SSI benefits is established no later than the time adoption proceedings are initiated.

(c) The child meets state medical assistance citizenship requirements.

(2) A qualified child may receive state medical assistance through an adoption assistance agreement without also receiving a monthly subsidy payment.

R512-43-7. Supplemental Adoption Assistance.

(1) A child meeting all qualifying criteria for a monthly subsidy and for whom an adoption assistance agreement for a monthly subsidy or state medical assistance is in effect may qualify for supplemental adoption assistance.

(2) Supplemental adoption assistance may only be used for extraordinary, infrequent, or uncommon documented needs not otherwise covered by a monthly subsidy, state medical assistance, or other public benefits for which a child who has a special need is eligible.

(3) Supplemental adoption assistance is not an entitlement, and will be granted only when justified by unique needs of the child and when all other resources for which a child is eligible have been exhausted.

(4) Supplemental adoption assistance requests up to \$3,000 will be considered and are subject to the approval of the regional adoption subsidy committee.

(5) Supplemental adoption assistance requests from \$3,000 to \$10,000 ~~exceeding \$3,000~~ shall be considered by the appropriate regional advisory committee established under Subsection 62A-4a-905(2) ~~62A-4a-805(2)~~.

(6) Supplemental adoption assistance requests exceeding \$10,000 shall be considered by a state level advisory committee with the same membership composition as the regional advisory committees established under Subsection 62A-4a-905(2).

~~(7)~~ Recommendations from the advisory committee are subject to the approval of the regional director or designee.

~~(8)~~ Any obligation made or expense incurred by a family prior to approval shall not be reimbursed with supplemental adoption assistance funds unless approval is granted by the regional director.

~~(9)~~ A request for an amendment or extension of an existing supplemental adoption assistance agreement will be reviewed by the same committee that reviewed the initial request. If the total amount of multiple requests in a year is \$3,000 to \$10,000 ~~exceeds \$3,000~~, the request shall be submitted to the appropriate regional advisory committee ~~committee~~ established under Subsection 62A-4a-905(2) ~~62A-4a-805(2)~~. If the request exceeds \$10,000, the request shall be submitted to the state level advisory committee.

~~(10)~~ Supplemental adoption assistance is subject to the availability of state funds appropriated for adoption assistance.

R512-43-8. Regional Adoption Subsidy Committee.

(1) Each region shall establish at least one regional adoption subsidy committee.

(2) The regional adoption subsidy committee shall be comprised of at least five ~~three~~ members, and a minimum of three members must be present for making decisions regarding adoption assistance. Decisions shall be made by consensus.

(3) Members of the committee may include the following:

(a) Chairperson;

(b) Clinical consultant or casework supervisor;

(c) Regional budget officer or fiscal representative;

(d) Allied agency representative from agencies such as a community mental health center, private adoption agency, or other agencies within the department;

- (e) Regional administrator or other staff with relevant responsibilities;
- (f) Adoptive or foster parent.
- (4) Responsibilities of the regional adoption assistance committee include:
 - (a) Verification that a child qualifies for adoption assistance,
 - (b) Approval for reimbursement of allowable, reasonable non-recurring costs,
 - (c) Approval of level of need and amount of monthly subsidy for initial requests, changes, and renewals,
 - (d) Approval of supplemental adoption assistance up to \$3,000,
 - (e) Extension of adoption assistance up to age 21 for a qualifying child,
 - (f) Renewal of adoption assistance, and
 - (g) Documentation of committee decisions.

R512-43-9. Renewal and Review of Adoption Assistance.

The adoption assistance agreement for a monthly subsidy or state medical assistance shall be renewed at least once every three years and reviewed periodically by regional staff. An agreement for supplemental adoption assistance exceeding \$3,000 shall be reviewed according to a time frame determined on a case by case basis by the appropriate regional advisory committee established under Subsection 62A-4a-905(2) [~~62A-4a-805(2)~~].

R512-43-10. Termination of Adoption Assistance.

- (1) An adoption assistance agreement for a monthly subsidy or state medical assistance shall be terminated if any of the following occur:
 - (a) The terms of the adoption assistance agreement are concluded.
 - (b) The adoptive parents request termination.
 - (c) The child reaches age 18, unless approval has been given by the adoption subsidy committee to continue until age 21 due to mental or physical disability.
 - (d) The child dies.
 - (e) The adoptive parents die.
 - (f) The adoptive parents' legal responsibility for the child ceases.
 - (g) The state determines that the child is no longer receiving financial support from the adoptive parents.
 - (h) The child enters the military.
 - (i) The child marries.
 - (j) The adoptive parents fail to respond to a renewal request.
- (2) Termination of state medical assistance is subject to the policies of the Division of Health Care Financing.
- (3) Supplemental adoption assistance shall terminate when an adoption assistance agreement for a monthly subsidy or state medical assistance is terminated, the terms of the agreement are concluded, the authorizing committee determines that the services funded with supplemental funds are no longer effective or appropriate based upon an independent review by a qualified provider, or if lack of availability of state funding prevents continuation. Written notice as described in R512-43-10(4) shall be provided at least 30 days before funding is discontinued due to lack of availability of state funding appropriated for adoption assistance or due to determination that services are no longer effective or appropriate.
- (4) Adoption assistance shall not be terminated for an adoptive parent's failure to respond to a renewal request for the agreement unless the Division has given the adoptive parents adequate notice of

the potential termination. Adequate notice means that a letter shall be sent to the adoptive parents notifying them of the need to renew the adoption assistance agreement, specifying a date by which the adoptive parents shall respond. If the adoptive parents do not respond to the original request, the Division shall send a certified letter to the family explaining the importance of renewing the adoption assistance agreement and the potential consequences of failing to renew the agreement. If the certified letter is returned unclaimed, additional efforts shall be pursued to locate the family such as a phone call or home visit before the assistance may be terminated. If the certified letter is returned undeliverable [~~unknown~~], the adoption assistance may be terminated.

R512-43-11. Fair Hearings.

- (1) Fair Hearing Request.
 - A written request for a fair hearing may be submitted to the Department of Human Services if:
 - (a) The adoption assistance application is denied;
 - (b) The adoption assistance application is not acted upon with reasonable promptness;
 - (c) Adoption assistance or supplemental adoption assistance is reduced, terminated, or changed without the concurrence of the adoptive parents;
 - (d) The amount of adoption assistance or supplemental adoption assistance approved was less than the amount requested by adoptive parents;
 - (e) Adoption assistance was not requested prior to finalization of the adoption and one of the criteria in R512-43-11(2)(a) applies.
 - (2) Post Finalization Request Fair Hearing.
 - (a) The fair hearing officer may approve appropriate state or federal adoption assistance for post finalization requests if one of the following is met:
 - (i) Relevant facts regarding the child, the biological family, or child's background were known but not presented to adoptive parents prior to finalization.
 - (ii) A denial of assistance was based upon a means test of the adoptive family.
 - (iii) An erroneous state determination was utilized to find a child ineligible for assistance.
 - (iv) The state or adoption agency failed to advise adoptive parents of the availability of assistance.
 - (b) The adoptive parents bear the burden of documenting that the child meets the definition of a child with a special need and that one of the criteria in R512-43-11(2)(a) applies. The state may provide corroborating facts to the family or the fair hearing officer.

R512-43-12. [~~R512-43-13.~~] Interstate Adoption Assistance.

- (1) The Division is responsible to determine if a child in Utah public foster care qualifies for adoption assistance when the child is placed in an adoptive home in another State. If the child qualifies, the Division provides adoption assistance regardless of the State of residence of the adoptive family and child.
- (2) If a child with a previous IV-E adoption assistance agreement enters public foster care because the adoption was dissolved or ended due to the result of the death of the parents, the State in which the child is taken into custody in public foster care is responsible to provide adoption assistance in a subsequent adoption.
- (3) If a child with a previous IV-E adoption assistance agreement does not enter public foster care when the adoption dissolved or ended due to the death of both [~~the~~] parents, the new

adoptive parent is responsible to apply for adoption assistance in the new adoptive parent's State of residence.

(4) A parent desiring to adopt an ~~out-of-state~~~~[out-of State]~~ child who is not in public foster care but is receiving SSI ~~shall apply~~~~[applies]~~ for adoption assistance in the parent's State of residence.

(5) An adoption assistance agreement remains in effect regardless of the State of residence of the adoptive parents as long as the child continues to qualify for adoption assistance.

(6) If a needed service specified in the agreement is not funded by the new State of residence, the state making the original adoption assistance payment remains financially responsible for paying for the specific service.

KEY: adoption, child welfare, foster care

May 14, 2002

Notice of Continuation March 14, 2002

62A-4a-106

~~62A-4a-901 through 907~~~~[62A-4a-801 through 807]~~



Human Services, Mental Health **R523-1-15** Funding Formula

NOTICE OF 120-DAY (EMERGENCY) RULE

DAR FILE NO.: 24842

FILED: 05/15/2002, 13:21

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: A rule change is needed to ensure an annual application of the funding formula, with adjustments based on the most current population data. It also provides that application of the formula may be phased-in over a three-year period, in order to prevent drastic budget shifts among local authorities. It will also make the rule consistent with state statute.

SUMMARY OF THE RULE OR CHANGE: Requires that State Board of Mental Health adjust the funding formula annually, allows the Board to consider criteria other than population for the determination of need in establishing a formula, and allows a three-year phase-in of the most current formula, not to extend beyond fiscal year 2006. (DAR NOTE: A corresponding proposed amendment is under DAR No. 24835 in this Bulletin.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-12-104 and 62A-12-105

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--This is a reallocation of existing funds.

❖ LOCAL GOVERNMENTS: The funding formula determines how state and federal funds will be allocated. This may change the amount of federal and state dollars that are passed through to any one local mental health authority, thereby impacting the 20% local match required by state statute.

❖ OTHER PERSONS: None--This is a reallocation of existing funds. There are no new requirements associated with the rule change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule does not change compliance regulations or create new compliance regulations. This is a reallocation of existing funds.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule could have a fiscal impact on local mental health authorities and the providers they have contracted with to provide mental health services.

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD cause an imminent budget reduction because of budget restraints or federal requirements.

The State Board of Mental Health made changes to the funding formula that necessitate a rule change. The new rule will change contracts that the Division has with local mental health authorities. In order to approve contracts and allocate funds in a timely manner an emergency rule is necessary.

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

HUMAN SERVICES
MENTAL HEALTH
120 N 200 W 4TH FL
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Janina Chilton at the above address, by phone at 801-538-4072, by FAX at 801-538-3993, or by Internet E-mail at jchilton@hs.state.ut.us

THIS RULE IS EFFECTIVE ON: 05/15/2002

AUTHORIZED BY: Robin Arnold-Williams, Executive Director

R523. Human Services, Mental Health.

R523-1. Policies and Procedures.

R523-1-15. Funding Formula.

A. The Board shall establish by rule a formula for the annual~~[allocating]~~ allocation of funds to local mental health authorities through contracts (Section 62A-12-105).

B. The funding formula shall ~~be~~~~[apply]~~ applied annually to state and federal funds appropriated by the legislature to the Division and is intended ~~[to contribute toward the]~~ for the annual equitable distribution of these funds to the state's local mental health authorities.

1. Appropriated funds will be distributed annually on a per capita basis, according to the most current population data available from the Office of Planning and Budget. New funding and/or decreases in funding shall be processed and distributed through the funding formula.

2. The funding formula ~~will~~~~[shall]~~ utilize a ~~[population density]~~ {rural} differential ~~[based upon]~~ to compensate for additional costs of providing services in a rural area which may consider: the total

population of each county, the total population base served by the local mental health center and/or population density.

~~3. In accordance with UCA Section 62A-12-105 the funding formula may utilize a determination of need other than population if the board establishes by valid and acceptable data, that other defined factors are relevant and reliable indicators of need.~~

~~3. The population density differential is part of the base amount allocated to the local mental health authority and will be recalculated in successive years only when a documented need arises.~~

~~4. The local mental health authorities' "equalized base" is defined as the state and federal funds which were expended in budget year fy 89-90, and which were distributed according to (1) population density differential by county and (2) on a per capita basis.~~

~~[5]4. [State funds allocated for mental health services and distributed through the formula to local mental health authorities shall be matched by the local mental health authority by at least 20%.] Each Local Mental Health Authorities shall provide funding equal to at least 20% of the state funds that it receives to fund services described in that local mental health authority's annual plan in accordance with UCA Section 17A-3-602.~~

~~6. New funds will be distributed on a per capita basis, according to the most current population data available from the Office of Planning and Budget. New funds will be added to each local authorities equalized base.~~

~~7. Decreases in state and federal revenues will be distributed on a per capita basis.~~

5. Application of the formula for allocation of state and federal funds may be subject to a phase-in plan for FY 03 through FY 06. At the latest, appropriations for FY 06 shall be allocated in accordance with the funding formula without any phase-in provisions.

[8]6. The formula does not apply to:

a. Funds that local mental health authorities receive from sources other than the Division.

b. Funds that local mental health authorities receive from the Division to operate a specific program within its jurisdiction that is available to all residents of the state.

c. Funds that local mental health authorities receive from the Division to meet a need that exists only within the jurisdiction of that local mental health authority.

d. Funds that local mental health authorities receive from the Division [of] for research projects.

KEY: bed allocations, due process, prohibited items and devices, fees

May 15, 2002

Notice of Continuation December 17, 1997

62A-12-102

62A-12-104

62A-12-209.6(2)

62A-12-283.1(3)(a)(i)

62A-12-283.1(3)(a)(ii)

▼ ————— ▼

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 (1998).

Administrative Services, Debt Collection **R21-1** Transfer of Collection Responsibility of State Agencies

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 24813
FILED: 05/03/2002, 09:26

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 established pursuant to Subsections 63A-8-201(3)(m), 63A-8-201(6)(f), and 63A-8-201(4)(g) of the Utah Code. Subsection 63A-8-201(3)(m) of the Utah Code authorizes the Office of State Debt Collection (OSDC) to establish procedures for writing off accounts receivable for accounting and collection purposes. Subsection 63A-8-201(6)(f) of the Utah Code authorizes the OSDC to require state agencies to bill and make initial collection efforts of its receivables up to the time the accounts must be transferred. Subsection 63A-8-201(6)(a) of the Utah Code authorizes the OSDC to require state agencies to transfer collection responsibility to the OSDC or its designee according to time limits specified by the OSDC. Subsection 63A-8-201(4)(g) of the Utah Code authorizes OSDC to establish a fee to cover the administrative costs of collection, a late penalty fee, and an interest charge by following the procedures and requirements of Section 63-38-3.2 of the Utah Code.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since the implementation of the rule, the OSDC has received comments suggesting that the definitions in the rule expand the powers of the OSDC beyond those defined in the law. In response to this concern, the definitions were removed from the rule and replaced by referencing the definitions in Section 63A-8-101 of the Utah Code. Legislative Research also expressed concern that

agency requirements found in the Statewide Policies and Procedures published by the OSDC are not in rule. Rules provide a vehicle for agency comment. The rule is amended to incorporate state agency requirements related to the collection and management of debt. Since state agency requirements are being established by rule, the publication is being changed and renamed to "Statewide Guidelines for Accounting, Reporting and Collecting Accounts Receivable."

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule should be continued to ensure that state debts and those the state is responsible to collect are managed, reported, and collected consistently and efficiently. At the end of FY2001, the state reported outstanding receivables in excess of \$800,000,000. State agencies estimate that \$500,000,000 is collectible. Of the \$500,000,000, 42% is owed to third parties such as custodial parents, 6% to other state agency funds such as Departments of Transportation and Commerce, 37% to the Federal Government, and 14% to Free Revenue. Without an agency with a primary focus to coordinate the management and collection of state debt, many of the collectible dollars will not be collected. Since the OSDC was established in November of 1996, a state-wide receivable program has been implemented, state-wide policies and procedures published, annual receivable reports generated for the governor's office and the legislature, new revenue in excess of \$9,000,000 recovered, agencies provided with professional collection training, court orders enforced, and social justice increased. The structure of the state receivable and collection program adds additional state collection resources with no growth in state government through partnering with the private sector for collection services. Because of automation, the OSDC has been able to operate with only four full time equivalents even though collection transactions and customer responses have increased tremendously. Since FY2001, OSDC has received no state funding. The OSDC funds the office, pays for private sector collection services, assists in funding other state collection programs, pays for state-wide collection training, and returns 100% of the dollars owed to the state on most collectible accounts by collecting the costs of collection in addition to the debt owed the state from the entity owing the state money.

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

ADMINISTRATIVE SERVICES
DEBT COLLECTION
Room 5100 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Gwen Anderson at the above address, by phone at 801-538-3603, by FAX at 801-538-3844, or by Internet E-mail at ganderson@utah.gov

AUTHORIZED BY: Gwen Anderson, Director

EFFECTIVE: 05/03/2002



Administrative Services, Debt Collection **R21-2** Office of State Debt Collection Administrative Procedures

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 24814
FILED: 05/03/2002, 09:27

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 establishes procedures for informal adjudicative proceedings as required by Sections 63-46b-4 and 63-46b-5 of the Utah Code.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The following issues have been raised. Section R21-2-5 seems to preclude an entity from requesting a formal proceeding, the rule does not seem to address the right to appeal an administrative order, and Section R21-2-16 seems to open the door for the Office of State Debt Collection (OSDC) to open an issue again after it has been set aside. The rule and the above issues were submitted to the Attorney General's Office for review and recommendations. They responded they did not see a need to change the rule. Pursuant to Section 63-46b-4 of the Utah Code, an agency may, by rule, designate categories of adjudicative proceedings to be conducted informally if the cost of formal adjudicative proceedings outweighs the potential benefits to the public of a formal adjudicative proceeding. Also pursuant to Subsection 63-46b-4(3) of the Utah Code, the presiding officer may convert an informal hearing to a formal hearing if the conversion is in the public interest and does not unfairly prejudice the rights of any party. Pursuant to Subsection 63-46b-5(h)(iii)(iv) of the Utah Code, citizens are

notified of the right for a judicial review and filing an appeal. Section R21-2-16 of the rule identifies the reasons that allow an administrative order to be set aside. The reasons ensure the citizen is treated fairly and eliminate duplicate orders by replacing the administrative order with a judicial order that covers the same time period.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule should be continued to ensure that citizens of the state are provided with a vehicle that allows citizens' disputes with the state to be reviewed by an impartial hearing officer at little or no cost to the citizen. The Administrative Procedures Act (Title 63, Chapter 46b) eliminates the need of costly judicial action on many cases. It provides the state with a tool that assists in collecting outstanding state debt.

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

ADMINISTRATIVE SERVICES
DEBT COLLECTION
Room 5100 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Gwen Anderson at the above address, by phone at 801-538-3603, by FAX at 801-538-3844, or by Internet E-mail at ganderson@utah.gov

AUTHORIZED BY: Gwen Anderson, Director

EFFECTIVE: 05/03/2002



Administrative Services, Debt Collection **R21-3** Debt Collection Through Administrative Offset

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 24815
FILED: 05/03/2002, 09:28

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 established pursuant to Subsection 63A-8-204(6) of the Utah Code which authorizes the Office of State Debt Collection (OSDC) to establish, by rule, an implementation of the debt collection technique of administrative offset.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since the implementation of the rule, OSDC has received comments suggesting that the definitions in the rule expand the powers of the Office beyond those defined in the law. In response to this concern, the definitions were removed from the rule and replaced by referencing the definitions in Section 63A-8-101 of the Utah Code.

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 it helps to recover debts owed the state by citizens who choose not to pay their debts timely. In FY2001, \$6,400,000 in outstanding state debt was recovered. In FY2002, \$5,000,000 has been recovered and with two months still left in the year, recovery is projected to be greater than the \$6,400,000 collected in FY2001. Victims of crime, children, single parents, the State, and local governments all benefit from recovery of dollars through administrative offset.

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

ADMINISTRATIVE SERVICES
DEBT COLLECTION
Room 5100 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Gwen Anderson at the above address, by phone at 801-538-3603, by FAX at 801-538-3844, or by Internet E-mail at ganderson@utah.gov

AUTHORIZED BY: Gwen Anderson, Director

EFFECTIVE: 05/03/2002



Commerce, Occupational and
Professional Licensing
R156-1
General Rules of the Division of
Occupational and Professional
Licensing

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 24808
FILED: 05/02/2002, 15:56

**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 58-1-106(1) provides that the Division may adopt and enforce rules to administer Title 58. This rule was enacted to clarify the provisions of Title 58, Chapter 1, with respect to all occupations and professions regulated by the Division.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in June 1997, it has been amended 12 times. Even though this rule has been amended numerous times, the Division has received no written comment with respect to this rule.

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 as it clarifies the provisions of Title 58, Chapter 1, with respect to all occupations and professions regulated by the Division.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Laura Poe at the above address, by phone at 801-530-6789, by FAX at 801-530-6511, or by Internet E-mail at lpoe@utah.gov

AUTHORIZED BY: J. Craig Jackson, Director

EFFECTIVE: 05/02/2002



Commerce, Occupational and
Professional Licensing
R156-37
Utah Controlled Substance Act Rules

**FIVE YEAR NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

DAR FILE NO.: 24821
FILED: 05/09/2002, 15:31

**NOTICE OF REVIEW AND
STATEMENT OF CONTINUATION**

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 37, provides for the regulation of controlled substances. Subsection 58-1-106(1) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-37-

6(1) provides the department may adopt rules relating to the licensing and control of the manufacture, distribution, production, prescription, administration, dispensing, conducting of research with, and performing of laboratory analysis upon controlled substances within this state. This rule was enacted to clarify the provisions of Title 58, Chapter 37, with respect to controlled substances.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was last reviewed in May 1997, it has been amended two times. In March 1998, the Division amended the rule to make minor wording corrections and to add information with respect to the Controlled Substance Database. The Division received one written comment from Kent Bishop (Governor's Office of Planning and Budget) on March 23, 1998, suggesting some nonsubstantive wording changes. As a result of Mr. Bishop's comments, a nonsubstantive rule filing was filed on May 4, 1998. In May 1998, the rule was again amended to update the rule with respect to the emergency verbal prescription of a Schedule II controlled substance. No written comments were received with respect to this rule filing. No other additional written comments have been submitted to the Division with respect to this rule.

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 as it clarifies the provisions of Title 58, Chapter 37, with respect to controlled substances.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Laura Poe at the above address, by phone at 801-530-6789, by FAX at 801-530-6511, or by Internet E-mail at lpoe@utah.gov

AUTHORIZED BY: J. Craig Jackson, Director

EFFECTIVE: 05/09/2002



Commerce, Occupational and
Professional Licensing
R156-70a
Physician Assistant Practice Act Rules

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 24809
FILED: 05/02/2002, 16:14

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Title 58, Chapter 70a, provides for the licensure of physician assistants. Subsection 58-1-106(1) provides that the Division may adopt and enforce rules to administer Title 58. Subsection 58-70a-201(3) provides that the Physician Assistant Licensing Board's duties and responsibilities shall be in accordance with Section 58-1-202. Subsection 58-1-202(1) provides that one of the duties of each board is to recommend appropriate rules to the division director. This rule was enacted to clarify the provisions of Title 58, Chapter 70a, with respect to physician assistants.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Since this rule was originally enacted in June 1997, it has only been amended one time. The Division has received no written comments with respect to this rule.

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 as it clarifies the provisions of Title 58, Chapter 70a, with respect to physician assistants.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Diana Baker at the above address, by phone at 801-530-6179, by FAX at 801-530-6511, or by Internet E-mail at dbaker@utah.gov

AUTHORIZED BY: J. Craig Jackson, Director

EFFECTIVE: 05/02/2002



Corrections, Administration
R251-305
Visiting at Community Correctional
Centers

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 24825
 FILED: 05/13/2002, 14:17

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 64-13-17 provides for visits with an offender at any correctional facility with the consent of the Department and under rules prescribed by the Department or court order.

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 were 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 establishes the process for offender visitation at correctional facilities. This rule is necessary to maintain the safety and security of staff, offenders, visitors, and facilities.

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

CORRECTIONS
 ADMINISTRATION
 14717 S MINUTEMAN DR
 DRAPER UT 84020-9549, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Ginny L Duncan at the above address, by phone at 801-545-5722, by FAX at 801-545-5523, or by Internet E-mail at gduncan@udc.state.ut.us

AUTHORIZED BY: Michael P. Chabries, Executive Director

EFFECTIVE: 05/13/2002

Corrections, Administration
R251-707
 Legal Access

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 24823
 FILED: 05/13/2002, 14:14

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 64-13-10 authorizes the Department to make rules necessary to accomplish its purposes. Section 64-13-17 stipulates that visitors and

correspondence to correctional facilities are subject to the rules of the Department.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: None were 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 establishes the regulations for inmates' access to courts and counsel while incarcerated in a correctional facility. This rule is necessary to maintain the safety and security of the staff, inmates, visitors, and property in a correctional facility.

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

CORRECTIONS
 ADMINISTRATION
 14717 S MINUTEMAN DR
 DRAPER UT 84020-9549, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Ginny L Duncan at the above address, by phone at 801-545-5722, by FAX at 801-545-5523, or by Internet E-mail at gduncan@udc.state.ut.us

AUTHORIZED BY: Michael P. Chabries, Executive Director

EFFECTIVE: 05/13/2002

Environmental Quality, Drinking Water
R309-600
 Drinking Water Source Protection for
 Ground-Water Sources

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 24832
 FILED: 05/15/2002, 09:02

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 19-4-104(1)(a)(iv) of the Utah Code Annotated authorizes the Drinking Water Board to make rules protecting watersheds and water sources used for public water systems.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received during or 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: Wells and springs are vulnerable to pollution from potential contamination sources. It is more cost effective to protect sources than it is to treat their contaminated waters or abandon sources and develop new ones. Essentially, Rule R309-600 requires public water systems to delineate source protection zones, inventory potential contamination sources, and implement protection strategies to preserve the drinking water quality of their wells and springs. It also requires public water systems to site new wells and springs in locations where they can be protected.

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

ENVIRONMENTAL QUALITY
DRINKING WATER
150 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Bob Lowe at the above address, by phone at 801-536-4194, by FAX at 801-536-4211, or by Internet E-mail at blowe@deq.state.ut.us

AUTHORIZED BY: Kevin Brown, Director

EFFECTIVE: 05/15/2002

Health, Administration

R380-20

Government Records Access and Management

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 24807
FILED: 05/02/2002, 09:57

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 Subsection 63-204-2(2) provides that a "governmental entity may make rules...specifying where and to whom requests for access shall be directed." Subsection 63-2-904-2(2) further allows a governmental entity to make rules specifying at what level the entity will carry out its responsibilities under the Act. This rule specifies where requests are to be directed and at what level the Department carries out its responsibilities under the Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written 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: This rule is necessary for the Department to efficiently and effectively meet its responsibilities to the public in meeting records access requests.

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

HEALTH
ADMINISTRATION
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Lyle Odendahl at the above address, by phone at 801-538-6878, by FAX at 801-538-6306, or by Internet E-mail at lodendah@doh.state.ut.us

AUTHORIZED BY: Rod Betit, Executive Director

EFFECTIVE: 05/02/2002

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-21

Physical Therapy

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE No.: 24816
FILED: 05/06/2002, 10:39

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 R414-1-6(2)(p) authorizes the Department to offer "physical therapy and related services." The provision of physical therapy evaluation and treatment is authorized by the federal government under various sections of 42 CFR. The purpose of the physical therapy program is to increase the functioning ability of each handicapped Medicaid recipient whether the handicap is temporary or permanent.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Comment from providers led the Department to combine physical therapy and occupational therapy to allow for services without preauthorization. This new program for outpatient hospital rehabilitation centers allows physical therapy and occupational therapy to work together. The change also means the first ten visits do not require preauthorization.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Physical therapy is a critical part of rehabilitation for Medicaid patients and should therefore be continued. Physical therapy allows clients to resume normal activities and potentially to work.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ross Martin at the above address, by phone at 801-538-6592, by FAX at 801-538-6099, or by Internet E-mail at irmartin@doh.state.ut.us

AUTHORIZED BY: Rod Betit, Executive Director

EFFECTIVE: 05/06/2002

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Health, Health Care Financing, Coverage and Reimbursement Policy **R414-38** Personal Care Service

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 24817
FILED: 05/06/2002, 16:18

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 R414-1-6(2)(v) authorizes the Department to offer "personal care services in the recipient's home, prescribed in a plan of treatment and provided by a qualified person, under the supervision of a registered nurse." The provision of personal care services is authorized by the federal government under 42 CFR 440.170 (f), 1992 ed. The purpose of the personal services program is "to maintain the capacity to function, retard disease progression, or prevent regression and complications; or achieve satisfactory level of comfort and dignity during terminal stages of an illness; or receive assistance while recovering from an acute condition."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Based on the recent Centers for Medicare and Medicaid Services Working

Disabled Initiative, extensive State Medicaid Plan changes have been approved which make some provisions of this rule obsolete. Through dialogue with providers and client advocacy groups, this rule is now more restrictive in delivery and scope of service than the State Plan provisions. For example, an attendant is now provided for the working disabled to make it easier for them to be productive, tax-paying citizens. In its current form, this rule does not address workplace and long-term personal care services which are also being provided based on the State plan changes.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule is being thoroughly examined in light of the Medicaid State Plan changes. The result could be elimination or revision of the rule. It has yet to be determined if elimination of this rule will best serve the people of the State of Utah.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Ross Martin at the above address, by phone at 801-538-6592, by FAX at 801-538-6099, or by Internet E-mail at irmartin@doh.state.ut.us

AUTHORIZED BY: Rod Betit, Executive Director

EFFECTIVE: 05/06/2002

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Natural Resources, Wildlife Resources **R657-2** Adjudicative Proceedings

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 24841
FILED: 05/15/2002, 13:20

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 the authority of Sections 63-46b-5 and 23-14-2.1 and is administered in accordance with the Utah Administrative Procedures Act. Rule R657-2 provides the standards and procedures for conducting adjudicative proceedings.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Division of Wildlife Resources (DWR) and the Wildlife Board have not received written comments, either in support or opposition to Rule R657-2, Adjudicative Proceedings. Written comments received in opposition to the rule are resolved using existing policies and procedures or the issue is placed on the Regional Advisory Council's and Wildlife Board's agenda for review and discussion during the review process for taking public input. The public is welcome to view the Regional Advisory Council minutes, Wildlife Board minutes, and administrative record for this rule at DWR. The standards adopted therein have worked well in providing fairness to all parties and in affording due process considerations to concerned individuals. The procedures adopted in this rule are effective and efficient.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: As stated above, the provisions of this rule have provided an effective and efficient process for conducting and administering adjudicative proceedings for DWR and the Wildlife Board. Continuation of this rule is necessary for continued success of the program.

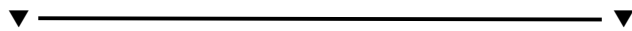
THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:

NATURAL RESOURCES
 WILDLIFE RESOURCES
 1594 W NORTH TEMPLE
 SALT LAKE CITY UT 84116-3154, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Debbie Sundell at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at dsundell.nrdwr@state.ut.us

AUTHORIZED BY: Kevin Conway, Director

EFFECTIVE: 05/15/2002



Natural Resources, Wildlife Resources
R657-29
 Government Records Access
 Management Act

**FIVE YEAR NOTICE OF REVIEW AND
 STATEMENT OF CONTINUATION**
 DAR FILE NO.: 24840
 FILED: 05/15/2002, 13:20

**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 63-2-204(2) authorizes the division to make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, specifying where and to whom requests for records access shall be directed.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Division of Wildlife Resources (DWR) and the Wildlife Board have not received written comments, either in support or opposition to Rule R657-29, Government Records Access Management Act. Written comments received in opposition to the rule are resolved using existing policies and procedures or the issue is placed on the Regional Advisory Council's and Wildlife Board's agenda for review and discussion during the review process for taking public input. The public is welcome to view the Regional Advisory Council minutes, Wildlife Board minutes, and administrative record for this rule at DWR. The procedures adopted therein have worked well in providing access to DWR records. The procedures adopted in this rule are effective and efficient.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Continuation of Rule R657-29 is necessary to provide an effective and efficient process prescribing where and to whom requests for information shall be directed and provide procedures for access to division records as allowed under Subsection 63-2-204(2).

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

NATURAL RESOURCES
 WILDLIFE RESOURCES
 1594 W NORTH TEMPLE
 SALT LAKE CITY UT 84116-3154, or
 at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
 Debbie Sundell at the above address, by phone at 801-538-4707, by FAX at 801-538-4745, or by Internet E-mail at dsundell.nrdwr@state.ut.us

AUTHORIZED BY: Kevin Conway, Director

EFFECTIVE: 05/15/2002



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 (1998)). 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 (1998). 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) (1998).

Public Safety

Peace Officer Standards and Training

No. 24830: R728-405. Drug Testing Requirement.

Last Five-Year Review: 01/13/97 (No. 18550, Filed 01/13/97 at 09:48 a.m., Published 02/01/97)

Expired: 05/14/2002

(DAR NOTE: Peace Officer Standards and Training will reenact this rule, see the proposed new rule filed under DAR No. 24859 in this Bulletin.)

End of the Notices of Expired Rules Section

Notices of Rule Effective Date Begin on the Following Page

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

Administrative Services

Facilities Construction and Management
No. 24594 (AMD): R23-1-60. Construction Contract Clauses.
Published: April 1, 2002
Effective: May 3, 2002

Fleet Operations

No. 24578 (AMD): R27-3. Vehicle Use Standards.
Published: April 1, 2002
Effective: May 15, 2002

Environmental Quality

Air Quality

No. 24595 (AMD): R307-110-16. Section IX, Control Measures for Area and Point Sources, Part G, Fluoride.
Published: April 1, 2002
Effective: May 13, 2002

No. 24591 (NEW): R307-310. Salt Lake County: Trading of Emission Budgets for Transportation Conformity.
Published: April 1, 2002
Effective: May 13, 2002

No. 24491 (AMD): R307-415-3. Definitions.
Published: March 1, 2002
Effective: May 13, 2002

End of the Notices of Rule Effective Dates Section

Rules Index Begins on the Following Page

**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, 2002, including notices of effective date received through May 15, 2002, the effective dates of which are no later than June 1, 2002. 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).

DAR NOTE: Because of publication constraints, neither Index will appear in this issue of the *Bulletin*.

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.utah.gov/>).
