UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
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Kenneth A. Hansen, Director
Nancy L. Lancaster, Editor

The *Utah State Bulletin (Bulletin)* is an official noticing publication of the executive branch of Utah State Government. The Department of Administrative Services, Division of Administrative Rules produces the *Bulletin* under authority of Section 63-46a-10, *Utah Code Annotated* 1953.

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

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

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SPECIAL NOTICES

GOVERNOR'S PROCLAMATION: CALLING THE FIFTY-FIFTH LEGISLATURE INTO A SECOND EXTRAORDINARY SESSION (SENATE ONLY)

WHEREAS, since the close of the 2003 General Session of the 55th Legislature of the State of Utah, certain matters have arisen which require immediate legislative attention; and

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

NOW, THEREFORE, I, MICHAEL O. LEAVITT, Governor of the State of Utah, by virtue of the authority vested in me by the Constitution and the Laws of the State of Utah, do by this Proclamation call the Senate only of the 55th Legislature of the State of Utah into a Second Extraordinary Session at the State Capitol in Salt Lake City, Utah, on the 20th day of May, 2003, at 12:00 noon, for the following purpose:

For the Senate to advise and consent to appointments made by the Governor to positions within state government of the State of Utah since the close of the 2003 General Session of the 55th Legislature of the State of Utah.

IN TESTIMONY WHEREOF, I have here unto set my hand and cause to be affixed the Great Seal of the State of Utah. Done at the State Capitol in Salt Lake City, Utah, this 5th day of May, 2003.

(STATE SEAL)

MICHAEL O. LEAVITT
Governor

OLENE S. WALKER
Lieutenant Governor

NATURAL RESOURCES
WILDLIFE RESOURCES

PUBLIC NOTICE OF EMERGENCY CHANGES TO THE 2003 UTAH FISHING REGULATIONS ESTABLISHED BY THE WILDLIFE BOARD FOR TAKING FISH AND CRAYFISH

I, Kevin Conway, by authority granted in Section 23-14-8 of the Wildlife Resources Code of Utah, declare an emergency amendment to the 2003 Utah Fishing Regulations. The following has been amended:

Honeyville Ponds (Cold Springs Lakes) (Box Elder County): **CLOSED** January 1, 2003, through 6 a.m. on May 24, 2003 (Saturday).

Wellsville Reservoir (Cache County): **CLOSED** January 1, 2003, through 6 a.m. on May 24, 2003, (Saturday).

This change is being made to correct an error in the 2003 Utah Fishing Proclamation. The above waters were closed until 6 a.m. on May 25, 2003. May 25 is a Sunday. According to State Law, Subsection 23-14-18(3), a season cannot open on a Sunday.

Except for other emergency changes made since January 1, 2003, all other rules established in the 2003 Utah Fishing Regulations remain in effect.

UTAH DIVISION OF WILDLIFE RESOURCES
By: Kevin K. Conway, Director
Subscribed and sworn to before me this 29th day of April 2003.

NATURAL RESOURCES
WILDLIFE RESOURCES

PUBLIC NOTICE OF EMERGENCY CHANGES TO THE 2003 UTAH FISHING REGULATIONS ESTABLISHED BY THE WILDLIFE BOARD FOR TAKING FISH AND CRAYFISH

I, Kevin Conway, by authority granted in Section 23-14-8 of the Wildlife Resources Code of Utah, declare an emergency amendment to the 2003 Utah Fishing Regulations. The following has been amended:

Yuba Reservoir (Sevier Bridge Reservoir) (Juab and Sanpete counties):

Effective May 19, 2003, the daily bag and possession limits for all game fish, except yellow perch, are doubled (for example: walleye 12, northern pike 12, channel catfish 16, and trout 8). The daily bag and possession limit on yellow perch will be increased to 20.

Effective August 15, 2003, through December 31, 2003, the reservoir and river within the high-water line of the reservoir will be CLOSED to all fishing.

Except for other emergency changes made since January 1, 2003, all other rules established in the 2003 Utah Fishing Regulations remain in effect.

UTAH DIVISION OF WILDLIFE RESOURCES
By: Kevin K. Conway, Director
Subscribed and sworn to before me this 25th day of April 2003.

End of the Special Notices Section

NOTICES OF
PROPOSED RULES

A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between April 16, 2003, 12:00 a.m., and May 1, 2003, 11:59 p.m. are included in this, the May 15, 2003, 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 June 16, 2003. 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 12, 2003, 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, Finance
R25-7
Travel-Related Reimbursements for State Employees

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26204
FILED: 05/01/2003, 07:46

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is being revised as a result of a division review of current reimbursement rates and practices. The review showed the following: 1)it is not clear when the $5 miscellaneous reimbursement begins; 2) the laundry reimbursement begins after the seventh night out, which is different from when the $5 miscellaneous reimbursement begins. To avoid confusion, the $5 miscellaneous reimbursement and the laundry reimbursement should both start after the sixth consecutive night out; 3) the Division of Fleet Services found that they had been undercharging the vehicle cost and overhead. An increase in the rate is necessary for Fleet Services to recover the cost of vehicles and overhead; and 4) the state reimbursement rate for private vehicle mileage when a fleet vehicle is not available to the employee is more than the amount reimbursed by the federal government. The amount of the state reimbursement rate that is more than the federal reimbursement rate is considered taxable by the Internal Revenue Service. To avoid both tax consequences to our employees and increased accounting responsibility for the state, the federal mileage reimbursement is adopted.

SUMMARY OF THE RULE OR CHANGE: The rule was amended to: 1) clarify that the $5 miscellaneous reimbursement begins after the sixth consecutive night out; 2) start the laundry reimbursement after the sixth consecutive night out; 3) change the reimbursement for private vehicle mileage to 30 cents per mile, the cost of operating a state fleet vehicle; and 4) change the reimbursement rate for private vehicle mileage to 36 cents per mile, the federal mileage rate, when a state fleet vehicle is not available to the employee.

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 Ch344, UT L 2002 Ch 277, and HB 1 Item 52, 2003 General Session

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: The cost or savings impact of these amendments to the state budget depends on whether a state fleet vehicle is available to the employee. State agencies (including legislative staff, the judicial branch, and the Utah System of Higher Education) will spend 2 cents more for each private vehicle mile they reimburse when a state fleet vehicle is available to the employee. However, they will spend 1/2 cent less for each private vehicle mile they reimburse when a state fleet vehicle is not available to the employee. The aggregate cost or savings impact on the state budget cannot be anticipated for the following reasons: 1) how many total miles agencies will reimburse is not known, and 2) whether or not a state fleet vehicle will be available to employees is not known and, therefore, which rate the agencies will reimburse employees is not known at this time.

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

❖OTHER PERSONS: The cost or savings impact of these amendments on employees of the state, legislative staff, the judicial branch, and the Utah System of Higher Education who drive a personal vehicle on business depends on whether a fleet vehicle is available to the employee. Employees who have a fleet vehicle available will receive 2 cents more per mile driven. Employees who do not have a fleet vehicle available will receive 1/2 cent less per mile driven. However, if reimbursement rate is not changed from 36 1/2 cents per mile to the federal reimbursement rate of 36 cents per mile, the employee will have to pay taxes on the difference between the two rates. As a result, any cost to the employee from the reduced mileage reimbursement would be mitigated by not having to pay taxes on the difference between the state and federal rates. The aggregate cost or savings impact on employees cannot anticipated for the following reasons: 1) it is not known how many total miles employees will be reimbursed for; 2) it is not known whether a state fleet vehicle will be available to employees when they need it and, therefore, rate the employees will be reimbursed is not known; and 3) the tax consequences to individual employees if the state and federal reimbursement rates are not synchronized for situations where a fleet vehicle is not available to the employee cannot be projected at this time.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The cost or savings impact of these amendments on employees of the state, legislative staff, the judicial branch, and the Utah System of Higher Education who drive a personal vehicle on business depends on whether a fleet vehicle is available to the employee. Employees who have a fleet vehicle available will receive 2 cents more per mile driven. Employees who do not have a fleet vehicle available will receive 1/2 cent less per mile driven. However, if reimbursement rate is not changed from 36 1/2 cents per mile to the federal reimbursement rate of 36 cents per mile, the employee will have to pay taxes on the difference between the two rates. As a result, any cost to the employee from the reduced mileage reimbursement would be mitigated by not having to pay taxes on the difference between the state and federal rates. The individual costs or savings impact on employees cannot anticipated for the following reasons: 1) it is not known how many total miles employees will be reimbursed for; 2) it is not known whether a state fleet vehicle will be available to employees when they need it and, therefore, rate the employees will be reimbursed is not known; and 3) the tax consequences to individual employees if the state and federal reimbursement rates are not synchronized for situations where a fleet vehicle is not available to the employee cannot be projected at this time.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Amendments to Rule 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, Department of Administrative Services

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@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 06/30/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2003

AUTHORIZED BY: Kim Thorne, Director

R25. Administrative Services, Finance.
R25-7. Travel-Related Reimbursements for State Employees.
R25-7-2. Authority and Exemptions.

(1) This rule is established pursuant to Section 63A-3-107, which authorizes the Division of Finance to adopt rules covering in-state and out-of-state travel.

(2) Senate Bill 1, Line Item 60 of the 2000 legislative session (2000 Utah Laws 344), as continued by House Bill 1, Item 57 of the 2001 legislative session (2001 Utah Laws 334), Senate Bill 1, Item 49 of the 2002 legislative session (2002 Utah Laws 277) and House Bill 1, Item 52 of the 2003 legislative session contains intent language directing that the mileage reimbursement rate authorized in Section R25-7-10 also be applied to legislative staff, the Judicial Branch and to the Utah System of Higher Education.

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~~]in excess of six consecutive nights, beginning after the [~~seventh~~]sixth night out.

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

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

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

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

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

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 [~~28~~]30 cents per mile, or [~~36 1/2~~]36 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 [~~28~~]30 cents per mile or the airplane fare, whichever is less, unless otherwise approved by the Department Director.

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

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

(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 air mileage and is limited to the most economical, usually-traveled route.

(7) Travel by private motorcycle must be approved prior to the trip by the Department Director or designee. Travel will be reimbursed at 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 allowances, state employees, transportation
[~~July 2, 2002~~]July 1, 2003
Notice of Continuation May 1, 2003
63A-3-107
63A-3-106
2000 Utah Laws 344
2001 Utah Laws 334
2002 Utah Laws 277
HB 1 Item 52, 2003 General Session

▼ ▼

Administrative Services, Fleet Operations
R27-7
Safety and Loss Prevention of State Vehicles

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26191
FILED: 04/28/2003, 10:07

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to include citizens' complaints of misuse or illegal operation of a state vehicle that have been investigated and found to have been valid as a basis for the loss of authority to operate a state vehicle. Also, the rule recognizes the paramount authority of agency accident review committees to determine the question of whether an accident is preventable or non-preventable. Finally, the rule includes conditions under which accidents involving emergency services vehicles are to be considered "non-preventable."

SUMMARY OF THE RULE OR CHANGE: The changes are: deletes "or DFO" from Subsection R27-7-3(2)(c); adds (d) to Subsection R27-7-3(3); deletes "DFO" from Subsection R27-7-3(4); deletes "or the employing agency," "determination made" and "DFO" and adds "withdrawal, suspension or revocation of authority to operate a state vehicle imposed by the employing agency pursuant to Subsections R27-7-3(3) and (4) from R27-7-3(6); strikes "DFO" and "continue" from, and adds "the employing agency" and pursuant to Subsections R27-7-3(3) and (4), and "remain in effect" to Subsection R27-7-3(7); strikes Subsection R27-7-4(4); renumbers Subsection R27-7-4(5) as (4) and strikes "Agency ARC determinations are subject to review by DFO."; strikes Subsections R27-7-4(6), (7), and (8); strikes "at fault" and adds "preventable" to Subsection R27-7-5(2); strikes Subsection R27-7-5(3)(a), and adds Subsection R27-7-5(3)(c)(i) to (iii); adds in Subsection R27-7-6(1)(b) "their own" and "a state certified or nationally recognized defensive driving course" and strikes "his or her", "at least eight (8) hours of approved", and "professional driver safety program"; strikes "pursuant to Section R27-7-3" from Subsection R27-7-6(1)(c); adds "an employee whose authority to operate a state vehicle has been suspended or revoked pursuant to Subsections R27-7-3(3) and (4), may petition" and strikes "The ARC shall refer any case involving the suspension of driving privileges to"; adds "pursuant to Subsection R27-7-6(3)" and strikes "employing agency or authorized driver pursuant to Subsection R27-5-3(2)(c) or R27-3-3(5) from R27-7-7(3); and adds Subsection R27-7-7(4) and renumbers the remaining paragraphs.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63A-9-401(1)(c)(viii)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: There are no anticipated costs or savings to the state budget because the proposed amendments only serve to define the applicability of certain rule sections and limit the jurisdictional reach of the Division of Fleet Operations.

❖LOCAL GOVERNMENTS: There are no anticipated costs or savings to local governments because the rules and amendments apply only to state agencies.

❖OTHER PERSONS: There are no anticipated costs or savings to others because the rules and amendments apply only to state agencies.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no anticipated compliance costs affected persons. The rules and amendments apply only to state agencies.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is a possibility that some businesses may benefit from an amendment that state certified or nationally recognized defensive driver training courses will suffice in fulfilling the driver training requirements that employees involved in "preventable" accidents must fulfill.

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

ADMINISTRATIVE SERVICES
FLEET OPERATIONS
Room 4120 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:
Sal Petilos at the above address, by phone at 801-538-3091, by FAX at 801-538-3844, or by Internet E-mail at spetilos@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 06/16/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 06/17/2003

AUTHORIZED BY: Steve Saltzgiver, Director

R27. Administrative Services, Fleet Operations.
R27-7. Safety and Loss Prevention of State Vehicles.
R27-7-3. Loss of Authority to Operate a State Vehicle.

(1) The authority to operate a state vehicle is subject to withdrawal, suspension or revocation.

(2) The authority to operate a state vehicle shall be automatically withdrawn, suspended or revoked in the event that an authorized driver's license is denied, cancelled, disqualified, suspended or revoked.

(a) The authority to operate a state vehicle shall, at a minimum, be withdrawn, suspended or revoked for the period of denial, cancellation, disqualification, suspension or revocation of the authorized driver's license.

(b) The authority to operate a state vehicle shall not be reinstated until such time as the individual provides proof that his or her driver license has been reinstated.

(c) The employing agency [~~or DFO~~]may petition the Driving Privilege Review Board (DPRB) to extend the period for which the authority to operate a state vehicle is withdrawn, suspended or revoked beyond the period for which the authorized driver's license is denied, cancelled, disqualified, suspended or revoked.

(d) The DPRB may extend the period for which the authority to operate a state vehicle is withdrawn, suspended or revoked, beyond the period for which the driver's license is denied, cancelled, disqualified, suspended, if the evidence regarding the circumstances surrounding the denial, cancellation, disqualification, suspension or revocation of the authorized driver's license and driving history indicates that it is in the best interest of the state to extend the period for which the authority to operate a state vehicle is withdrawn, suspended or revoked.

(3) The authority to operate a state vehicle shall be suspended or revoked for any of the following grounds:

(a) The authorized driver, while acting within the scope of employment, has been involved in 3 or more preventable accidents during a five (5) year period; or

(b) The authorized driver, while acting within the scope of employment, has received 5 or more citations for violating motor vehicle laws during a five (5) year period; or

(c) The unauthorized use, misuse, abuse or neglect of a state vehicle; or[-]

(d) On the basis of citizen complaints, the authorized driver, while acting within the scope of employment has been found, pursuant to 63A-9-501,to have misused or illegally operated a vehicle three (3) times during a three (3) year period.

(4) The employing agency[~~DFO~~] shall impose a period for which the authority to operate a state vehicle will be withdrawn, suspended or revoked under the circumstances described in R27-7-3(3)(a),(b) or (c), on the basis of an investigation of the circumstances surrounding each accident and the authorized driver's driving history.

(5) The withdrawal of authority to operate a state vehicle shall be in addition to agency-imposed discipline, corrective or remedial action, if any.

(6) The authorized driver [~~or the employing agency may~~]petition the DPRB to review the withdrawal, suspension or revocation of the authority to operate a state vehicle imposed by the employing agency[~~determination made by DFO~~] pursuant to R-27-7-3(3) and (4).

(7) Any determination made by the employing agency[~~DFO~~] with regard to the withdrawal, suspension or revocation of the authority to operate a state vehicle, pursuant to R27-7-3(3) and (4) shall remain in effect[~~continue~~] until such time as a review by the DPRB can be conducted, and a decision rendered.

R27-7-4. Accident Review Committee (ARC).

(1) Each agency leasing vehicles from the Division of Fleet Operations shall establish and maintain an Accident Review Committee (ARC). Each agency ARC shall conduct quarterly reviews of all accidents or complaints involving state vehicles under the possession or control of their respective agencies.

(2) The purpose of the ARC is to reduce the number of accidents and complaints involving drivers of vehicles being used in the course of conducting state business.

(3) The ARC shall determine, through a review process, whether an accident was either preventable or non-preventable, using standards established by the National Safety Council.[

~~(4) The ARC shall determine the remedial action, if any, to be imposed in a particular accident case.~~]

(4)[~~(5) Agency ARC determinations are subject to review by DFO.~~]_ Each agency ARC shall, within five (5) business days of reviewing an accident, provide to DFO, in writing, its determination and recommended actions, if any, as well as all evidence used to arrive at its determination as to whether the accident was preventable.[

~~(6) In the event that DFO does not concur with an agency ARC's conclusions regarding the accident, either the agency or DFO may request that the DPRB review the case.~~

~~(7) In the event that either the agency or DFO requests a review of the case, the DPRB's decision shall be binding.~~

~~(8) Upon the request of the DPRB, the ARC shall forward all applicable meeting minutes to the DPRB.~~]

R27-7-5. Accident Review Committee Guidelines.

(1) The ARC shall have no less than three (3) voting members. The members shall be from different areas in the agency.

(2) An accident shall be classified as preventable[~~at fault~~] if any of the following factors are involved:

(a) Driving too fast for conditions;

(b) Failure to observe clearance;

(c) Failure to yield;

(d) Failure to properly lock the vehicle;

(e) Following too closely;

(f) Improper care of the vehicle;

(g) Improper backing;

(h) Improper parking;

(i) Improper turn or lane change;

(j) Reckless Driving as defined in Utah Code 41-6-45;

(k) Unsafe driving practices, including but not limited to: the use of electronic equipment or cellular phone while driving, smoking while driving, personal grooming, u-turn, driving with an animal(s) loose in the vehicle.

(3) An accident shall be classified as non-preventable when:[

~~(a) The state vehicle is struck while the authorized driver is operating the vehicle in a safe manner;~~]

(a)[~~(b)~~] The state vehicle is struck while properly parked;

(b)[~~(c)~~] The state vehicle is vandalized while parked at an authorized location;[-]

(c) The state vehicle is an emergency vehicle, and

(i) At the time of the accident the operator was in the line of duty and operating the vehicle in accordance with their respective agency's applicable policies, guidelines or regulations; and

(ii) Damage to the vehicle occurred during the chase or apprehension of people engaged in or potentially engaged in unlawful activities; or

(iii) Damage to the vehicle occurred in the course of responding to an emergency in order to save or protect the lives, property, health, welfare and safety of the public.

(4) The ARC shall notify DFO of their findings, as to whether the accident in question was preventable or non-preventable, regarding each accident case reviewed.

R27-7-6. Effects of ARC Accident Classification.

(1) In the event that an accident is determined by the ARC to be preventable, the ARC shall impose and enforce the following:

(a) The authorized driver shall be required to attend a Risk Management-approved driver safety program after being involved in the first preventable accident;

(b) The driver shall be required to attend, at their own[~~his or her~~] expense, [~~at least eight (8) hours of approved~~]a state certified or nationally recognized defensive driving course [~~professional driver safety program~~] after being involved in a second preventable accident;

(c) The driver may have his or her authority to operate a state vehicle suspended or revoked, [~~pursuant to R27-7-3, ~~]if he or she is involved in a third preventable accident within five calendar years of being involved in the first preventable accident.

(3) An employee whose authority to operate a state vehicle has been suspended or revoked pursuant to R27-7-3(3) and (4), may petition [~~The ARC shall refer any case involving the suspension of driving privileges to ~~]the DPRB for a review of the agency ARC's determination. The suspension of state driving privileges shall continue until such time as a formal hearing before the DPRB can be held, and a decision rendered. The provisions of the DPRB's decision, including the revocation of the driver's authority to drive a vehicle in the conduct of state business, will govern from that time forward.

R27-7-7. Driving Privilege Review Board.

(1) The Driving Privilege Review Board (DPRB) shall have no more than 3 voting members. The Department of Administrative Services, the Division of Risk Management and the agency whose employee is the subject matter of the case pending before the DPRB shall each have a voting member.

(2) Agency actions that involve the withdrawal, suspension or revocation of the authority to operate a state vehicle are subject to review by the DPRB.

(3) The DPRB shall, upon receipt of the petition for review from the authorized driver, pursuant to R27-7-6(3), [~~employing agency or the authorized driver pursuant to R27-5-3(2)(c) or R27-3-3(5),~~] schedule a review and render a decision on whether to uphold the agency's decision regarding the withdrawal, suspension or revocation of the authority to operate a state vehicle, [~~or decision rendered by the agency~~]or impose a different penalty.

(4) The DPRB shall, upon receipt of an employing agency's petition, pursuant to R27-7-3(2)(c), schedule a review and render a decision on whether to extend the period for which the authority to operate a state vehicle is withdrawn, beyond the period for which the authorized driver's license is denied, cancelled, disqualified, suspended or revoked.

(5)[~~(4) DFO, t~~] The employing agency, and the authorized driver shall be notified of the hearing date, the reason for the hearing, the substance of the charges, as well as their respective right to respond to the petition, rebut the evidence presented and present evidence in their respective behalf at the hearing.

(6)[~~(5)~~] The DPRB shall render a decision that[~~which~~] will be forwarded to the agency for enforcement. In making its decision, the DPRB may consider factors, including but not limited to, the severity of injuries, the extent of damages, the authorized driver's culpability and willfulness.

(7)[~~(6)~~] The DPRB may impose a range of penalties from no action to a withdrawal, suspension or revocation of the authority to operate a state vehicle for an indefinite period. In no case shall the withdrawal, suspension or revocation of the authority to operate a state vehicle be less than the period of withdrawal, suspension or revocation of the privilege to drive imposed by the courts.

(8)[~~(7)~~] An employee whose authority to operate a state vehicle has been withdrawn, suspended or revoked may petition the DPRB for reinstatement of the authority on the basis of changed circumstances. The employee shall provide proof of the change in circumstances that would justify the reinstatement of authority.

KEY: accidents, incidents, tickets, ARC
August 13, 2002
63A-9-401(1)(c)(viii)

Commerce, Administration
R151-14
New Automobile Franchise Act Rule

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26199
FILED: 04/30/2003, 13:58

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to clarify agency procedures for administrative proceedings and records requests.

SUMMARY OF THE RULE OR CHANGE: This rule amendment clarifies agency procedures for designation of a substitute hearing officer to conduct certain aspects of administrative proceedings; adds provisions regarding filing of an answer and pre-hearing memoranda; and adds a provision regarding records requests.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 63-46b-1 et seq., 13-35-101 et seq., and 63-2-101 et seq.

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: This rule filing does not add any costs to the State Budget because the amendments merely codify the procedures currently in place within the agency.
❖LOCAL GOVERNMENTS: This rules does not affect local government.
❖OTHER PERSONS: This rule filing does not create any costs to the regulated individual or regulated industry because it is a codification of current agency procedures.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule filing does not create any costs to the regulated individual or regulated industry because it is a codification of current agency procedures.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No business fiscal impact is anticipated as a result of this filing which merely codifies 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 801-530-6446, 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 06/16/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 06/17/2003

AUTHORIZED BY: Ted Boyer Jr., Executive Director

R151. Commerce, Administration.
R151-14. New Automobile Franchise Act Rule.
R151-14-1. Title.

This rule shall be known as the "New Automobile Franchise Act Rule".

R151-14-2. Authority - Purpose.

In accordance with the New Automobile Franchise Act, Title 13, Chapter 14, this rule governs administrative proceedings before the Utah Motor Vehicle Franchise Advisory Board, and is adopted under the authority of Subsection 13-14-104(1).

R151-14-3. Adjudicative Proceedings.

(1) Informal Proceeding. Pursuant to Section 13-14-104, administrative and adjudicative proceedings conducted before the Board shall be conducted informally.

(2) Applicable Rules. In addition to Title 63, Chapter 46b, Utah Administrative Procedures Act, any adjudicative proceedings required by the New Automobile Franchise Act shall be conducted in accordance with this rule and with the Department of Commerce Administrative Procedures Act Rule, R151-46b.

(3) Procedure for Substitution of Presiding Officer. In accordance with Sections 63-46b-2(1)(h) and 13-14-10[~~4, an administrative law judge is designated as the presiding officer to determine questions of law in adjudicative proceedings before the Board, and to conduct or assist the Board Chair in conducting such proceedings. The Board shall act as finder of fact at any evidentiary hearings conducted in adjudicative proceedings before the Board.~~]7(2), the Executive Director of the Department may upon his/her own motion substitute an administrative law judge as the presiding officer to conduct certain aspects of the adjudicative proceedings before the Board if he/she determines that fairness to the parties would not be compromised by such substitution. The substitution order shall give any party who feels that such substitution would compromise fairness an opportunity to request the Executive Director to reconsider the substitution by submitting written objections and supporting arguments to the Executive Director. Upon reconsideration, the Executive Director may leave the order intact or make such other orders as he/she deems appropriate.

(4) Submissions. Except as otherwise expressly required or permitted in this Rule or in the New Automobile Franchise Act, all correspondence or other submissions shall be directed to the Chair of the Utah Motor Vehicle Franchise Advisory Board at the Utah Department of Commerce.

(5) Form of Pleadings. A request for approval of an act regulated by the New Automobile Franchise Act shall be commenced by the filing of a pleading headed "BEFORE THE DEPARTMENT OF COMMERCE" and captioned "Request for Agency Action." The pleading shall be substantially in compliance with the Utah Administrative Procedures Act, Section 63-46b-3, and the Department of Commerce Administrative Procedures Act Rule, R151-46b-7.

(6) Answer. If the presiding officer determines that an answer to any request for agency action would be helpful to the proceedings, the presiding officer may order a party to the proceedings to file an answer.

(7) Memoranda. If the presiding officer determines that prehearing briefs would be helpful to the proceedings, the presiding officer may order the parties to submit memoranda in accordance with any scheduling order entered by the presiding officer.

(8) GRAMA. Any requests for records of the proceedings before the Board will be governed by GRAMA (Government Records Access and Management Act), Utah Code Ann. Section 63-2-101 et seq. Any schedule of records classifications maintained by the Department shall be made available to the parties upon request.

R151-14-4. Registration.

(1) Each newly formed or otherwise not previously registered franchisor or franchisee shall request an initial registration form from the Board. The Board shall provide a renewal form to each registered franchisor and franchisee at least 30 and not more than 60 days prior to the expiration of the current registration.

(2) A registrant may use the form provided by the Board to renew its registration or may submit a renewal request in another format so long as that request contains the following information:

(a) Name of dealership/manufacturer;

(b) Address of dealership/manufacturer;

(c) Owners or stockholders and percentage of holding (5% or above only);

(d) Line-makes manufactured, distributed, or sold;

(e) If applicable, dealer number; and

(f) Name and address of person designated for the purpose of receiving notices or process pursuant to the provisions of the New Automobile Franchise Act.

(3) At the option of the Board's chair, the processing of an application for registration by the Department staff may be delayed for a reasonable time to give the registrant an opportunity to cure technical defects in an application for registration.

KEY: automobiles, motor vehicles, franchises, recreational vehicles
[~~January 2,~~]2003
Notice of Continuation November 14, 2001
13-14-101 et seq.

Commerce, Administration
R151-35
Powersport Vehicle Franchise Act Rule

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26198
FILED: 04/30/2003, 13:58

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to clarify agency procedures for administrative proceedings and records requests.

SUMMARY OF THE RULE OR CHANGE: This rule amendment clarifies agency procedures for designation of a substitute hearing officer to conduct certain aspects of administrative proceedings; adds provisions regarding filing of an answer and pre-hearing memoranda; and adds a provision regarding records requests.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 63-46b-1 et seq., 13-35-101 et seq., and 63-2-101 et seq.

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: This rule filing does not add any costs to the State Budget because the amendments merely codify the procedures currently in place within the agency.
❖LOCAL GOVERNMENTS: This rules does not affect local government.
❖OTHER PERSONS: This rule filing does not create any costs to the regulated individual or regulated industry because it is a codification of current agency procedures.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule filing does not create any costs to the regulated individual or regulated industry because it is a codification of current agency procedures.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No business fiscal impact is anticipated as a result of this filing which merely codifies 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 801-530-6446, 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 06/16/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 06/17/2003

AUTHORIZED BY: Ted Boyer Jr., Executive Director

R151. Commerce, Administration.
R151-35. Powersport Vehicle Franchise Act Rule.
R151-35-1. Title.

This rule shall be known as the "Powersport Vehicle Franchise Act Rule".

R151-35-2. Authority - Purpose.

In accordance with the Powersport Vehicle Franchise Act, Title 13, Chapter 35, this rule governs administrative proceedings before the Utah Powersport Vehicle Franchise Advisory Board, and is adopted under the authority of Subsection 13-35-104(1).

R151-35-3. Adjudicative Proceedings.

(1) Informal Proceeding. Pursuant to Section 13-35-104, administrative and adjudicative proceedings conducted before the Board shall be conducted informally.

(2) Applicable Rules. In addition to Title 63, Chapter 46b, Utah Administrative Procedures Act, any adjudicative proceedings required by the Powersport Vehicle Franchise Act shall be conducted in accordance with this rule and with the Department of Commerce Administrative Procedures Act Rule, R151-46b.

(3) Procedure for Substitution of Presiding Officer. In accordance with Sections 63-46b-2(1)(h) and 13-35-10[~~4, an administrative law judge is designated as the presiding officer to determine questions of law in adjudicative proceedings before the Board, and to conduct or assist the Board Chair in conducting such proceedings. The Board shall act as finder of fact at any evidentiary hearings conducted in adjudicative proceedings before the Board.~~]7(2), the Executive Director of the Department may upon his/her own motion substitute an administrative law judge as the presiding officer to conduct certain aspects of the adjudicative proceedings before the Board if he/she determines that fairness to the parties would not be compromised by such substitution. The substitution order shall give any party who feels that such substitution would compromise fairness an opportunity to request the Executive Director to reconsider the substitution by submitting written objections and supporting arguments to the Executive Director. Upon reconsideration, the Executive Director may leave the order intact or make such other orders as he/she deems appropriate.

(4) Submissions. Except as otherwise expressly required or permitted in this Rule or in the Powersport Vehicle Franchise Act, all correspondence or other submissions shall be directed to the Chair of the Utah Powersport Vehicle Franchise Advisory Board at the Utah Department of Commerce.

(5) Form of Pleadings. A request for approval of an act regulated by the Powersport Vehicle Franchise Act shall be commenced by the filing of a pleading headed "BEFORE THE DEPARTMENT OF COMMERCE" and captioned "Request for Agency Action." The pleading shall be substantially in compliance with the Utah Administrative Procedures Act, Section 63-46b-3, and the Department of Commerce Administrative Procedures Act Rule, R151-46b-7.

(6) Answer. If the presiding officer determines that an answer to any request for agency action would be helpful to the proceedings, the presiding officer may order a party to the proceedings to file an answer.

(7) Memoranda. If the presiding officer determines that prehearing briefs would be helpful to the proceedings, the presiding officer may order the parties to submit memoranda in accordance with any scheduling order entered by the presiding officer.

(8) GRAMA. Any requests for records of the proceedings before the Board will be governed by GRAMA (Government Records Access and Management Act), Utah Code Ann. Section 63-2-101 et seq. Any schedule of records classifications maintained by the Department shall be made available to the parties upon request.

R151-35-4. Registration.

(1) Initial Registration. Each franchisor and franchisee doing business in this state shall request an initial registration form from the Board. The Board will provide an initial registration form to each known franchisor and franchisee.

(2) Annual Renewals. The Board will provide a renewal form to each registered franchisor and franchisee at least 30 and not more than 60 days prior to the expiration of the current registration.

(3) A registrant may use the form provided by the Board as its initial or renewal registration or may submit a registration or renewal request in another format so long as that request contains the following information:

(a) Name of dealership/manufacturer;

(b) Address of dealership/manufacturer;

(c) Owners or stockholders and percentage of holding (5% or above only);

(d) Line-makes manufactured, distributed, or sold;

(e) If applicable, dealer number; and

(f) Name and address of person designated for the purpose of receiving notices or process pursuant to the provisions of the Powersport Vehicle Franchise Act.

(4) At the option of the Board chair, the processing of an application for registration by the Department staff may be delayed for a reasonable time to give the registrant an opportunity to cure technical defects in an application for registration.

KEY: motorcycles, dirt bikes, off road vehicles, franchises
[January 15,]2003
13-35-101 et seq.

Commerce, Occupational and Professional Licensing

R156-38

Residence Lien Restriction and Lien Recovery Fund Rules

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26192
FILED: 04/28/2003, 11:34

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division needs to amend the rules so that they conform with changes made in the Lien Restriction and Lien Recovery Fund Act, Title 38, Chapter 11, by H.B. 78 during the 2003 legislative session. (DAR NOTE: H.B. 78 is found at UT L 2003 Ch 276, and is effective as of May 1, 2003.)

SUMMARY OF THE RULE OR CHANGE: Amendments being proposed clarify how interest is to be calculated, delete existing language which has been rendered obsolete by the passage of H.B. 78, codify current Division procedures with respect to allocation of certain claim elements, and make technical corrections. The following sections in the rule are being amended: R156-38-102, R156-38-103a, R156-38-203, R156-38-204a, R156-38-204c, R156-38-204d, R156-38-301a, R156-38-301b, and R156-38-302.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 38-11-101, and Subsections 58-1-106(1)(a) and 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: The Division anticipates no costs or savings to the state budget as a result of these proposed amendments. The Lien Recovery Fund is a self-supporting entity and it receives no general revenues. Further, any costs associated with the proposed amendments have already been account for in the fiscal analysis of H.B. 78. This proposed rule filing does not materially alter that fiscal analysis.

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

❖OTHER PERSONS: This proposed rule filing causes no cost changes other than those already accounted for in the fiscal analysis of H.B. 78.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The Division anticipates no compliance costs. The proposed amendments to the rule will not materially alter the cost for preparation and filing of claims against the Fund.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change contains various amendments intended to clarify existing standards and procedures and does not create any fiscal impact to businesses. The remaining changes to the rule are for the purpose of bringing the rule into compliance with statutory amendments through the passage of H.B. 78. Thus, no fiscal impact to businesses should result beyond those accounted for in H.B. 78. 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 06/16/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 5/20/2003 at 9:00 AM, 160 East 300 South, North Conference Room (First Floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 06/17/2003

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) "Licensed or exempt from licensure", as used in Subsection 38-11-204(3) means that, on the date the written contract was entered into, the contractor held a valid, active license issued by the Division pursuant to Title 58, Chapter 55 of the Utah Code in any classification or met any of the exemptions to licensure given in Title 58, Chapters 1 and 55.

([~~5~~]6) "Necessary party" includes the division, on behalf of the fund, and the claimant.

([~~6~~]7) "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~~]8) "Permissive party" includes the nonpaying party and any entity[~~a licensee or qualified beneficiary~~] who will be required to reimburse the fund if a claimant's claim is paid from the fund.

([~~8~~]9) "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.

R156-38-103a. Authority - Purpose - Organization.

(1) These rules are adopted by the division under the authority of Section 38-11-103 to enable the division to administer Title 38, Chapter 11, the Residence Lien Restriction and Lien Recovery Fund Act.

(2) The organization of these rules is patterned after the organization of Title 38, Chapter 11.

R156-38-203. Limitation on Payment of Claims.

(1) Claims may be paid prior to the pro-rata adjustment required by Subsection 38-11-203(4)(b) if, based upon an evaluation of the notices of commencement of action filed with respect to an owner-occupied residence or the total claim filings on an owner-occupied residence, the division determines that a pro-rata payment will likely not be required.

(2) If any claims have been paid before the division determines a pro-rata payment will likely be required, the division will notify the claimants of the likely adjustment and that the claimants will be required to reimburse the division when the final pro-rata amounts are determined.

(3) The pro-rata payment amount required by Subsection 38-11-203(4)(b) shall be calculated as follows:

(a) Determine the total claim amount each claimant would be entitled to without consideration of the limit set in Subsection 38-11-203(4)(b).

(b) Sum the amounts each claimant would be entitled to without consideration of the limit to determine the total amount payable to all claimants without consideration of the limit.

(c) Divide the limit amount by the total amount payable to all claimants without consideration of the limit to find the claim allocation ratio.

(d) For each claim, multiply the total claim amount without consideration of the limit by the claim allocation ratio to find the net claim payment for each claim.

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 homeowner contracted with[~~claim involves~~] an original contractor, documentation issued by the division that the original contractor [~~is~~]was licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act on the date the contract was entered into;

(b) if the homeowner contracted with[~~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;

(c) if the homeowner contracted with a manufactured housing retailer, a copy of the completed retail purchase contract;

(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~~]other 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~~]applicable:

(a) a copy of an action date stamped by a court of competent jurisdiction filed by the claimant against the nonpaying party[~~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 nonpaying party[~~contracting entity or subcontractor~~] prevented the claimant from satisfying Subsections (a) and (b);

(5) one of the following:

(a) a copy of a civil judgment entered in favor of the claimant against the nonpaying party[~~contracting entity or subcontractor~~] containing a finding that the nonpaying party[~~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 nonpaying party[~~contracting entity or subcontractor~~] prevented the claimant from obtaining [~~such~~]a civil judgment, together with credible evidence establishing that the nonpaying party[~~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~~]applicable:

(a) a copy of a supplemental order issued following the civil judgment entered in favor of the claimant and a copy of the return of service of the supplemental order indicating either that service was accomplished on the nonpaying party[~~contracting entity or subcontractor~~] or that said nonpaying party[~~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 nonpaying party[~~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 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) 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.

R156-38-204c. Claims Against the Fund by Laborers - Supporting Documents.

(1) The following supporting documents shall, at a minimum, accompany each laborer claim for recovery from the fund:

(a) one of the following:

(i) a copy of a wage claim assignment filed with the [~~Industrial Commission of the Utah Labor Division~~]Employment Standards Bureau of the Antidiscrimination and Labor Division of the Labor Commission of Utah for the amount of the claim, together with all supporting documents submitted in conjunction therewith; or

(ii) a copy of an action filed by claimant against claimant's employer to recover wages owed;

(b) one of the following:

(i) a copy of a final administrative order for payment issued by the [~~Industrial Commission of Utah Labor Division~~]Employment Standards Bureau of the Antidiscrimination and Labor Division of the Labor Commission of Utah containing a finding that the claimant is an employee and that the claimant has not been paid wages due for work performed at the site of construction on an owner-occupied residence;

(ii) a copy of a civil judgment entered in favor of claimant against the employer containing a finding that the employer failed to pay the claimant wages due for work performed at the site of construction on an owner-occupied residence; or

(iii) a copy of a bankruptcy filing by the employer which prevented the entry of an order or a judgment against the employer;

(c) one of the following:

(i) 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);

(ii) 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

(iii) documentation that the claimant has been prevented from obtaining an owner-occupied residence affidavit together with independent evidence establishing that the owner 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).

(2) When a laborer makes claim on multiple residences as a result of a single incident of non-payment by the same employer, the division must require payment of at least one application fee required under Section 38-11-204(1)(b) and at least one registration fee required under Subsection 38-11-204(7), but may waive additional application and registration fees for claims for the additional residences, where no legitimate purpose would be served by requiring separate filings.

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

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

(2) When a claimant [~~requests payment of~~]provides qualified service on multiple [~~claims~~]residences, irrespective of whether those residences are owner-occupied residences, and files claim for payment on some or all of those residences and the claims are 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~~]residences using the following formula: (Qualified services attributable to the owner-occupied residence at issue in the claim 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~~]3)(a) For claims wherein the claimant has had judgment entered against the nonpaying party, 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.

(4) The interest rate(s) applicable to a claim shall be the rate for the year or years in which payment for the qualified services was due.

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:

TABLE II

Primary Classification Number	Subclassification Number	Classification
E100		General Engineering Contractor
	S211	Boiler Installation Contractor
	S213	Industrial Piping Contractor
	S262	Granite and Pressure Grouting Contractor
S320		Steel Erection Contractor
	S321	Steel Reinforcing Contractor
	S322	Metal Building Erection Contractor
	S323	Structural Stud Erection Contractor
S340		Sheet Metal Contractor
S360		Refrigeration Contractor
S440		Sign Installation Contractor
	S441	Non Electrical Outdoor Advertising Sign Contractor
S450		Mechanical Insulation Contractor
S470		Petroleum System Contractor
S480		Piers and Foundations Contractor
I101		General Engineering Trades Instructor
I102		General Building Trades Instructor
I103		General Electrical Trades Instructor
I104		General Plumbing Trades Instructor
I105		General Mechanical Trades Instructor

(2) Any person holding a license requiring registration in the fund that is on inactive status on the assessment date of any special assessment of the fund, shall be exempt from payment of that [~~specific~~]special assessment and any assessment made during the time the license remains on inactive status and the licensee does not engage in the licensed occupation or profession.

(3) Before a licensee [~~on inactive status, who would otherwise be required to pay an assessment, ~~]can be reinstated to an active status, the licensee must pay:

(a) the initial assessment of $195 assessed July 1, 1995, if that assessment has never been paid by that licensee; and

(b) the most recent special assessment immediately preceding the date on which the license is reinstated to active status.

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 registrant's[~~qualified beneficiary's~~] prior name;

(b) the registrant's[~~qualified beneficiary's~~] new name;

(c) the registrant's[~~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.

R156-38-302. Renewal and Reinstatement Procedures.

(1) Renewal notices required in connection with a special assessment shall be mailed to each registrant at least 30 days prior to the expiration date for the existing registration established in the renewal notice. Unless the registrant pays the special assessment by the expiration date shown on the renewal notice, the registrant's registration in the fund automatically expires on the expiration date.

(2) Renewal notices shall be sent by letter deposited in the post office with postage prepaid, addressed to the last address shown on the division's records. Such mailing shall constitute legal notice. It shall be the duty and responsibility of each registrant to maintain a current address with the division.

(3) Renewal notices shall specify the amount of the special assessment, the application requirement, and other renewal requirements, if any; shall require that each registrant document or certify that the registrant meets the renewal requirements; and shall advise the registrant of the consequences of failing to renew a registration.[

~~(4) Renewal notices shall specify a renewal application due date no later than the expiration date for the existing registration.~~]

([~~5~~]4) Renewal applications must be received by the division in its ordinary course of business on or before the renewal application due date in order to be processed as a renewal application. Late applications will be processed as reinstatement applications.

([~~6~~]5) A registrant whose registration has expired may have the registration reinstated by complying with the requirements and procedures specified in Subsection 38-11-302(5).

KEY: licensing, contractors, liens
[~~July 3, 2002~~]2003
Notice of Continuation April 6, 2000
38-11-101
58-1-106(1)(a)
58-1-202(1)(a)

▼ ▼

Commerce, Occupational and Professional Licensing

R156-63

Security Personnel Licensing Act Rules

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26193
FILED: 04/28/2003, 15:57

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and the Security Services Licensing Board are recommending changes to the rule to further define and clarify the qualifications for licensure, unprofessional conduct, and the operating standards for the occupation.

SUMMARY OF THE RULE OR CHANGE: In Section R156-63-102, added a definition for "authorized emergency vehicle"; and added wording to the definition of "qualifying agent" to further define the responsibilities of a contract security company qualifying agent. In Section R156-63-302c, added wording to clarify the passing score of 75% on the Utah Security Personnel Qualifying Agent's Examination. In Section R156-63-302d, added wording that all contract security companies shall notify the division immediately upon cancellation of an insurance policy, whether such cancellation was initiated by the insurance company or the insured agency. Added Section R156-63-302f to define "good moral character" by clarifying criminal convictions which may disqualify a person from obtaining or holding an unarmed private security officer license, an armed private security officer license, or a contract security company license and clarifies when an application for said licensure may be approved for an applicant who has a criminal background. In Section R156-63-304, updated a statute reference. In Section R156-63-307, added conditions for when an on-the-job training letter may be issued to an applicant by the Division. In Section R156-63-502, added as unprofessional conduct definitions to include utilizing a vehicle or an uniform by a security company that implies that the company or its employees are a police agency, incompetence or negligence by a licensee that results in injury to a person or that creates an unreasonable risk that a person may be harmed, failure by the contract security company to adequately supervise employees to the extent that the public health and safety are at risk, and failing to immediately notify the division of the cancellation of the contract security company's insurance policy. In Section R156-63-603, amendments are made to change the content of the basic education and training program for armed private security officers, amendments remove the requirement that an armed private security officer attend a basic training program different than the one established for the unarmed private security officer, amendments add additional training requirements to the firearms training program to include two additional hours of instruction in firearms training, and two additional hours of training on the firearms range. The increase in armed private security officer training is necessary to further ensure that those officers who are authorized to

carry a firearm will do so in a safe manner and not be an additional danger to the public. In Subsection R156-63-604(1)(h), deleted reference to "armed". In Sections R156-63-605 and R156-63-610, amendments are made to these two sections to clarify uniform requirements and standards for vehicle markings to ensure that a security officer and his vehicle are easily distinguishable from a police officer.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-63-101, and Subsections 58-1-106(1)(a) and 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: The Division will incur minimal costs, less than $100, 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 rule amendments do not apply to local governments.
❖OTHER PERSONS: The proposed rule amendments will slightly increase costs to a contract security company with reference to the four additional hours of training time for armed private security officers. It is estimated that the four hours will cost an additional $20 per individual. However, the consolidation of the basic training programs for unarmed and armed private security officers should be a savings of $50 per individual. The four hour increase of training time for armed private security officers will only apply to new applicants for licensure. Therefore, the Division is unable to determine an aggregate amount since we are not able to determine how many new applicants for licensure as an armed private security officer will apply in the future.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed rule amendments will slightly increase costs to a contract security company with reference to the four additional hours of training time for armed private security officers. It is estimated that the four hours will cost an additional $20 per individual. However, the consolidation of the basic training programs for unarmed and armed private security officers should be a savings of $50 per individual.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Generally, this rule change includes amendments that are intended to clarify the criteria for initial licensure and the standards for conduct of licensees. The amendment regarding firearm education, however, could cause an increase of $20 to those licensed as armed private security officers. However, these costs would be outweighed by the potential benefits to public safety by ensuring that armed private security officers are properly trained in firearm use. No other fiscal impact on businesses can be foreseen from this rule filing. 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:
Clyde Ormond at the above address, by phone at 801-530-6254, by FAX at 801-530-6511, or by Internet E-mail at cormond@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 5/22/2003 at 11:00 AM, 160 East 300 South, North Conference Room (First Floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 06/17/2003

AUTHORIZED BY: J. Craig Jackson, Director

R156. Commerce, Occupational and Professional Licensing.
R156-63. Security Personnel Licensing Act Rules.
R156-63-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 63, as used in Title 58, Chapters 1 and 63 or these rules:

(1) "Approved basic education and training programs" as used in these rules means basic education and training that meets the standards set forth in Sections R156-63-602, R156-63-603 and R156-63-604 and that is approved by the division.

(2) "Authorized emergency vehicle" is as defined in Subsection 41-6-1(3).

(3) "Contract security company" includes:

(a) a peace officer who engages in providing security or guard services when acting in a capacity other than as an employee of the law enforcement agency by whom he is employed, or for other than the regular salary, whether at regular pay or overtime pay, from the law enforcement agency by whom he is employed; but does not include:

(b) a company which hires as employees, individuals to provide security or guard services for the purpose of protecting tangible personal property, real property, or the life and well being of personnel employed by, or animals owned by or under the responsibility of the that company, as long as the security or guard services provided by the company do not benefit any person other than the employing company.

([~~3~~]4) "Employee" means an individual providing services in the security guard industry for compensation when the amount of compensation is based directly upon the security guard services provided and upon which the employer is required under law to withhold federal and state taxes, and for whom the employer is required under law to provide worker's compensation insurance coverage and pay unemployment insurance.

([4]5) "Immediate supervision" means the supervisor is available for immediate voice communication and can be available for in-person consultation within a reasonable period of time with an on-the-job trainee.

([~~5~~]6) "Officer" as used in Subsections 58-63-201(1)(a) and R156-63-302a(1)(b) means a manager, director, or administrator of a contract security company.

([~~6~~]7) "Practical experience" means experience as an unarmed or armed private security officer obtained under the immediate supervision of a supervisor who has been assigned to train and develop the unarmed or armed private security officer.

([~~7~~]8) "Qualified continuing education" as used in these rules means continuing education that meets the standards set forth in Subsection R156-63-304.

([~~8~~]9) "Qualifying agent" means an individual who is an officer, director, partner, proprietor or manager of a contract security company who exercises material authority in the conduct of the contract security company's business by making substantive technical and administrative decisions relating to the work performed for which a license is required under this chapter and who is not involved in any other employment or activity which conflicts with his duties and responsibilities to ensure the licensee's performance of work regulated under this chapter does not jeopardize the public health, safety, and welfare.

([~~9~~]10) "Supervised on-the-job training" means training of an armed or unarmed private security officer under the immediate supervision of a licensed private security officer who has been assigned to train and develop the on-the-job trainee.

([~~10~~]11) "Unprofessional conduct," as defined in Title 58, Chapters 1 and 63, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-63-502.

R156-63-302c. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the examination requirements for licensure in Section 58-63-302 are defined, clarified, or established as follows:

(1) the qualifying agent for each applicant who is a contract security company shall obtain a passing score of at least 75% on[~~pass~~] the Utah Security Personnel Qualifying Agent's[~~Law and Rules~~] Examination; and

(2) each applicant for licensure as an armed private security officer or an unarmed private security officer shall obtain a score of at least 75% on the basic education and training final examination approved by the division and offered by each provider of basic education and training as a part of the program.

R156-63-302d. Qualification for Licensure - Liability Insurance for a Contract Security Company.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the insurance requirements for licensure as a contract security company in Subsection 58-63-302(1)(j)(i) are defined, clarified, or established as follows.

(1) An applicant shall file with the division a "Certificate of Insurance" providing liability insurance for the following exposures:

(a) general liability;

(b) assault and battery;

(c) personal injury;

(d) false arrest;

(e) libel and slander;

(f) invasion of privacy;

(g) broad form property damage;

(h) damage to property in the care, custody or control of the contract security company; and

(i) errors and omissions.

(2) Said insurance shall provide liability limits in amounts not less than $300,000 for each incident and not less than $1,000,000 total aggregate for each annual term.

(3) The insurance carrier must be an insurer which has a certificate of authority to do business in Utah, or is an authorized surplus lines insurer in Utah, or is authorized to do business under the laws of the state in which the corporate offices of foreign corporations are located.

(4) All contract security companies shall have a current insurance certificate of coverage as defined in Subsection (1) on file at all times and available for immediate inspection by the division during normal working hours.

(5) All contract security companies shall notify the division immediately upon cancellation of the insurance policy, whether such cancellation was initiated by the insurance company or the insured agency.

R156-63-302f. Qualifications for Licensure - Good Moral Character - Disqualifying Convictions.

(1) In addition to those criminal convictions prohibiting licensure as set forth in Subsections 58-63-302(1)(h), (2)(c) and (3)(c), the following is a list of criminal convictions which may disqualify a person from obtaining or holding an unarmed private security officer license, an armed private security officer license, or a contract security company license:

(a) crimes against a person as defined in Title 76, Chapter 5, Part 1;

(b) theft, including retail theft, as defined in Title 76;

(c) larceny;

(d) sex offenses as defined in Title 76, Part 4;

(e) any offense involving controlled dangerous substances;

(f) fraud;

(g) extortion;

(h) treason;

(i) forgery;

(j) arson;

(k) kidnapping;

(l) perjury;

(m) conspiracy to commit any of the offenses listed herein;

(n) hijacking;

(o) burglary;

(p) escape from jail, prison, or custody;

(q) false or bogus checks;

(r) terrorist activities;

(s) desertion;

(t) pornography; and

(u) any attempt to commit any of the above offenses.

(2) Applications for licensure or renewal of licensure in which the applicant, or in the case of a contract security company, the officers, directors, and shareholders with 5% or more of the stock of the company, has a criminal background shall be considered on a case by case basis, including a consideration of the following:

(a) the duties violated;

(b) the potential or actual injury caused by the applicant's unprofessional conduct; and

(c) the existence of aggravating or mitigating factors.

R156-63-304. Continuing Education for Armed and Unarmed Private Security Officers as a Condition of Renewal.

(1) In accordance with Subsections 58-1-203([~~7~~]1)(g) and 58-1-308(3)(b), there is created a continuing education requirement as a condition of renewal or reinstatement of licenses issued under Title 58, Chapter 63 in the classifications of armed private security officer and unarmed private security officer.

(2) Qualified continuing education for armed private security officers and unarmed private security officers shall consist of not less than 16 hours of formal classroom education or practical experience every two years.

(3) Continuing firearms education and training for armed private security officers shall consist of not less than eight hours during each calendar year. Firearms education and training shall comply with the provisions of Public Law 103-54, the Armored Car Industry Reciprocity Act of 1993.

(4) If a renewal period is shortened or lengthened to effect a change of renewal cycle, the continuing education hours required for that renewal period shall be increased or decreased accordingly as a pro rata amount of the requirements of a two-year period.

(5) Continuing education to qualify under the provisions of Subsection (2) shall include:

(a) company operational procedures manual;

(b) applicable state laws and rules;

(c) legal powers and limitations of private security officers;

(d) observation and reporting techniques;

(e) ethics; and

(f) emergency techniques.

R156-63-307. Exemptions from Licensure.

(1) In accordance with Subsection 58-1-307(1)(c), an applicant who has applied for licensure as an unarmed or armed private security officer is exempt from licensure and may engage in practice as an unarmed or armed private security officer in a supervised on-the-job training capacity, for a period of time not to exceed the earlier of 30 days or action by the division upon the application.

(2) Upon receipt of a complete application for licensure as an unarmed private security officer or as an armed private security officer, an on-the-job training letter may be issued to the applicant, if the applicant meets the following criteria:

(a) the applicant has not been licensed as an unarmed or as an armed private security officer in the state of Utah at least two years prior to applying for licensure;

(b) the applicant submits with his application an official criminal history re port from the Bureau of Criminal Identification showing "No Criminal Record Found";

(c) the applicant has not answered "yes" to any question on the qualifying questionnaire section of the application; and

(d) the applicant has not had a license to practice an occupation or profession denied, revoked, suspended, restricted or placed on probation.

R156-63-502. Unprofessional Conduct.

"Unprofessional conduct" includes the following:

(1) making any statement that would reasonably cause another person to believe that a private security officer functions as a law enforcement officer or other official of this state or any of its political subdivisions or any agency of the federal government;

(2) employment of an unarmed or armed private security office by a contract security company, as an on-the-job trainee pursuant to Section R156-63-307, who has been convicted of a felony or a misdemeanor crime of moral turpitude;

(3) employment of an unarmed or armed private security officer by a contract security company who fails to meet the requirements of Section R156-63-307; and

(4) a judgment on, or a judicial or prosecutorial agreement concerning a felony, or a misdemeanor involving moral turpitude, entered against an individual by a federal, state or local court, regardless of whether the court has made a finding of guilt, accepted a plea of guilty or nolo contendere by an individual, or an individual has entered into participation in a first offender, deferred adjudication or other program or arrangement where judgment of conviction is withheld.

(5) utilizing a vehicle whose markings, lighting, or signal devices imply that the vehicle is an authorized emergency vehicle as defined in Subsection 41-6-1(3) and Section 41-6-1.5 and in Title R722, Chapter 340;

(6) wearing a uniform, insignia, or badge that would lead a reasonable person to believe that the unarmed or armed private security officer is connected with a federal, state, or municipal law enforcement agency;

(7) incompetence or negligence by an unarmed private security officer, an armed private security officer or by a contract security company that results in injury to a person or that creates an unreasonable risk that a person may be harmed;

(8) failure by the contract security company or its officers, directors, partners, proprietors or responsible management personnel to adequately supervise employees to the extent that the public health and safety are at risk; and

(9) failing to immediately notify the division of the cancellation of the contract security company's insurance policy.

R156-63-603. Operating Standards - Content of Approved Basic Education and Training Program for Armed Private Security Officers.

An approved basic education and training program for armed private security officers shall have the following components:

(1) at least eight hours of basic classroom instruction to include the following:

(a) the nature and role of private security, including the limits of, scope of authority and the civil liability of a private security officer and the private security officer's role in today's society;

(b) state laws and rules applicable to private security;

(c) legal responsibilities of private security, including constitutional law, search and seizure and other such topics;

(d) situational response evaluations, including protecting and securing crime or accident scenes, notification of intern and external agencies, and controlling information;

(e) ethics;

(f) use of force, emphasizing the de-escalation of force and alternatives to using force;

(g) report writing, including taking witness statements, log maintenance, the control of information, taking field notes, report preparation and basic writing skills;

(h) [~~armed~~]patrol techniques, including mobile vs. fixed post, accident prevention, responding to calls and alarms, security breeches, and monitoring potential safety hazards;

(i) police and community relations, including fundamental duties and personal appearance of security officers;

(j) sexual harassment in the work place; and

(k) a final examination which competently examines the student in the subjects included in the approved program of education and training.

(2) at least [~~six~~]eight hours of classroom firearms instruction to include the following:

(a) armed patrol techniques;

(b) ethical restraints on weapon use;

(c) legal responsibilities of an armed private security officer;

(d) the weapon and its ammunition;

([~~b~~]e) the use of factory loaded ammunition only;
([~~c~~]f) the care and cleaning of the weapon;
([~~d~~]g) cleaning equipment options;
([~~e~~]h) barrel and cylinder maintenance;
([~~f~~]i) no alterations of firing mechanism;
([~~g~~]j) weapons inspection review procedures;
([~~h~~]k) firearm safety on duty;
([~~i~~]l) firearm safety at home;
([~~j~~]m) firearm safety on range;[
~~(k) ethical restraints on weapon use;~~
~~(l) legal restraints on weapon use;~~]
([~~m~~]n) use of deadly force under Utah law and the provisions of Title 76, Chapter 2, Part 4 and;
([~~n~~]o) the instruction that armed private security officers shall not fire their weapon unless there is an eminent threat to life and at no time will the weapon be drawn as a threat or means to force compliance with any verbal directive; and
(3) at least [~~six~~]eight hours of firearms instruction on the range to include the following:
(a) demonstration of appropriate techniques of shooting;
(b) explanation of the difference between flash sight and sight picture; and
(c) a recognized practical pistol course on which the applicant achieves a minimum score of 80%.

R156-63-604. Operating Standards - Content of Approved Basic Education and Training Program for Unarmed Private Security Officers.
An approved basic education and training program for unarmed private security officers shall have the following components:
(1) at least eight hours of basic classroom instruction to include the following:
(a) the nature and role of private security, including the limits of, scope of authority and the civil liability of a private security officer and the private security officer's role in today's society;
(b) state laws and rules applicable to private security;
(c) legal responsibilities of private security, including constitutional law, search and seizure and other such topics;
(d) situational response evaluations, including protecting and securing crime or accident scenes, notification of internal and external agencies, and controlling information;
(e) ethics;
(f) use of force, emphasizing the de-escalation of force and alternatives to using force;
(g) report writing, including taking witness statements, log maintenance, the control of information, taking field notes, report preparation and basic writing skills;
(h) [~~unarmed~~]patrol techniques, including mobile vs. fixed post, accident prevention, responding to calls and alarms, security breeches, monitoring potential safety hazards;
(i) police and community relations, including fundamental duties and personal appearance of security officers;
(j) sexual harassment in the work place;
(k) a final examination which competently examines the student in the subjects included in the approved program of education and training.

R156-63-605. Operating Standards - Uniforms.
(1) All unarmed and armed private security officers while on duty shall wear the uniform of their contract security company employer unless assigned to work undercover.
(2) Uniforms worn by armed or unarmed private security officers shall be marked with the name of the company or the words "Contract Security", "Security Officer", or "Security", visibly displayed on the uniform or jacket in a prominent manner making the uniform easily [~~distinguished~~]distinguishable from the uniform of any public law enforcement agency.

R156-63-610. Operating Standards - Vehicles.
(1) No contract security company or its personnel shall utilize a vehicle whose markings, lighting, or signal devices imply that the vehicle is an authorized emergency vehicle pursuant to Subsection 41-6-1(3)[~~bearing a red or blue emergency light or containing a siren, bell, or other non-standard signaling device~~].
(2) The company name, either alone or in conjunction with the word "Security", shall appear on each side and the rear of the company vehicle in letters no less than 2.5 inches in height and readable from a reasonable distance.

KEY: licensing, security guards, private security officers
[~~December 4, 2001~~]2003
Notice of Continuation September 28, 2000
58-1-106(1)(a)
58-1-202(1)(a)
58-63-101

Community and Economic Development, Community Development, Fine Arts
R207-1
Utah Arts Council General Program Rules

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26185
FILED: 04/24/2003, 09:36

RULE ANALYSIS
PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The change updates the rule to reflect that some of the agency's information is available online either exclusively or in addition to printed materials. Furthermore, the change indicates the agency's authority to award commissions in addition to prizes, grants, and fellowships, as per Section 9-6-404.

SUMMARY OF THE RULE OR CHANGE: The changes are: add "and/or electronic" between "printed" and "materials"; substitute "events" with "opportunities"; and add "commissions," between "prizes," and "grants".

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 9-6-404

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: Through use of electronic materials in lieu of printed materials in some aspects of its programs, the

agency anticipates savings on design, printing costs, paper, and postage. Actual amounts are not known at this time.
❖LOCAL GOVERNMENTS: No anticipated fiscal impact. In order to access electronic materials, affected agencies will need access to a computer with an internet connection, which most agencies already have and are otherwise available free of cost at public libraries. The agency offers printed materials for those without access to electronic materials.
❖OTHER PERSONS: No anticipated fiscal impact. In order to access electronic materials, affected persons will need access to a computer with an internet connection, which are available free of cost at public libraries. The agency offers printed materials for those without access to electronic materials.

COMPLIANCE COSTS FOR AFFECTED PERSONS: In order to access electronic materials, affected persons will need access to a computer with an internet connection, which are available free of cost at public libraries. The agency offers printed materials for those without access to electronic materials. No other compliance costs anticipated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No anticipated fiscal impact.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMUNITY AND ECONOMIC DEVELOPMENT
COMMUNITY DEVELOPMENT, FINE ARTS
617 E SOUTH TEMPLE
SALT LAKE CITY UT 84102-1177, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jennifer Broschinsky at the above address, by phone at 801-236-7548, by FAX at 801-236-7556, or by Internet E-mail at jbroschinsky@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 06/24/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 06/25/2003

AUTHORIZED BY: Frank McEntire, Director

R207. Community and Economic Development, Community Development, Fine Arts.
R207-1. Utah Arts Council General Program Rules.
R207-1-1. Utah Arts Council General Program Rules.

The Utah Arts Council shall set forth in printed and/or electronic materials: standards and procedures, eligibility requirements, fees, restrictions, panel and committee members, deadlines for submitting applications, requirements pertaining to specific [~~events~~]opportunities, dates of events, liability, and other information which is available to the public. The Utah Arts Council has the authority to award prizes, commissions, grants and fellowships.

KEY: art in public places, art preservation, art financing, performing arts
[~~1987~~]2003
Notice of Continuation August 20, 2002
9-6-205

▼ ▼

Community and Economic Development, Community Development, Fine Arts
R207-2
Policy for Commissions, Purchases, and Donations to, and Loans from, the Utah State Art Collections

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26186
FILED: 04/24/2003, 09:37

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The change clarifies criteria for selection of public art commissions, as authorized by Section 9-6-405 of the Utah State Code. Subsection R207-2-1(c) has been modified to eliminate redundancy and define culpability of non-state agencies, and state agencies that do not get proper authorization for loans of artwork, for insurance costs of art on loan from the Utah State Art Collections. As per Title 63A, Chapter 4, the Division of Risk Management insures the Utah State Art Collection as property of the State of Utah. However, Risk Management will not cover works of art that are loaned to non-state (i.e., federal or private) agencies.

SUMMARY OF THE RULE OR CHANGE: In Subsection R207-2-1(a), add "etc." after "Folk Arts Selection Committee"; remove "appropriateness to the site for Public Art pieces"; add a comma after "in filling historical"; replace "media" with "cultural"; and add the sentence "Public Art commissions will be based on the aesthetic value, appropriateness to the site or facility and budget.". In Subsection R207-2-1(b), replace "should" with "may"; add "solely" between "becomes" and "responsible"; replace "insuring and conserving" with "its ownership, including cataloging, conserving, insuring, storing, and displaying"; and add a period after "work of art". Also, change the last sentence to read "The artwork will not be considered part of the Utah State Art Collections.". In the first sentence of Subsection R207-2-1(c), add "from the Utah State Art Collections" after "artwork"; remove "to state agencies", "also", and "at the Utah Arts Council", and add "state's Risk Management Division" after "insured by the"; delete the sentence beginning with "Otherwise" and add the sentence "Replacement value insurance for non-state agencies, by agreement or default, is borne by the institution receiving the

loaned works."; replace "Traveling Exhibitions" with "exhibition or other purposes"; add "state's Risk Management Division through the" between "insured by the" and "Utah Arts Council"; replace "Program artwork is" with "commissions are" and replace "state through the site where the art is located" with "state's Risk Management Division through the Utah Arts Council and the host agency."

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 9-6-205, 9-6-405, and 63A-4-101

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: As the change is not incremental, no fiscal impact anticipated to the state.
❖LOCAL GOVERNMENTS: Non-state agencies or their insurance are responsible for repair or replacement costs in the event that artwork loaned from the State Collections is damaged or lost. This is not an incremental change in cost, but is being added to the rule to reflect the Division of Risk Management's policy and the loan contract signed by the agency receiving the loan.
❖OTHER PERSONS: Non-state agencies or their insurance are responsible for repair or replacement costs in the event that artwork loaned from the State Collections is damaged or lost. This is not an incremental change in cost, but is being added to the rule to reflect the Division of Risk Management's policy and the loan contract signed by the agency receiving the loan.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Non-state agencies or their insurance are responsible for repair or replacement costs in the event that artwork loaned from the State Collections is damaged or lost. This is not an incremental change in cost, but is being added to the rule to reflect the Division of Risk Management's policy and the loan contract signed by the agency receiving the loan.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: As the rule change describes Risk Management's current policy, no additional fiscal impact is anticipated.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMUNITY AND ECONOMIC DEVELOPMENT
COMMUNITY DEVELOPMENT, FINE ARTS
617 E SOUTH TEMPLE
SALT LAKE CITY UT 84102-1177, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jennifer Broschinsky at the above address, by phone at 801-236-7548, by FAX at 801-236-7556, or by Internet E-mail at jbroschinsky@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 06/24/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 06/25/2003

AUTHORIZED BY: Frank McEntire, Director

R207. Community and Economic Development, Community Development, Fine Arts.
R207-2. Policy for Commissions, Purchases, and Donations to, and Loans from, the Utah State Art Collections.
R207-2-1. Policy for Commissions, Purchases, and Donations to, and Loans from, the Utah State Art Collections.

In order to maintain the quality and integrity of the Utah State Art Collections, the following policies have been adopted:

a. All works of art accepted into the Utah State Art Collections must be approved through the appropriate channels (Visual Arts Committee, Public Art Selection Committees, Folk Arts Selection Committee, etc.). This policy applies to commissions, purchases and donations of artwork. When art is added to any of the Utah State Art Collections, the Utah Arts Council will assume responsibility for cataloging, conserving, insuring, storing, and displaying that work. The criteria for selecting works for the Utah State Art Collections will be based on the quality of the work, [~~appropriateness to the site for Public Art pieces, ~~]and its role in filling historical, [~~media~~]cultural, and stylistic gaps. Public Art commissions will be based on the aesthetic value, appropriateness to the site or facility, and budget.

b. If other state agencies are approached by an individual or organization wishing to donate a work of art, that agency [~~should~~]may contact the Utah Arts Council to receive approval through the appropriate channels (see "a" above). If the agency does not contact the Utah Arts Council, or if the donation is not accepted by the Utah Arts Council, that agency becomes solely responsible for [~~insuring and conserving~~]its ownership, including cataloging, conserving, insuring, storing, and displaying the donated work of art. The artwork [~~which is~~]will not [~~then~~]be considered part of the Utah State Art Collections.

c. Loans of artwork from the Utah State Art Collections[~~to state agencies~~] must [~~also~~]be approved through appropriate channels [~~at the Utah Arts Council~~]in order for them to be insured by the state's Risk Management Division through the Utah Arts Council. [~~Otherwise, insurance will be the responsibility of the state agency which accepts the loan.~~]Replacement value insurance for non-state agencies, by agreement or default, is borne by the institution receiving the loaned works. Works of art loaned directly to the Utah Arts Council for [~~Traveling Exhibitions~~]exhibition or other purposes are fully insured by the state's Risk Management Division through the Utah Arts Council. Public Art [~~Program artwork is~~]commissions are insured by the state's Risk Management Division through the Utah Arts Council and the host agency[~~site where the art is located~~].

KEY: art loans, art donations, art in public places, art work
[~~September 3, 1998~~]2003
Notice of Continuation August 20, 2002
9-6-205

Education, Administration
R277-108
Annual Assurance of Compliance by School Districts

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26190
FILED: 04/25/2003, 17:16

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: 2003 legislation provided for additional requirements of school districts. The amendments to this rule include those additional requirements and also makes minor technical changes.

SUMMARY OF THE RULE OR CHANGE: The changes include assurances from local boards about the recitation of the Pledge of Allegiance in public schools, plans for expenditures of two block grant programs, information to community councils about their responsibilities, and direction to school districts about payroll deductions from employees wages and other provisions.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: There is no anticipated cost or savings to state budget because the cost of reporting by school districts is minimal and will be borne by local boards.
❖LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government; compliance is mandatory under the law and the reporting will be combined with other required reports from local boards.
❖OTHER PERSONS: There is no anticipated cost or savings to other persons. Individuals are not required to report; the reporting requirement is for local boards.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons because local boards will make compliance reports; no individuals are required to make reports.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule, and I see no fiscal impact on businesses. Steven O. Laing

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.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 06/16/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 06/17/2003

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

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R277. Education, Administration.
R277-108. Annual Assurance of Compliance by [~~School Districts~~]Local School Boards.
R277-108-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board; Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities and allows the Board to interrupt disbursements of state aid to any district which fails to comply with rules adopted in accordance with the law.

B. The purpose of this rule is to provide local school boards with a list of laws requiring [~~school district~~]local school board action and a means of assuring that local boards are in compliance.

R277-108-4. Local Board and Identified School Responsibilities.

A. Local Boards shall submit the required Annual Assurance Letter(s) and other compliance forms on or before dates identified by the Board.

B. In the event that a local school board is unable to provide required assurances, compliance information or forms by required dates, the local school board shall provide to the USOE a written explanation of the [~~district's~~]local school board's inability and provide a compliance date. The request for delay in providing the assurance shall be reviewed by the Board or its designee and accepted or rejected in a timely manner.

R277-108-5. Assurances.

A. Each local school board and charter school governing board shall provide, consistent with state law, written assurance of the following:

(1) the National motto is displayed in schools consistent with Section 53A-13-101.4(6);

(2) the Pledge of Allegiance is recited in public schools consistent with Section 53A-13-101.6;

([~~2~~]3) a policy has been developed, in consultation with school personnel, parents, and school community, to provide for effective implementation of student education plans/student education occupation plans (SEPs/SEOPs) consistent with Section 53A-1a-106(2)(b);

([~~3~~]4) a plan is in place for the expenditure of Interventions for Student Success Block Grant Program funds consistent with Section 53A-17a-123.5;

([4]5) a policy has been developed for Quality Teaching Block Grant Program consistent with Section 53A-17a-124;

([~~5~~]6) a policy has been developed on education association leave consistent with Section 53A-3-425;[~~ and~~]

([~~6~~]7) each public school within the district has established a community council consistent with Section 53A-1[~~-606.5~~]a-108, and the community council members have been advised of their responsibilities consistent with Sections 53A-1a-108 and 53A-1a-108.5[~~-~~];

([~~7~~]8) the [~~district~~]local school board has provided the USOE with required Utah Performance Assessment System for Students (U-PASS) [~~statistical data~~]test results in order for the USOE to fulfill the requirements of 53A-1-605[~~-~~];

(9) the district does not make payroll deductions from the wages of its employees for political purposes consistent with Section 34-32-1.1(2);

(10) the local school board has implemented a training program for school administrators consistent with Section 53A-3-402(1)(f); and

(11) the local school board has an educator evaluation program developed by a joint committee including classroom teachers, parents and administrators consistent with Section 53A-10-103.

B. Letters from local school boards assuring compliance with the laws above are due to the State Superintendent of Public Instruction no later than October 1 of each year.

R277-108-6. Penalties for Noncompliance.

A. The Board shall request written explanation(s) from [~~school districts~~]local school boards and identified schools that fail to meet reporting and compliance deadlines.

B. Following an opportunity to provide explanations and request delays, [~~school districts~~]local school boards and identified schools shall be notified of penalties assessed by the Board against the [~~school district or schools~~]local school boards.

C. Penalties may include:

(1) warning letters;

(2) letters of reprimand sent to the [~~school district or school~~]local school board with copies to appropriate Legislative committees;

(3) charter school review under R277-481; or

(4) interruption of monthly transfers of funds specified for administrative costs under Section 53A-17a-108, interruptions of disbursement of state aid under Section 53A-1-401(3) or withholding of specific program funds.

KEY: [~~school districts~~]local school boards, compliance
[~~November 4, 2002~~]2003
Art X Sec 3
53A-6-702
53A-1-401(3)

▼ ▼

Education, Administration
R277-484
Data Standards, Deadlines and Procedures

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 26189
FILED: 04/25/2003, 17:15

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of the rule is to provide specific standards, deadlines, and procedures for school districts and the State Office of Education to fulfill their respective responsibilities for the collection and reporting of nonassessment data essential to both school accountability and allocation of state funds to districts.

SUMMARY OF THE RULE OR CHANGE: The rule provides for deadlines for data submission, specifies use of data for accountability, use of data for allocation of funds, financial consequences of failure to submit timely reports, adjustments to deadlines, and modifications of data based on audits.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 53A-1-401(3)

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: There is no anticipated cost or savings to state budget. The State Office of Education has collected this information previously and will continue to do so within its existing budget.
❖LOCAL GOVERNMENTS: There is no anticipated cost or savings to local government. Local school boards have provided most of this information previously. However, this rule provides greater specificity for certain reports. Local school boards will continue to provide this information within existing budget.
❖OTHER PERSONS: There is no anticipated cost or savings to other persons. The date will be collected from local school boards and the rule has no requirements for individuals.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons because local school boards have provided most of this information previously and will continue to do so within existing budget.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: I have reviewed this rule, and I see no fiscal impact on businesses. Steven O. Laing

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.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 06/16/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 06/17/2003

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

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R277. Education, Administration.
R277-484. Data Standards, Deadlines and Procedures.
R277-484-1. Definitions.

A. "Annual Financial Report" means an account of district revenue and expenditures by source and fund sufficient to meet the

reporting requirements specified in Section 53A-1-301(2)(d)(i) through (v).

B. "Annual Program Report" means an account of district revenue and expenditures by source and program sufficient to meet the reporting requirements specified in Section 53A-1-301(2)(d)(i) through (v).

C. "Board" means the Utah State Board of Education.

D. "Computer Aided Credentials of Teachers in Utah System (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes information such as:

(1) personal directory information;

(2) educational background;

(3) endorsements;

(4) employment history;

(5) professional development information; and

(6) a record of disciplinary action taken against the educator.

E. "CCD" means Common Core of Data, a set of surveys administered by the NCES.

F. "Data Clearinghouse File" means the electronic file submitted by districts to the USOE in the layout specified by the USOE.

G. "Data Warehouse" means the database of demographic information, course taking, and test results maintained by the USOE on all students enrolled in Utah schools.

H. "ESEA" means the federal Elementary and Secondary Education Act, also known as the No Child Left Behind Act.

I. "FTE" means full time equivalent.

J. "Inaccurate data" means data elements whose values are (a) missing or (b) incomplete or (c) not consistent with other values in the same or related reports or (d) not close to expected values based on available comparative data from similar districts or trend data for the district in question.

K. "MESA" means Mathematics Engineering Science Achievement, a program designed to encourage underserved ethnic minority and all female students to prepare for careers in those areas. The criteria of the program are defined under Section 53A-17a-121 and R277-717.

L. "MSP" means Minimum School Program, the set of state support K-12 public school funding programs.

M. "MST" means Mountain Standard Time.

N. "NCES" means National Center for Education Statistics, a branch of the United States Department of Education.

O. "School district (district)" means any organizational unit of the public education system existing under state laws as either a regular school district or a charter school.

P. "USOE" means Utah State Office of Education.

Q. "Weighted Pupil Unit (WPU)" means the unit of measure that is computed in accordance with the Minimum School Program Act for the purpose of determining the costs of a program on a uniform basis for each school district.

R. "Year" means both the school year and the fiscal year in Utah, which runs from July 1 through June 30.

S. "YICSIS" means the Youth In Custody Student Information System.

R277-484-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, and by Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities and specifically allows the Board to interrupt disbursements of state aid to any district which fails to comply with rules.

B. The Board, through its chief executive officer, the State Superintendent of Public Instruction, is required to perform certain data collection related duties, such as organizing education data into an automated decision support system consistent with Section 53A-1-301(2)(e).

C. The purpose of this rule is to support the construction of the decision support system identified in Subsection 2B and to be consistent with R277-473, Testing Procedures, by providing specific standards, deadlines, and procedures by which districts and the USOE shall fulfill their respective responsibilities for the collection and reporting of nonassessment data essential to both school accountability and allocation of state funds to districts.

R277-484-3. Deadlines for Data Submission.

Districts shall submit data to the USOE through the following reports by 5:00 p.m. MST on the date and in the format specified by the USOE:

A. January 24 - Adult Education - midyear report for current year.

B. June 15 - Safe School Incidents Report - for current year.

C. June 30 - CACTUS - final update for current year.

D. July 15

(1) Adult Education - final report for prior year;

(2) Bus Driver Credentials Report - for current year;

(3) Classified Personnel Report - for prior year;

(4) Data Clearinghouse File - final comprehensive update for prior year;

(5) Driver Education Report - for prior year;

(6) ESEA Choice and Supplemental Services Report - for prior year;

(7) Fee Waivers Report - for prior year;

(8) Fire Drill Compliance Statement - for prior year;

(9) Immunization Status Report (to Utah Department of Health) - final for prior year;

(10) Teacher Benefits Report - for prior year;

(11) YICSIS - final update for prior year.

E. August 1 - Textbook Report - for prior year.

F. September 1

(1) Extended Year for Severely Disabled Report;

(2) Membership Audit Report - for prior year.

G. October 1

(1) Annual Financial Report (AFR) - for prior year;

(2) Annual Program Report (APR) - for prior year.

H. October 15 - Data Clearinghouse File - update as of October 1 for current year.

I. November 1

(1) CACTUS - update for current year;

(1) Enrollment Audit Report - for current year;

(2) Immunization Status Report - for current year;

(3) Transportation Statistics:

(a) Schedule A1 (Mileage Report) B - for current year;

(b) Schedule B (Time Report) - for current year.

J. November 15 - Free and Reduced Price Lunch Enrollment Survey - as of October 31 for current year.

K. November 30 - Financial Audit Report.

L. December 15 - Data Clearinghouse File - update as of December 1 for current year.

R277-484-4. Use of Data for Accountability.

A. Of the reports listed in Section 3 that are sources for the Data Warehouse, the USOE shall load them into the Data Warehouse as of the submission deadlines specified.

B. The Data Warehouse shall be the sole official source of data for annual:

(1) school performance reports required under Section 53A-3a-602.5;

(2) determination of adequate yearly progress as required under the ESEA.

C. If the data available to the Data Warehouse on the deadline is inaccurate, the USOE shall:

(1) load the data into the Data Warehouse as is; and

(2) notify users of accountability reports of specific problems with the data that may affect its reliability or interpretation. Such notification may take the form of a technical appendix on data quality.

D. The CACTUS update of November 1 shall be the sole official source of teacher FTE data by school for reporting to the NCES on the CCD nonfiscal survey.

R277-484-5. Use of Data for Allocation of Funds.

A. Of the reports listed in Section 3:

(1) the Data Clearinghouse File of July 15 shall be the sole official source of prior year data for MSP allocation formulas which require summary statistics on the following types of students:

(a) Early Graduates, under Section 53A-15-102 and R277-703;

(b) English Language Learner (Limited English Proficient);

(c) Free or Reduced Price Lunch Eligible (Economically Disadvantaged, Low Income);

(d) Homeless;

(e) Immigrant;

(f) MESA, under Section 53A-17a-121 and R277-717;

(g) Migrant;

(h) Mobile;

(i) Racial/Ethnic Minority.

(2) YICSIS shall be the sole official source of membership data on YIC students.

(3) the Data Clearinghouse File and YICSIS update of July 15 shall be the sole official source of data for preaudit aggregate membership.

(4) the Data Clearinghouse File of October 15 shall be the sole official source of preaudit data for the Fall Enrollment count.

(5) the CACTUS update of June 30 shall be the sole official source of prior year data for MSP allocation formulas which require summary statistics on teachers.

B. If the data available for allocation purposes is inaccurate, and the cause of the inaccuracy is determined by the USOE to be outside of the district's control, the USOE may impute values to ensure continued funding.

C. If the USOE uses imputed values, it shall also document how the cause of inaccurate data was determined as well as the method by which replacement values were imputed in its fiscal work papers.

R277-484-6. Financial Consequences of Failure to Submit Reports on Time.

A. If a district fails to submit a report by its deadline as specified in Section 3, the USOE shall stop the MSP fund transfer process on the day after the deadline, unless the district has obtained an extension of the deadline in accordance with the procedure described in Section 7, to the following extent:

(1) 10% of the total monthly MSP transfer amount for the following reports:

(a) Annual Financial Report;

(b) Annual Program Report;

(c) Data Clearinghouse File (July 15);

(d) Data Clearinghouse File (October 15);

(e) Financial Audit Report;

(2) 100% of the monthly MSP transfer amount for the specific program, if the report pertains to any of the following programs:

(a) Adult Education (July 15);

(b) Driver Education;

(c) Safe Schools;

(d) Special Education (December 15 - Data Clearinghouse File);

(e) Transportation (November 1);

(f) Youth In Custody.

(3) Loss of 1.0 WPU from Kindergarten or Grades 1-12 programs, depending on the grade level of the student, in the current year Fall Update for each student whose prior year immunization status was not accounted for in accordance with Utah Code 53A-11-301 as of July 15.

B. If the USOE has stopped the MSP fund transfer process for a district, the USOE shall:

(1) upon receipt of a late report from that district, restart the transfer process within the month (if the report is submitted by 10:00 a.m. before the twentieth day of the month) or in the following month (if the report is submitted after 10:00 a.m. on or after the twentieth day of the month); and

(2) inform the appropriate Board Committee at its next regularly scheduled Committee meeting.

R277-484-7. Adjustments to Deadlines.

A. Deadlines that fall on a weekend, state holiday or Utah Education Association convention day in a given year shall be moved to the date of the first workday after the date specified in Section 3 for that year.

B. A district may seek an extension of a deadline to ensure continuation of funding and provide more accurate input to allocation formulas by submitting a written request to the USOE. The request shall be received by the USOE at least 24 hours before the specified deadline in Section 3 and include:

(1) The reason(s) why the extension is needed;

(2) The signatures of the district business administrator and the district superintendent; and

(3) The date by which the district shall submit the report.

C. In processing the request for the extension, the USOE shall:

(1) Take into consideration the pattern of district compliance with reporting deadlines, consult with other USOE staff who have knowledge relevant to the situation of the district; and either

(2) Approve the request and allow the MSP fund transfer process to continue; or

(3) Recommend denial of the request and forward it the USOE Associate Superintendent for Data and Business Services for a final decision on whether to stop the MSP fund transfer process.

D. If, after receiving an extension, the district fails to submit the report by the agreed date, the MSP fund transfer process shall be stopped and the procedure described in Section 6 shall apply.

E. Extensions shall apply only to the report(s) and date(s) specified in the request.

F. Extensions shall affect only the status of the MSP fund transfer process and consequently the values of summary variables used in allocation formulas; extensions shall not necessarily delay the loading of detail data into the Data Warehouse for use in accountability formulas.

R277-484-8. Modifications of Data Based on Audits.

A. Aggregate membership and fall enrollment for Kindergarten, Grades 1-12, Special Education (Self Contained), and Homebound and Hospitalized students shall be modified by the USOE to match the values in the Membership and Enrollment audit reports, respectively, when:

(1) the audit is conducted by an independent auditor in accordance with the State of Utah Legal Compliance Audit Guide; and

(2) the audit report is submitted by the auditor to the USOE.

B. If an otherwise acceptable nonfiscal audit report is received by the USOE too late to incorporate into the next scheduled update of the MSP budget for the fiscal year in question, the USOE shall:

(1) use the corresponding preaudit data submitted by the district in the allocation formulas; and

(2) indicate in the MSP budget publication that the district's allocations are based on preaudit data.

KEY: data standards, reports, deadlines
2003
Art X Sec 3
53A-1-401(3)
53A-1-301(2)(e)

Environmental Quality, Water Quality
R317-2
Standards of Quality for Waters of the State

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26242
FILED: 05/01/2003, 17:12

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendments are in response to a triennial review of Utah's Water Quality Standards by the U.S. Environmental Protection Agency (EPA). The proposed amendments update or add the following items: 1) Ammonia Standards Revision: newly revised equations for the calculation of the ammonia standards are proposed; 2) Antidegradation Policy: a new procedure will add a review process for all discharges placed into any of river, stream, lake, or reservoir. This process may require additional alternative treatment options, a higher level of treatment, allow pollution trading, etc. The rule also permits a waiver for the review requirement; 3) Metals Standards Revision: newly revised equations for the calculation of some metals standards are proposed and adjusted metals values based upon new toxicological data are also proposed; 4) Total Dissolved Solids (TDS) and Salinity: A new standard for stock watering is proposed; 5) Changed Designated/Beneficial Use Classifications: corrections of classifications from new site specific information are proposed; and 6) adopt by reference the 2002 Review of the Standards for Salinity for the Colorado Basin.

SUMMARY OF THE RULE OR CHANGE: The changes are: 1) ammonia standards are adjusted due to recent new toxicological data from U.S. EPA; 2) added a statewide procedure for protecting the remaining assimilative capacity of streams, river, reservoirs, and lakes; 3) adjusted several metals values due to new toxicological data from U.S. EPA; 4) added a standard of 2000 mg/l TDS for stockwatering; 5) adjusted some beneficial use classifications to values more associated with their use; and 6) adopted by reference the 2002 Review of the Standards for Salinity for the Colorado Basin.

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

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: No anticipated cost or savings to state budget. The proposed amendments will be implemented using existing resources.

❖LOCAL GOVERNMENTS: The change in the total ammonia standard is likely to cause a reduction of cost impact in both capital and operating costs. The change could potentially result in a cost savings of millions of dollars statewide.

❖OTHER PERSONS: Nearly all wastewater treatment facilities statewide will have decreased operational costs because of a less stringent ammonia standard. In addition, the cost of capital equipment for upgrading or new treatment facilities to treat ammonia will be substantially less. Those wastewater (industrial/municipal) treatment facilities that are required to undergo a formal antidegradation review may be required to have additional treatment, monitoring, recycling, and reuse, etc. This may cause an increase of capital costs and/or operational costs not to exceed 20% higher than the cost of the discharging alternative, and (for POTWs (publicly-owned treatment works)) where the projected per connection service fees would not be greater than 1.4% of MAGHI (median adjusted gross household income), the current affordability criterion now being used by the Water Quality Board in the wastewater revolving loan program. A less polluting alternative may receive a more favorable funding arrangement in order to make it a more financially attractive alterative.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Nearly all wastewater treatment facilities statewide will have decreased operational costs because of a less stringent ammonia standard. In addition, the cost of capital equipment for upgrading or new treatment facilities to treat ammonia will be substantially less. Those wastewater (industrial/municipal) treatment facilities that are required to undergo a formal antidegradation review may be required to have additional treatment, monitoring, recycling, and reuse, etc. This may cause an increase of capital costs and/or operational costs not to exceed 20% higher than the cost of the discharging alternative, and (for publicly-owned treatment works) where the projected per connection service fees would not be greater

than 1.4% of MAGHI (median adjusted gross household income), the current affordability criterion now being used by the Water Quality Board in the wastewater revolving loan program. A less polluting alternative may receive a more favorable funding arrangement in order to make it a more financially attractive alterative.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed amendments will have a positive fiscal impact on municipal and industrial discharges that have ammonia limits in their wastewater discharge permits.

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

ENVIRONMENTAL QUALITY
WATER QUALITY
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:
Dave Wham at the above address, by phone at 801-538-6052, by FAX at 801-538-6016, or by Internet E-mail at dwham@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 06/16/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 6/06/2003 at 10:00 AM, Cannon Health Bldg., Room 125, 288 N 1460 W, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 07/18/2003

AUTHORIZED BY: Don Ostler, Director

R317. Environmental Quality, Water Quality.
R317-2. Standards of Quality for Waters of the State.
R317-2-3. Antidegradation Policy.

3.1 Maintenance of Water Quality

Waters whose existing quality is better than the established standards for the designated uses will be maintained at high quality unless it is determined by the Board, after appropriate intergovernmental coordination and public participation in concert with the Utah continuing planning process, allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. However, existing instream water uses shall be maintained and protected. No water quality degradation is allowable which would interfere with or become injurious to existing instream water uses.

In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with Section 316 of the Federal Clean Water Act.

3.2 High Quality Waters - Category 1

Waters of high quality which have been determined by the Board to be of exceptional recreational or ecological significance or have been determined to be a State or National resource requiring protection, shall be maintained at existing high quality through designation, by the Board after public hearing, as High Quality Waters - Category 1. New point source discharges of wastewater, treated or otherwise, are prohibited in such segments after the effective date of designation. Protection of such segments from pathogens in diffuse, underground sources is covered in R317-5 and R317-7 and the Regulations for Individual Wastewater Disposal Systems (R317-501 through R317-515). Other diffuse sources (nonpoint sources) of wastes shall be controlled to the extent feasible through implementation of best management practices or regulatory programs.

Projects such as, but not limited to, construction of dams or roads will be considered where pollution will result only during the actual construction activity, and where best management practices will be employed to minimize pollution effects.

Waters of the state designated as High Quality Waters - Category 1 are listed in R317-2-12.1.

3.3 High Quality Waters - Category 2

High Quality Waters - Category 2 are designated surface water segments which are treated as High Quality Waters - Category 1 except that a point source discharge may be permitted provided that the discharge does not degrade existing water quality. Waters of the state designated as High Quality Waters - Category 2 are listed in R317-2-12.2.

[~~3.4 High Quality Waters - Category 3~~

~~High Quality Waters Category 3 are designated surface water segments where a point source discharge may be permitted under the conditions and following the review outlined in this section. The High Quality Waters Category 3 designation may be applied to waters with quality higher than that necessary to support the designated beneficial uses of those waters.~~

~~Drinking water sources or waters with special value for recreation or fisheries are candidates to be designated as High Quality Waters - Category 3. Before new point source discharges, or increases to existing point source discharges, may be allowed, the State shall assure that (1) there shall be achieved all statutory and regulatory requirements for all new and existing point sources and there shall be achieved all required cost-effective and reasonable best management practices for nonpoint source control in the immediate area of the discharge, (2) there are no reasonable non-degrading or less degrading alternatives to the discharge (based on information provided by the discharger), (3) the proposed activity has economic and social importance, and (4) water quality standards will not be violated by the discharge.~~

~~In addition, depending upon the location of the discharge and its proximity to downstream drinking water diversions, additional treatment or more stringent effluent limits or additional monitoring, beyond that which may otherwise be required to meet minimum technology standards or instream water quality standards, may be required in order to adequately protect public health and the environment. Such additional treatment may include additional disinfection, suspended solids removal to make the disinfection process more effective, and/or nutrient removal to reduce the organic content of raw water used as a source for domestic water systems. Additional monitoring may include analyses for viruses, cryptosporidium, or other pathogenic organisms. The additional treatment/effluent limits/monitoring which may be required will be~~

~~determined in consultation with the Division of Drinking Water and the downstream drinking water users.~~

~~The review required by this section may be waived by the Executive Secretary where the volume of the discharge is small compared to the flow of the receiving stream. In general, this waiver would be considered where the ratio of the average stream flow to the discharged flow is expected to be greater than 100:1, and the ratio of the 7Q10 (7 day-10 year) low flow to the discharge flow is expected to be greater than 25:1 where the increase in concentration of pollutants in the stream at 7Q10 is low flow is expected to be less than 10%, or based on other site specific criteria.~~

~~Waters of the state designated as High Quality Waters – Category 3 are listed in R317-2-12.3~~]3.4 For all other waters of the state, point source discharges are allowed and degradation may occur, pursuant to the conditions and review procedures outlined below.

a. Activities Potentially Subject to Antidegradation Review (ADR)

1. For all State waters, antidegradation reviews will be conducted as appropriate for proposed federally regulated activities, such as those under Clean Water Act Sections 401 (FERC and other Federal actions), 402 (UPDES permits), and 404 (Army Corps of Engineers permits). The Executive Secretary may conduct an ADR on other projects with the potential for major impact on the quality of waters of the state. The review will determine whether the proposed activity complies with the applicable antidegreadation requirements for the particular receiving waters that may be affected.

2. For High Quality Category 1 and High Quality Category 2 waters, reviews shall be consistent with the requirement established in Sections 3.2 and 3.3, respectively.

For State waters that do not have a High Quality Category 1 or High Quality Category 2 designation, reviews shall be consistent with the procedures identified in Section 3.4 a.-3.4 b.

The first step of the process will be to determine if the proposed activity does not require an antidegradation review as described in Section 3.4 b. below. If so, no further review will be required.

b. An Anti-degradation review is not required where any of the following conditions apply:

1. Water quality will not be lowered by the proposed activity (e.g., a UPDES permit is being renewed and the proposed effluent concentration value and pollutant loading is equal to or less than the existing effluent concentrations value and pollutant loading).

2. Discharge limits are established in an approved TMDL that is consistent with the current water quality standards for the receiving water (e.g., where TMDLs are established, changes in efluent limits that are consistent with the existing load allocation would not tirgger an anti-degradation review), or

3. Water quality impacts will be temporary and related only to sediment or turbidity and fish spawning will not be impaired, or

4. The discharge is to a water quality limited water, and assimilative capacity is essentially allocated to existing discharges.

5. The water quality effects of the proposed activity are expected to be temporary and limited. As general guidance, CWA Section 402 general permits, CWA Section 404 nationwide and general permits, or activities of short duration, will be deemed to have a temporary and limited effect on water quality where there is a reasonable factual basis to support such a conclusion. The 404 nationwide and general permits, or activities of short duration, will be deemed to have a temporary and limited effect on water quality where there is a reasonable factual basis to support such a conclusion. The 404 nationwide permits decision will be made at the time of permit issuance, as part of the Division's water quality certification under DWA Section 401. Where it is determined that the category of activities will result in temporary and limited effects, subsequent individual activities authorized under such permits will not be subject to further antidegradation review. Factors to be considered in determining whether water quality effects will be temporary and limited may include the following:

(a) Length of time during which water quality benefits to the segment (e.g., dredging of contaminated sediments)

(b) Percent change in ambient concentrations of pollutants of concern

(c) Pollutants affected

(d) Likelihood for long-term water quality benefits to the segment (e.g., dredging of contaminated sediments)

(e) Potential for any residual long-term influences on existing uses.

6. The affected waters are classified as 3C, 3D (and not 3A or 3B), or 3E waters, or are classified only as Class 4.

7. The affected waters are considered to be poor quality fisheries as indicated by Utah Division of Wildlife Resource (UDWR) Classes IV, V, and VI with the exception of those waters which add a letter (P, R, N, B, X, or C) to the numerical rating and those which have a "unique rating".

8. The water body is listed on the current 303(d) list for the parameters of concern.

9. Existing water quality for the parameters of concern does not satisfy applicable numeric and narrative water quality criteria.

10. Water quality impacts are expected to be minor. For example: (a) for discharge permit renewals, if the increase in project loading over the prior permit is less than 20%; or

(b) if the increase in pollutant loading to the stream is less than 20% over existing background.

11. The volume of the discharge is small as compared to the flow of the receiving stream. In general, this would be considered where the ratio of the average stream flow to the dishcarged flow is expected to be greater than 100:1, the ratio of the 7Q10 (7 day-10 year) low flow to the discharge flow is expected to be greater than 25:1, and where the increase in concentration of the pollutants in the stream at 7Q10 at low flow is expected to be less than 10%, or based upon other site specific criteria.

For waiver criteria that apply on a parameter-by-parameter basis, a decision to waive the review for one parameter will not eliminate the review requirements for other parameters that will be affected by the proposed activity. Even if one or more of the above conditions apply, an antidegradation review may be required by the Executive Secretary if the receiving water is a drinking water source, if the receiving water has a special value for recreation or fisheries, if an existing use may be impaired, or based on other site-specific factors as appropriate.

c. Anti-degradation Review Process

For activities described in Section R317-2-3.4 a. above, and which require a review the following ADR procedure will be conducted. If appropriate, the Division will notify affected agencies and the public with regards to the requested proposed acitivity and discussions with stakeholders may be held. In the case of Section 402 discharge permits, if it is determined that a discharge will be allowed, the Division of Water Quality will develop any needed UPDES permits for public notice following the normal permit issuance process.

The ADR will cover the following requirmeents or determinations:

1. Will all Statutory and regulatory requirements be met?

The Executive Secretary will review to determine that there will be achieved all statutory and regulatory requirements for all new and existing point sources and all required cost-effective and reasonable best management practices for nonpoint source control in the area of the dishcarge. If point sources exist in the area that have not achieved all statutory and regulatory requirements, the Executive Secretary will consider whether schedules of compliance or other plans have been established when evaluating shether compliance has been assured. Generally, the "area of the discharge" will be determined based on the parameters of concern associated with the proposed activity and the portion of the receiving water that would be affected.

2. Are there any reasonable less-degrading alternatives?

There will be an evaluation of whether there are any reasonable non-degrading or less degrading alternatives for the proposed activity. This question will be addressed by the Division based on information provided by the project proponent. Control alternatives for a proposed activity will be evaluated in an effort to avoid or minimize degradation of the receiving water. Alternatives to be considered, evaluated, and implemented to the extent feasible, could include pollutant trading, water conservation, water recycling and reuse, land application, total containment, etc.

For proposed UPDES permitted discharges, the following list of alternatives should be considered, evaluated and implemented to the extent feasible:

(a) innovative or alternative treatment options

(b) more effective treatment options or higher treatment levels

(c) connection to other wastewater treatment facilities

(d) process changes or product or raw material substitution

(e) seasonal or controlled discharge options to minimize discharging during critical water quality periods

(f) seasonal or controlled discharge options to minimize discharging during critical water quality periods

(g) pollutant trading

(h) water conservation

(i) water recycle and reuse

(j) alternative dishcarge locations or alternative receiving waters

(k) land application

(l) total containment

(m) improved operation and maintenance of existing treatment systems

(n) other appropriate alternatives

An option more costly than the cheapest alternative may have to be implemented if a substantial benefit to the stream can be realized. Alternatives would generally be considered feasible where costs are no more than 20% higher than the cost of the discharging alternative, and (for POTWs) where the projected per connection service fees are not greater than 1.4% of MAGHI (median adjusted gross household income), the current affordability criterion now being used by the Water Quality Board in the wastewater revolving loan program. Alternatives within these cost ranges should be carefully considered by the discharger. Where State financing is appropriate, a financial assistance package may be influenced by this evaluation, i.e., a less polluting alternative may receive a more favorable funding arrangement in order to make it a more financially attractive alternative.

It must also be recognized in relationship to evaluating options that would avoid or reduce discharges to the stream, that in some situations it may be more beneficial to leave the water in the stream for instream flow purposes than to remove the discharge to the stream.

d. For 404 permitted activities, all appropriate alternatives to avoid and minimize degreadation should be evaluated. Activities involving a discharge of dredged or fill materials that are considered to have more than minor adverseaffects on the aquatic environment are regulated by individual CWA Section 404 permits. The decision-making process relative to the 404 permitting program is contained in the 404 (b) (1) guidelines, the Corps of Engineers:

(a) makes a determination that the proposed activity discharges are unavoidable (i.e., necessary):

(b) examines alternatives to the proposed activity and authorize only the least damaging practicable alternative; and

(c) requires mitigation for all impacts associated with the activity. A 404 (b) (1) finding document is produced as a result of this procedure and is the basis for the permit decision. Public participation is provided for in the process. Because the 404(b)(1) guidelines contains an alternatives analysis, the executive secretary will not require development of a separate alternatives analysis for the anti-degradation review. The division will use the analysis in the 404(b)(1) finding document in completing its anti-degradation review and 401 certification.

4. Does the proposed activity have economic and social importance?

Although it is recognized that any activity resulting in a discharge to surface waters will have positive and negative aspects, information must be submitted by the applicant that any discharge or increased discharge will be of economic or social importance in the area.

The factors addressed in such a demonstration may include, but are not limited to, the following:

(a) employment (i.e., increasing, maintaining, or avoiding a reduction in employment);

(b) increased production;

(c) improved community tax base;

(d) housing;

(e) correction of an environmental or public health problem; and

(f) other information that may be necessary to determine the social and economic importance of the proposed surface water discharge.

5. The applicant may submit a proposal to mitigate any adverse environmental effects of the proposed activity (e.g., instream habitat improvement, bank stabilization). Such mitigation plans should describe the proposed mitigation measures and the costs of such mitigation. Mitigation plans will not have any effect on effluent limits or conditions included in a permit (except possibly where a previously completed mitigation project has resulted in an improvement in background water quality that affects a water quality-based limit). Such mitigation plans will be developed and implemented by the applicant as a means to further minimize the environmental effects of the proposed activity and to increase its socio-economic importance. An effective mitigation plan may, in some cases, allow the Executive Secretary to authorize proposed activities that would otherwise not be authorized.

6. Will water quality standards be violated by the discharge?

Proposed activities that will affect the quality of waters of the state will be allowed only where the proposed activity will not violate water quality standards.

7. Will existing uses be maintained and protected?

Proposed activities can only be allowed if "existing uses" will be maintained and protected. No UPDES permit will be allowed which will permit numeric water quality standards to be exceeded in a receiving water outside the mixing zone. In the case of nonpoint pollution sources, the non-regulatory Section 319 program now in place will address these sources through application of best management practices to ensure that numeric water quality standards are not exceeded.

8. If a situation is found where there is an existing use which is a higher use (i.e., more stringent protection requirements) than that current designated use, the Division will apply the water quality standards and anti-degradation policy to protect the existing use. Narrative criteria may be used as a basis to protect existing uses for parameters where numeric criteria have not been adopted. Procedures to change the stream use designation to recognize the existing use as the designated use would be initiated.

d. Special Procedures for Drinking Water Sources

An Antidegradation Review may be required by the Executive Secretary for discharges to waters with a Class 1C drinking water use assigned, irrespective of whether any of the conditions in Section 3.4 b. applies. Factors to be considered may include the volume of the discharge compared to the flow of the receiving stream, or where the pollutants discharged may have potentially adverse impact on the drinking water supply.

Depending upon the locations of the discharge and its proximity to downstream drinking water diversions, additional treatment or more stringent effluent limits or additional monitoring, beyond that which may otherwise be required to meet minimum technology standards or in stream water quality standards, may be required by the Executive Secretary in order to adequately protect public health and the environment. Such additional treatment may include additional disinfection, suspended solids removal to make the disinfection process more effective, removal of any specific contaminants for which drinking water maximum contaminant levels (MCLs) exits, and/or nutrient removal to reduce the organic content of raw water used of such monitoring, more stringent treatment may then be required.

The additional treatment/effluent limits/monitoring which may be required will be determined by the Executive Secretary after consultation with the Division of Drinking Water and the downstream drinking water users.

e. Public Notice

The public will be provided notice and an opportunity to comment on the conclusions of all completed antidegradation reviews. Where possible, public notice on the antidegradation review conclusions will be combined with the public notice on the proposed permitting action. For UPDES permits, public notice will be provided through the normal permitting process, as all draft permits are public noticed for 30 days, and public comment solicited, before being issued as a final permit. The Statement of Basis for the draft UPDES permit will contain information on how the ADR was addressed. Where waivers are granted from the review requirements, the basis for the waiver will be documented and noticed for public comment.

R317-2-4. Colorado River Salinity Standards.

In addition to quality protection afforded by these regulations to waters of the Colorado River and its tributaries, such waters shall be protected also by requirements of "Proposed Water Quality Standards for Salinity including Numeric Criteria and Plan of Implementation for Salinity Control, Colorado River System, June 1975" and a supplement dated August 26, 1975, entitled "Supplement, including Modifications to Proposed Water Quality Standards for Salinity including Numeric Criteria and Plan of Implementation for Salinity Control, Colorado River System, June 1975", as approved by the seven Colorado River Basin States and the U.S. Environmental Protection Agency, as updated by the 1978 Revision and the 1981, 1984, 1987, 1990, 1993, 1996[~~ and 1999~~], 1999 and 2002 Reviews of the above documents.

R317-2-12. High Quality Waters.

12.1 High Quality Waters - Category 1.

In addition to assigned use classes, the following surface waters of the State are hereby designated as High Quality Waters - Category 1:

a.[~~12.1.1~~] All surface waters geographically located within the outer boundaries of U.S. National Forests whether on public or private lands with the following exceptions:

All High Quality Waters - Category 2 as listed in R317-2-12.2.

Weber River, a tributary to the Great Salt Lake, in the Weber River Drainage from Uintah to Mountain Green.

b.[~~12.1.2~~] Other surface waters, which may include segments within U.S. National Forests as follows:

1.[~~12.1.2.1~~] Colorado River Drainage

Calf Creek and tributaries, from confluence with Escalante River to headwaters.

Sand Creek and tributaries, from confluence with Escalante River to headwaters.

Mamie Creek and tributaries, from confluence with Escalante River to headwaters.

Deer Creek and tributaries, from confluence with Boulder Creek to headwaters (Garfield County).

Indian Creek and tributaries, through Newspaper Rock State Park to headwaters.

2.[~~12.1.2.2~~] Green River Drainage

Price River (Lower Fish Creek from confluence with White River to Scofield Dam.

Range Creek and tributaries, from confluence with Green River to headwaters.

Strawberry River and tributaries, from confluence with Red Creek to headwaters.[

~~Avintaquin Creek, from confluence with Strawberry River to confluence with Cottonwood Creek.~~]

Ashley Creek and tributaries, from Steinaker diversion to headwaters.

Jones Hole Creek and tributaries, from confluence with Green River to headwaters.

Green River, from state line to Flaming Gorge Dam.

Tollivers Creek, from confluence with Green River to headwaters.

Allen Creek, from confluence with Green River to headwaters.

3.[~~12.1.2.3~~] Virgin River Drainage

North Fork Virgin River and tributaries, from confluence with East Fork Virgin River to headwaters.

East Fork Virgin River and tributaries from confluence with North Fork Virgin River to headwaters.

4.[~~12.1.2.4~~] Kanab Creek Drainage

Kanab Creek and tributaries, from irrigation diversion at confluence with Reservoir Canyon to headwaters.

5.[~~12.1.2.5~~] Bear River Drainage

Swan Creek and tributaries, from Bear Lake to headwaters.

North Eden Creek, from Upper North Eden Reservoir to headwaters.

Big Creek and tributaries, from Big Ditch diversion to headwaters.

Woodruff Creek and tributaries, from Woodruff diversion to headwaters.

6.[~~12.1.2.6~~] Weber River Drainage

Burch Creek and tributaries, from Harrison Boulevard in Ogden to headwaters.

Hardscrabble Creek and tributaries, from confluence with East Canyon Creek to headwaters.

Chalk Creek and tributaries, from U.S. Highway 189 to headwaters.

Weber River and tributaries, from U.S. Highway 189 near Oakley to headwaters.

7.[~~12.1.2.7~~] Jordan River Drainage

City Creek and tributaries, from City Creek Water Treatment Plant to headwaters (Salt Lake County).

Emigration Creek and tributaries, from Hogle Zoo to headwaters (Salt Lake County).

Red Butte Creek and tributaries, from Foothill Boulevard in Salt Lake City to headwaters.

Parley's Creek and tributaries, from 13th East in Salt Lake City to headwaters.

Mill Creek and tributaries, from Wasatch Boulevard in Salt Lake City to headwaters.

Big Cottonwood Creek and tributaries, from Wasatch Boulevard in Salt Lake City to headwaters.

Little Willow Creek and tributaries, from diversion to headwaters (Salt Lake County.)

Bell Canyon Creek and tributaries, from Lower Bells Canyon Reservoir to headwaters (Salt Lake County).

South Fork of Dry Creek and tributaries, from Draper Irrigation Company diversion to headwaters (Salt Lake County).

8.[~~12.1.2.8~~] Provo River Drainage

Upper Falls drainage above Provo City diversion (Utah County).

Bridal Veil Falls drainage above Provo City diversion (Utah County).

Lost Creek and tributaries, above Provo City diversion (Utah County).

9.[~~12.1.2.9~~] Sevier River Drainage

Chicken Creek and tributaries, from diversion at canyon mouth to headwaters.

Pigeon Creek and tributaries, from diversion to headwaters.

East Fork of Sevier River and tributaries, from Kingston diversion to headwaters.

Parowan Creek and tributaries, from Parowan City to headwaters.

Summit Creek and tributaries, from Summit City to headwaters.

Braffits Creek and tributaries, from canyon mouth to headwaters.

Right Hand Creek and tributaries, from confluence with Coal Creek to headwaters.

10.[~~12.1.2.10~~] Raft River Drainage

Clear Creek and tributaries, from state line to headwaters (Box Elder County).

Birch Creek (Box Elder County), from state line to headwaters.

Cotton Thomas Creek from confluence with South Junction Creek to headwaters.

11.[~~12.1.2.11~~] Western Great Salt Lake Drainage

All streams on the south slope of the Raft River Mountains above 7000' mean sea level.

Donner Creek (Box Elder County), from irrigation diversion to Utah-Nevada state line.

Bettridge Creek (Box Elder County), from irrigation diversion to Utah-Nevada state line.

Clover Creek, from diversion to headwaters.

All surface waters on public land on the Deep Creek Mountains.

12.[~~12.1.2.12~~] Farmington Bay Drainage

Holmes Creek and tributaries, from Highway US-89 to headwaters (Davis County).

Shepard Creek and tributaries, from Height Bench diversion to headwaters (Davis County).

Farmington Creek and tributaries, from Height Bench Canal diversion to headwaters (Davis County).

Steed Creek and tributaries, from Highway US-89 to headwaters (Davis County).

12.2 High Quality Waters - Category 2.

In addition to assigned use classes, the following surface waters of the State are hereby designated as High Quality Waters - Category 2:

a.[~~12.2.1~~] Green River Drainage

Deer Creek, a tributary of Huntington Creek, from the forest boundary to 4800 feet upstream.

Electric Lake.[

~~12.3 High Quality Waters - Category 3.~~

~~In addition to assigned use classes, the following surface waters of the State are hereby designated as High Quality Waters - Category 3:~~

~~12.3.1 Provo River Drainage~~

~~Provo River and tributaries from Murdock Diversion to U.S. Forest Boundary, including Deer Creek Reservoir and Jordanelle Reservoir.~~]

R317-2-13. Classification of Waters of the State (see R317-2-6).

13.1 Upper Colorado River Basin

a. Colorado River Drainage

TABLE

Paria River and tributaries, from state line to headwaters	2B	3C	4
All tributaries to Lake Powell, except as listed [~~separately~~]below	2B	3B	4
[~~Escalante River and tributaries, from Lake Powell to confluence with Boulder Creek~~	~~2B~~	~~3C~~	
~~Escalante River and tributaries, from confluence with Boulder Creek, including~~			

~~Boulder Creek, to headwaters~~		~~2B~~	~~3A~~	~~4~~]
Escalante River and tributaries, from Lake Powell to confluence with Boulder Creek		2B	3C	4
Escalante River and tributaries, from confluence with Boulder Creek, including Boulder Creek, to headwaters		2B	3A	4
Dirty Devil River and tributaries, from Lake Posell to Fremont River		2B	3C	4
Deer Creek and tributaries, from confluence with Boulder Creek to headwaters		2B	3A	4
[~~Dirty Devil River and tributaries, from Lake Powell to Fremont River~~		~~2B~~	~~3C~~]	
Fremont River and tributaries, from confluence with Muddy Creek to Capitol Reef National Park, except as listed below	1C	2B	3C	4
Pleasant Creek and tributaries, from confluence with Fremont Rive to East boundary of Capitol Reef National Park		2B	3C	4
Pleasant Creek and tributaries, from East boundary of Capitol Reef National Park to headwaters	1C	2B	3A	
Fremont River and tributaries, through Capitol Reef National Park to headwaters	1C	2B	3A	4
[~~Pleasant Creek and tributaries, from confluence with Fremont River to East boundary of Capitol Reef National Park~~		~~2B~~	~~3C~~	
~~Pleasant Creek and tributaries, from East boundary of Capitol Reef National Park to headwaters~~	~~1C~~	~~2B~~	~~3A~~]	
Muddy Creek and tributaries, from confluence with Fremont River to Highway U-10 crossing , except as listed below	2B	3C	4	
Quitchupah Creek and Tributaries, from Highway U-10 crossing to headwaters		2B	3A	4
Ivie Creek and tributaries, from Highway U-10 to headwaters		2B	3A	4
Muddy Creek and tributaries, from Highway U-10 crossing to headwaters	1C	2B	3A	4
[~~Quitchupah Creek and tributaries, from Highway U-10 crossing to headwaters~~		~~2B~~	~~3A~~	~~4~~
~~Ivie Creek and tributaries, from Highway U-10 to headwaters~~		~~2B~~	~~3A~~	~~4~~
~~San Juan River and tributaries, from Lake Powell to state line except as listed below:~~	~~1C~~	~~2B~~	~~3B~~	~~4~~]
Johnson Creek and tributaries, from confluence with Recapture Creek to headwaters	1C	2B	3A	4
Verdure Creek and tributaries, from Highway US-191 crossing		2B	3A	4
North Creek and tributaries, from confluence with Montezuma Creek to headwaters	1C	2B	3A	4
South Creek and tributaries, from confluence with Montezuma Creek to headwaters	1C	2B	3A	4
Spring Creek and tributaries, from confluence with Vega Creek to headwaters		2B	3A	4
Montezuma Creek and tributaries, from U.S. Highway 191 to headwaters	1C	2B	3A	4
Colorado River and tributaries, from Lake Powell to state line except as listed [~~separately~~]	1C	2B	3B	4
[~~Indian Creek and tributaries, from confluence with Colorado River to Newspaper Rock State Park~~		~~2B~~	~~3B~~	~~4~~
~~Indian Creek and tributaries, through Newspaper Rock State Park to headwaters~~	~~1C~~	~~2B~~	~~3A~~	~~4~~
~~Kane Canyon Creek and tributaries, from confluence with Colorado River to headwaters~~		~~2B~~	~~3C~~	~~4~~
~~Mill Creek and tributaries, from confluence with Colorado River to headwaters~~	~~1C~~	~~2B~~	~~3A~~	~~4~~
~~Dolores River and tributaries, from confluence with Colorado River to state line~~		~~2B~~	~~3C~~	~~4~~
~~Roc Creek and tributaries, from confluence with Dolores River to headwaters~~		~~2B~~	~~3A~~	~~4~~
~~LaSal Creek and tributaries, from state line to headwaters~~		~~2B~~	~~3A~~	~~4~~
~~Lion Canyon Creek and tributaries, from state line to headwaters~~		~~2B~~	~~3A~~	~~4~~
~~Little Dolores River and tributaries, from confluence with Colorado River to state line~~		~~2B~~	~~3C~~	~~4~~
~~Bitter Creek and tributaries, from confluence with Colorado River to headwaters~~		~~2B~~	~~3C~~	~~4~~]

Indian Creek and tributaries, through Newspaper Rock State Park to headwaters	1C	2B	3A		4
Kane Canyon Creek and tributaries, from confluence with Colorado River to headwaters		2B	3C		4
Mill Creek and tributaries, from confluence with Colorado River to headwaters	1C	2B	3A		4
Dolores River and tributaries, from confluence with Colorado River to state line		2B	3C		4
Roc Creek and tributaries, from confluence with Dolores River to headwaters		2B	3A		4
LaSal Creek and tributaries, from state line to headwaters		2B	3A		4
Lion Canyon Creek and tributaries, from state line to headwaters		2B	3A		4
Little Dolores River and tributaries, from confluence with Colorado River to state line		2B	3C		4
Bitter Creek and tributaries, from confluence with Colorado River to headwaters		2B	3C		4

b. Green River Drainage

TABLE

Green River and tributaries, from confluence with Colorado River to state line except as listed below:	1C	2B	3B		4
Thompson Creek and tributaries from Interstate Highway 70 to headwaters		2B	3C		4
San Rafael River and tributaries, from confluence with Green River to confluence with Ferron Creek		2B	3C		4
Ferron Creek and tributaries, from confluence with San Rafael River to Millsite Reservoir		2B	3C		4
Ferron Creek and tributaries, from Millsite Reservoir to headwaters	1C	2B	3A		4
Huntington Creek and tributaries, from confluence with Cottonwood Creek to Highway U-10 crossing		2B	3C		4
Huntington Creek and tributaries, from Highway U-10 crossing to headwaters	1C	2B	3A		4
Cottonwood Creek and tributaries, from confluence with Huntington Creek to Highway U-57 crossing		2B	3C		4
Cottonwood Creek and tributaries, from Highway U-57 crossing to headwaters	1C	2B	3A		4
Cottonwood Canal, Emery County	1C	2B		3E	4
Price River and tributaries, from confluence with Green River to Carbon Canal Diversion at Price City Golf Course Except as listed below		2B	3C		4
Grassy Trail Creek and tributaries, from Grassy Trail Creek Reservoir to headwaters	1C	2B	3A		4
Price River and tributaries, from Carbon Canal Diversion at Price City Golf Course to Price City Water Water Treatment Plant intake.		2B	3A		4
Price River and tributaries, from Price City Water Treatment Plant intake to headwaters	1C	2B	3A		4
[~~Grassy Trail Creek and tributaries, from Grassy Trail Creek Reservoir to headwaters~~	~~1C~~	~~2B~~	~~3A~~		~~4~~]
Range Creek and tributaries, from confluence with Green River to Range Creek Ranch		2B	3A		4
Range Creek and tributaries, from Range Creek Ranch to headwaters	1C	2B	3A		4
Rock Creek and tributaries, from confluence with Green River to headwaters		2B	3A		4
Nine Mile Creek and tributaries, from confluence with Green River to headwaters		2B	3A		4
Pariette Draw and tributaries, from confluence with Green River to headwaters		2B	3B	3D	4
Willow Creek and tributaries (Uintah County), from confluence with Green River to headwaters		2B	3A		4
[~~Bitter Creek and Tributaries from White River to Headwaters~~		~~2B~~	~~3A~~		~~4~~]
White River and tributaries, from confluence with Green River to state line, except as listed below		2B	3B		4
Bitter Creek and Tributaries from White River to Headwaters		2B	3A		4
Duchesne River and tributaries, from confluence with Green River to Myton Water Treatment Plant intake, except as listed below		2B	3B		4

Duchesne River and tributaries, from Myton Water Treatment Plant intake to headwaters	1C	2B	3A	4
[~~Uinta River and tributaries, from confluence with Duchesne River to Highway US-40 crossing~~		~~2B~~	~~3B~~	~~4~~
~~Uinta River and tributaries, from Highway US-40 crossing to headwaters~~		~~2B~~	~~3A~~	~~4~~
~~Power House Canal from confluence with Uinta River to headwaters~~		~~2B~~	~~3A~~	~~4~~]
Lake Fork River and tributaries, from confluence with Duchesne River to headwaters	1C	2B	3A	4
Lake Fork Canal from Dry Gulch Canal Diversion to Moon Lake	1C	2B		3E 4
Dry Gulch Canal, from Myton Water Treatment Plant to Lake Fork Canal	1C	2B		3E 4
[~~Whiterocks River and Canal, from Tridell Water Treatment Plant to headwaters~~	~~1C~~	~~2B~~	~~3A~~	~~4~~]
Ashley Creek and tributaries, from confluence with Green River to Steinaker diversion		2B	3B	4
Ashley Creek and tributaries, from Steinaker diversion to headwaters	1C	2B	3A	4
Big Brush Creek and tributaries, from confluence with Green River to Tyzack (Red Fleet) Dam		2B	3B	4
Big Brush Creek and tributaries, from Tyzack (Red Fleet) Dam to headwaters	1C	2B	3A	4
Jones Hole Creek and tributaries, from confluence with Green River to headwaters		2B	3A	
Diamond Gulch Creek and tributaries, from confluence with Green River to headwaters		2B	3A	4
Pot Creek and tributaries, from Crouse Reservoir to headwaters		2B	3A	4
Green River and tributaries, from Utah-Colorado state line to Flaming Gorge Dam except as listed below:		2B	3A	4
Sears Creek and tributaries, Daggett County		2B	3A	
Tolivers Creek and tributaries, Daggett County		2B	3A	
Red Creek and tributaries, from confluence with Green River to state line		2B	3C	4
Jackson Creek and tributaries, Daggett County		2B	3A	
Davenport Creek and tributaries, Daggett County		2B	3A	
Goslin Creek and tributaries, Daggett County		2B	3A	
Gorge Creek and tributaries, Daggett County		2B	3A	
Beaver Creek and tributaries, Daggett County		2B	3A	
O-Wi-Yu-Kuts Creek and tributaries, County		2B	3A	
[~~Tributaries to Flaming Gorge Reservoir, except as listed below~~		~~2B~~	~~3A~~	~~4~~]
Tributaries to Flaming Gorge Reservoir, except as listed below		2B	3A	4
[~~Birch Spring Draw and tributaries, from Flaming Gorge Reservoir to headwaters~~		~~2B~~	~~3C~~	~~4~~
~~Spring Creek and tributaries, from Flaming Gorge Reservoir to headwaters~~		~~2B~~	~~3A~~]	
Birch Spring Draw and tributaries, from Flaming Gorge Reservoir to headwaters		2B	3C	4
Spring Creek and tributaries, from Flaming Gorge Reservoir to headwaters		2B	3A	
All Tributaries [~~to the Green River above~~] of Flaming Gorge Reservoir from Utah-Wyoming state line to headwaters		2B	3A	4

13.2 Lower Colorado River Basin

a. Virgin River Drainage

TABLE

Beaver Dam Wash and tributaries, from Motoqua to headwaters		2B	3B	4
Virgin River and tributaries [~~(except as listed below),~~] from state line to Quail Creek diversion		2B	3B	4
[~~Santa Clara River and tributaries, from Gunlock Reservoir to headwaters~~	~~1C~~	~~2B~~	~~3A~~	~~4~~]
Santa Clara River from confluence with Virgin River to Gunlock Reservoir	1C	2B	3B	4
Santa Clara River and tributaries, from Gunlock Reservoir to headwaters		2B	3A	4
Leed's Creek, from confluence with Quail Creek to headwaters		2B	3A	4

Quail Creek from Quail Creek Reservoir to headwaters	1C	2B	3A		4
Ash Creek and tributaries, from confluence with Virgin River to Ash Creek Reservoir		2B	3A		4
Ash Creek and tributaries, From Ash Creek Reservoir to headwaters		2B	3A		4
Virgin River and tributaries [~~(except as listed below)~~], from the Quail Creek diversion to headwaters, except as listed below	1C	2B		3C	4
North Fork Virgin River and tributaries	1C	2B	3A		4
East Fork Virgin River, from town of Glendale to headwaters			3A		4
Kolob Creek, from confluence with Virgin River to headwaters		2B	3A		4
[~~Beaver Dam Wash and tributaries, from Motoqua to headwaters~~		~~2B~~	~~3A~~		~~4~~]

b. Kanab Creek Drainage

TABLE

Kanab Creek and tributaries, from state line to irrigation diversion at confluence with Reservoir Canyon		2B		3C	4
Kanab Creek and tributaries, from irrigation diversion at confluence with Reservoir Canyon to headwaters		2B	3A		4
Johnson Wash and tributaries, from state line to confluence with Red Wash		2B		3C	4
Johnson Wash and tributaries, from confluence with Red Wash to headwaters		2B	3A		4

13.3 Bear River Basin

a. Bear River Drainage

TABLE

Bear River and tributaries, from Great Salt Lake to Utah-Idaho border, except as listed below:		2B	3B	3D	4
[~~Willard Creek, from Willard Bay Reservoir to headwaters~~		~~2B~~	~~3A~~		~~4~~
~~Perry Canyon Creek from U.S. Forest boundary to headwaters~~		~~2B~~	~~3A~~		~~4~~
~~Box Elder Creek from confluence with Black Slough to Brigham City Reservoir (the Mayor's Pond)~~		~~2B~~		~~3C~~	~~4~~
~~Box Elder Creek, from Brigham City Reservoir (the Mayor's Pond) to headwaters~~		~~2B~~	~~3A~~		~~4~~
~~Malad River and tributaries, from confluence with Bear River to state line~~		~~2B~~		~~3C~~	
~~Little Bear River and tributaries, from Cutler Reservoir to headwaters~~		~~2B~~	~~3A~~	~~3D~~	~~4~~
~~Logan River and tributaries, from Cutler Reservoir to headwaters~~		~~2B~~	~~3A~~	~~3D~~	~~4~~
~~Blacksmith Fork and tributaries, from confluence with Logan River to headwaters~~		~~2B~~	~~3A~~		~~4~~
~~Newton Creek and tributaries, from Cutler Reservoir to Newton Reservoir~~		~~2B~~	~~3A~~		~~4~~
~~Clarkston Creek and tributaries, from Newton Reservoir to headwaters~~		~~2B~~	~~3A~~		~~4~~
~~Birch Creek and tributaries, from confluence with Clarkston Creek to headwaters~~		~~2B~~	~~3A~~		~~4~~
~~Summit Creek and tributaries, from confluence with Bear River to headwaters~~		~~2B~~	~~3A~~		~~4~~
~~Cub River and tributaries, from confluence with Bear River to state line, except as listed below:~~		~~2B~~		~~3B~~	~~4~~
~~High Creek and tributaries, from confluence with Cub River to headwaters~~		~~2B~~	~~3A~~		~~4~~
~~Swan Springs tributary to Swan Creek~~	~~1C~~	~~2B~~	~~3A~~]		
Willard Creek, from Willard Bay Reservoir to headwaters		2B	3A		4
Perry Canyon Creek from U.S. Forest boundary to headwaters		2B	3A		4
Box Elder Creek from confluence with Black Slough to Brigham City Reservoir (the Mayor's Pond)		2B		3C	4
Box Elder Creek, from Brigham City Reservoir (the Mayor's Pond) to headwaters		2B	3A		4
Malad River and tributaries, from confluence with Bear River to state line		2B		3C	
Little Bear River and tributaries, from Cutler Reservoir to headwaters		2B	3A	3D	4
Logan River and tributaries, from Cutler Reservoir to headwaters		2B	3A	3D	4
Blacksmith Fork and tributaries, from confluence with Logan River to headwaters		2B	3A		4
Newton Creek and tributaries, from Cutler Reservoir to Newton Reservoir		2B	3A		4

Clarkston Creek and tributaries, from Newton Reservoir to headwaters		2B	3A	4
Birch Creek and tributaries, from confluence with Clarkston Creek to headwaters		2B	3A	4
Summit Creek and tributaries, from confluence with Bear River to headwaters		2B	3A	4
Cub River and tributaries, from confluence with Bear River to state line, except as listed below:		2B	3B	4
High Creek and tributaries, from confluence with Cub River to headwaters		2B	3A	4
All tributaries to Bear Lake from Bear Lake to headwaters, except as listed below		2B	3A	4
[~~Swan Creek and tributaries, from Bear Lake to headwaters~~		~~2B~~	~~3A~~	~~4~~
~~Big Creek and tributaries, from Bear Lake to headwaters~~		~~2B~~	~~3A~~	~~4~~]
Swan Springs tributary to Swan Creek	1C	2B	3A	
Bear River and tributaries in Rich County		2B	3A	4
Bear River and tributaries, from Utah-Wyoming state line to headwaters (Summit County)		2B	3A	4
Mill Creek and tributaries, from state line to headwaters (Summit County)		2B	3A	4

13.4 Weber River Basin

a. Weber River Drainage

TABLE

Willard Creek, from Willard Bay Reservoir to headwaters		2B	3A	4
Weber River, from Great Salt Lake to Slaterville diversion, except as listed below:		2B	3C 3D	4
[~~Four Mile Creek from I-15 to headwaters~~		~~2B~~	~~3A~~	~~4~~]
Four Mile Creek from I-15 To headwaters		2B	3A	4
Weber River and tributaries, from Slaterville diversion to Stoddard diversion, except as listed below		2B	3A	4
Ogden River and tributaries, From confluence with Weber River To Pineview Dam, except as listed Below		2B	3A	4
Wheeler Creek from Confluence with Ogden River to headwaters	1C	2B	3A	4
All tributaries to Pineview Reservoir	1C	2B	3A	4
Strongs Canyon Creek and Tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A	4
Burch Creek and tributaries, from Harrison Boulevard in Ogden to Headwaters	1C	2B	3A	
Spring Creek and tributaries, From U.S. National Forest Boundary to headwaters	1C	2B	3A	4
Weber River and tributaries, from Stoddard diversion to headwaters	1C	2B	3A	4
[~~Strongs Canyon Creek and tributaries, from U.S. National Forest boundary to headwaters~~	~~1C~~	~~2B~~	~~3A~~	~~4~~
~~Burch Creek and tributaries, from Harrison Boulevard in Ogden to headwaters~~	~~1C~~	~~2B~~	~~3A~~	
~~Spring Creek and tributaries, from U.S. National Forest boundary to headwaters~~	~~1C~~	~~2B~~	~~3A~~	~~4~~
~~Ogden River and tributaries, from confluence with Weber River to Pineview Dam~~		~~2B~~	~~3A~~	~~4~~
~~Wheeler Creek from confluence with Ogden River to headwaters~~	~~1C~~	~~2B~~	~~3A~~	~~4~~
~~All tributaries to Pineview Reservoir~~	~~1C~~	~~2B~~	~~3A~~	~~4~~]

13.5 Utah Lake-Jordan River Basin

a. Jordan River Drainage

TABLE

Jordan River, from Farmington Bay to North Temple Street, Salt Lake City		2B	3B * 3D	4
Jordan River, from North Temple Street in Salt Lake City to confluence with Little Cottonwood Creek		2B	3B *	4
Surplus Canal from Great Salt Lake to the diversion from the Jordan River		2B	3B * 3D	4
Jordan River from confluence with Little Cottonwood Creek to Narrows Diversion		2B	3A	4
Jordan River, from Narrows Diversion to Utah Lake	1C	2B	3B	4
City Creek, from Memory Park in Salt Lake City to City Creek Water Treatment Plant		2B	3A	
City Creek, from City Creek Water Treatment Plant to headwaters	1C	2B	3A	
[~~Parley's Creek and tributaries, from 1300 East in Salt Lake City to Mountain Dell Reservoir~~		~~2B~~	~~3A~~	

~~Parley's Creek and tributaries, from Mountain Dell Reservoir to headwaters~~	~~1C~~	~~2B 3A~~		
~~Emigration Creek and tributaries, from Foothill Boulevard in Salt Lake City to headwaters~~		~~2B 3A~~]		
Red Butte Creek and tributaries, from Red Butte Reservoir to headwaters	1C	2B 3A		
Mill Creek (Salt Lake County) from confluence with Jordan River to Interstate Highway 15		2B	3C	4
Mill Creek (Salt Lake County) and tributaries from Interstate Highway 15 to headwaters		2B 3A		4
Big Cottonwood Creek and tributaries, from confluence with Jordan River to Big Cottonwood Water Treatment Plant		2B 3A		4
Big Cottonwood Creek and tributaries, from Big Cottonwood Water Treatment Plant to headwaters	1C	2B 3A		
Deaf Smith Canyon Creek and tributaries	1C	2B 3A		4
Little Cottonwood Creek and tributaries, from confluence with Jordan River to Metropolitan Water Treatment Plant		2B 3A		4
Little Cottonwood Creek and tributaries, from Metropolitan Water Treatment Plant to headwaters	1C	2B 3A		
Bell Canyon Creek and tributaries, from lower Bell's Canyon reservoir to headwaters	1C	2B 3A		
Little Willow Creek and tributaries, from Draper Irrigation Company diversion to headwaters	1C	2B 3A		
Big Willow Creek and tributaries, from Draper Irrigation Company diversion to headwaters	1C	2B 3A		
South Fork of Dry Creek and tributaries, from Draper Irrigation Company diversion to headwaters	1C	2B 3A		
All permanent streams on east slope of Oquirrh Mountains (Coon, Barney's, Bingham, Butterfield, and Rose Creeks)		2B	3D	4
Kersey Creek from confluence of C-7 Ditch to headwaters		2B	3D	

* Site specific criteria for total ammonia and dissolved oxygen. See Table 2.14.5.

b. Provo River Drainage

TABLE

Provo River and tributaries, from Utah Lake to Murdock diversion		2B 3A		4
Provo River and tributaries, from Murdock Diversion to headwaters	1C	2B 3A		4
[~~Upper Falls drainage above Provo City diversion~~	~~1C~~	~~2B 3A~~		
~~Bridal Veil Falls drainage above Provo City diversion~~	~~1C~~	~~2B 3A~~		
~~Lost Creek and tributaries above Provo City diversion~~	~~1C~~	~~2B 3A~~]		
Upper Falls drainage above Provo City diversion	1C	2B 3A		
Bridal Veil Falls drainage above Provo City diversion	1C	2B 3A		
Lost Creek and tributaries above Provo City diversion	1C	2B 3A		

c. Utah Lake Drainage

TABLE

Dry Creek and tributaries (above Alpine), from U.S. National Forest boundary to headwaters		2B 3A		4
American Fork Creek and tributaries, from diversion at mouth of American Fork Canyon to headwaters		2B 3A		4
[~~Spanish Fork River and tributaries, from Utah Lake to diversion at Moark Junction~~		~~2B~~	~~3B~~ ~~3D~~	~~4~~
~~Spanish Fork River and tributaries, from diversion at Moark Junction to headwaters~~		~~2B 3A~~		~~4~~]
Spring Creek and tributaries, from Utah Lake near Lehi to headwaters		2B 3A		4
Lindon Hollow Creek and tributaries, from Utah Lake to headwaters		2B	3B	4
Rock Canyon Creek and tributaries (East of Provo) from U.S. National Forest boundary to headwaters	1C	2B 3A		4
Mill Race (except from Interstate Highway 15 to the Provo City WWTP discharge) and tributaries from Utah Lake to headwaters		2B	3B	4
Mill Race from Interstate Highway 15 to the Provo City wastewater treatment plant discharge		2B	3B	4

Spring Creek and tributaries from Utah Lake (Provo Bay) to 50 feet upstream from the east boundary of the Industrial Parkway Road Right-of-way	2B	3B		4
Tributary to Spring Creek (Utah County) which receives the Springville City WWTP effluent from confluence with Spring Creek to headwaters	2B	3D		4
Spring Creek and tributaries from 50 feet upstream from the east boundary of the Industrial Parkway Road right-of-way to the headwaters	2B	3A		4
Ironton Canal from Utah Lake (Provo Bay) to the east boundary of the Denver and Rio Grande Western Railroad right-of-way	2B		3C	4
Ironton Canal from the east boundary of the Denver and Rio Grande Western Railroad right-of-way to the point of diversion from Spring Creek	2B	3A		4
Hobble Creek and tributaries, from Utah Lake to headwaters	2B	3A		4
Dry Creek and tributaries from Utah Lake (Provo Bay) to [~~Interstate Highway 15~~] Highway-US 89	2B		[~~3C~~]	3E 4
Dry Creek and tributaries from [~~Interstate Highway 15~~] Highway-US 89 to headwaters	2B	3A		4
Spanish Fork River and tributaries, from Utah Lake to diversion at Moark Junction	2B	3B	3D	4
Spanish Fork River and tributaries, from diversion at Moark Junction to headwaters	2B	3A		4
Benjamin Slough and tributaries [~~(except Beer Creek)~~] from Utah Lake to headwaters, except as listed below	2B	3B		4
[~~Beer Creek (Utah County) from 4850 West (in NE1/4NE1/4 sec. 36, T.8 S., R.1 E.) to headwaters~~	2B		3C	4]
Beer Creek (Utah County) from 4850 West (in NE1/4NE1/4 sec. 36, T.8 S., R.1 E.) to headwaters	2B		3C	4
[~~All other permanent streams entering Utah Lake~~	2B	3B		4]
Salt Creek, from Nephi diversion to headwaters	2B	3A		4
Currant Creek, from mouth of Goshen Canyon to Mona Reservoir	2B	3A		4
Burriston Creek, from Mona Reservoir to headwaters	2B	3A		4
Peteetneet Creek and tributaries, from irrigation diversion above Maple Dell to headwaters	2B	3A		4
Summit Creek and tributaries (above Santaquin), from U.S. National Forest boundary to headwaters	2B	3A		4
[~~Rock Canyon Creek and tributaries (East of Provo) from U.S. National Forest boundary to headwaters~~	1C	2B	3A	4
~~Dry Creek and tributaries (above Alpine), from U.S. National Forest boundary to headwaters~~		2B	3A	4]
All other permanent streams entering Utah Lake		2B	3B	4

13.6 Sevier River Basin

a. Sevier River Drainage

TABLE

Sevier River and tributaries from Sevier Lake to Gunnison Bend Reservoir to U.S.National Forest boundary except [~~the following~~] as listed below		2B	3C	4
Beaver River and tributaries from Minersville City to headwaters		2B	3A	4
Little Creek and tributaries, From irrigation diversion to Headwaters		2B	3A	4
Pinto Creek and tributaries, From Newcastle Reservoir to Headwaters		2B	3A	4
Coal Creek and tributaries		2B	3A	4
Summit Creek and tributaries		2B	3A	4
Parowan Creek and tributaries		2B	3A	4
Tributaries to Sevier River from Sevier Lake to Gunnison Bend Reservoir from U.S. National Forest boundary to headwaters, including:		2B	3A	4
Pioneer Creek and tributaries, Millard County		2B	3A	4
Chalk Creek and tributaries, Millard County		2B	3A	4
Meadow Creek and tributaries, Millard County		2B	3A	4
Corn Creek and tributaries, Millard County		2B	3A	4
[~~Tributaries to Sevier River from Gunnison Bend Reservoir to Annabella Diversion from U.S. National Forest boundary to headwaters~~		2B	3A	4]
Sevier River and tributaries below U.S. National Forest boundary from Gunnison Bend Reservoir to Annabella Diversion except [~~the following tributaries:~~] except as listed below		2B	3B	4

Oak Creek and tributaries, Millard County	2B	3A	4
Round Valley Creek and tributaries, Millard County	2B	3A	4
Judd Creek and tributaries, Juab County	2B	3A	4
Meadow Creek and tributaries, Juab County	2B	3A	4
Cherry Creek and tributaries Juab County	2B	3A	4
Tanner Creek and tributaries, Juab County	2B		3E 4
Baker Hot Springs, Juab County	2B	3D	4
Chicken Creek and tributaries, Juab County	2B	3A	4
San Pitch River and tributaries, from confluence with Sevier River to Highway U-132 crossing except [~~the following tributaries:~~] As listed below:	2B	3C 3D	4
Twelve Mile Creek (South Creek) and tributaries, from U.S. Forest Service boundary to headwaters	2B	3A	4
Six Mile Creek and tributaries, Sanpete County	2B	3A	4
Manti Creek (South Creek) and tributaries, from U.S. Forest Service boundary to headwaters	2B	3A	4
Ephraim Creek (Cottonwood Creek) and tributaries, from U.S. Forest Service to headwaters	2B	3A	4
Oak Creek and tributaries, from U.S. Forest Service boundary near Spring City to headwaters	2B	3A	4
Fountain Green Creek and tributaries, from U.S. Forest Service boundary to headwaters	2B	3A	4
San Pitch River and tributaries, from Highway U-132 crossing to headwaters	2B	3A	4
[~~Judd Creek and tributaries, Juab County~~	~~2B~~	~~3A~~	~~4~~
~~Meadow Creek and tributaries, Juab County~~	~~2B~~	~~3A~~	~~4~~
~~Cherry Creek and tributaries, Juab County~~	~~2B~~	~~3A~~	~~4~~
~~Tanner Creek and tributaries, Juab County~~			~~4~~
~~Baker Hot Springs, Juab County~~	~~2B~~	~~3D~~	~~4~~]
Tributaries to Sevier River from Gunnison Bend Reservoir to Annabelle Diversion from U.S. National Forest boundary to headwaters	2B	3A	4
Sevier River and tributaries, from Annabella diversion to headwaters	2B	3A	4
Monroe Creek and tributaries, from diversion to headwaters	2B	3A	4
Little Creek and tributaries, from irrigation diversion to headwaters	2B	3A	4
Pinto Creek and tributaries, from Newcastle Reservoir to headwaters	2B	3A	4
Coal Creek and tributaries	2B	3A	4
Summit Creek and tributaries	2B	3A	4
Parowan Creek and tributaries	2B	3A	4
Duck Creek and tributaries	2B	3A	4

13.7 Great Salt Lake Basin

a. Western Great Salt Lake Drainage

TABLE

Grouse Creek and tributaries, Box Elder County	2B	3A	4
Muddy Creek and tributaries, Box Elder County	2B	3A	4
Dove Creek and tributaries, Box Elder County	2B	3A	4
Pine Creek and tributaries, Box Elder County	2B	3A	4
Rock Creek and tributaries, Box Elder County	2B	3A	4
Fisher Creek and tributaries, Box Elder County	2B	3A	4
Dunn Creek and tributaries, Box Elder County	2B	3A	4
[~~Donner Creek and tributaries, from irrigation diversion to Utah Nevada state line~~	~~2B~~	~~3A~~	~~4~~
~~Bettridge Creek and tributaries, from irrigation diversion to Utah Nevada state line~~	~~2B~~	~~3A~~	~~4~~]
Indian Creek and tributaries, Box Elder County	2B	3A	4
Tenmile Creek and tributaries, Box Elder County	2B	3A	4
Curlew (Deep) Creek, Box Elder County	2B	3A	4
Blue Creek and tributaries, from Great Salt Lake to Blue Creek Reservoir	2B	3D	4

Blue Creek and tributaries, from Blue Creek Reservoir to headwaters		2B	3B	4
All perennial streams on the east slope of the Pilot Mountain Range	1C	2B	3A	4
Donner Creek and tributaries, from irrigation diversion to Utah-Nevada state line		2B	3A	4
Bettridge Creek and tributaries, from irrigation diversion to Utah-Nevada state line		2B	3A	4
North Willow Creek and tributaries, Tooele County		2B	3A	4
South Willow Creek and tributaries, Tooele County		2B	3A	4
Hickman Creek and tributaries, Tooele County		2B	3A	4
Barlow Creek and tributaries, Tooele County		2B	3A	4
Clover Creek and tributaries, Tooele County		2B	3A	4
Faust Creek and tributaries, Tooele County		2B	3A	4
Vernon Creek and tributaries, Tooele County		2B	3A	4
Ophir Creek and tributaries, Tooele County		2B	3A	4
Soldier Creek and Tributaries from the Drinking Water Treatment Facility Headwaters, Tooele County	1C	2B	3A	4
Settlement Canyon Creek and tributaries, Tooele County		2B	3A	4
Middle Canyon Creek and tributaries, Tooele County		2B	3A	4
Tank Wash and tributaries, Tooele County		2B	3A	4
Basin Creek and tributaries, Juab and Tooele Counties		2B	3A	4
Thomas Creek and tributaries, Juab County		2B	3A	4
Indian Farm Creek and tributaries, Juab County		2B	3A	4
Cottonwood Creek and tributaries, Juab County		2B	3A	4
Red Cedar Creek and tributaries, Juab County		2B	3A	4
Granite Creek and tributaries, Juab County		2B	3A	4
Trout Creek and tributaries, Juab County		2B	3A	4
Birch Creek and tributaries, Juab County		2B	3A	4
Deep Creek and tributaries, from Rock Spring Creek to headwaters, Juab and Tooele Counties		2B	3A	4
Cold Spring, Juab County		2B	3C	3D
Cane Spring, Juab County		2B	3C	3D
Lake Creek, from Garrison (Pruess) Reservoir to Nevada state line		2B	3A	4
Snake Creek and tributaries, Millard County		2B	3B	4
Salt Marsh Spring Complex, Millard County		2B	3A	
Twin Springs, Millard County		2B	3B	
Tule Spring, Millard County		2B	3C	3D
Coyote Spring Complex, Millard County		2B	3C	3D
Hamblin Valley Wash and tributaries, from Nevada state line to headwaters (Beaver and Iron Counties)		2B	3D	4
Indian Creek and tributaries, Beaver County, from Indian Creek Reservoir to headwaters		2B	3A	4
Shoal Creek and tributaries, Iron County		2B	3A	4

b. Farmington Bay Drainage

TABLE

Corbett Creek and tributaries, from Highway to headwaters		2B	3A	4
Kays Creek and tributaries, from Farmington Bay to U.S. National Forest boundary		2B	3B	4
North Fork Kays Creek and tributaries, from U.S. National Forest boundary to headwaters		2B	3A	4
Middle Fork Kays Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A	4
South Fork Kays Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A	4
Snow Creek and tributaries		2B	3C	4
Holmes Creek and tributaries, from Farmington Bay to U.S. National Forest boundary		2B	3B	4
Holmes Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A	4
Baer Creek and tributaries, from Farmington Bay to Interstate Highway 15		2B	3C	4

Baer Creek and tributaries, from Interstate Highway 15 to Highway US-89		2B	3B		4
Baer Creek and tributaries, from Highway US-89 to headwaters	1C	2B	3A		4
Shepard Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A		4
Farmington Creek and tributaries, from Farmington Bay Waterfowl Management Area to U.S. National Forest boundary		2B	3B		4
Farmington Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A		4
Rudd Creek and tributaries, from Davis aqueduct to headwaters		2B	3A		4
Steed Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A		4
Davis Creek and tributaries, from Highway US-89 to headwaters		2B	3A		4
Lone Pine Creek and tributaries, from Highway US-89 to headwaters		2B	3A		4
Ricks Creek and tributaries, from Highway I-15 to headwaters	1C	2B	3A		4
Barnard Creek and tributaries, from Highway US-89 to headwaters		2B	3A		4
Parrish Creek and tributaries, from Davis Aqueduct to headwaters		2B	3A		4
Deuel Creek and tributaries, (Centerville Canyon) from Davis Aqueduct to headwaters		2B	3A		4
Stone Creek and tributaries, from Farmington Bay Waterfowl Management Area to U.S. National Forest boundary		2B	3A		4
Stone Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A		4
Barton Creek and tributaries, from U.S. National Forest boundary to headwaters		2B	3A		4
Mill Creek (Davis County) and tributaries, from confluence with State Canal to U.S. National Forest boundary		2B	3B		4
Mill Creek (Davis County) and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A		4
North Canyon Creek and tributaries, from U.S. National Forest boundary to headwaters		2B	3A		4
[~~Hobart~~]Howard Slough		2B		3C	4
Hooper Slough		2B		3C	4
Willard Slough		2B		3C	4
Willard Creek to Headwaters	1C	2B	3A		4
Chicken Creek to Headwaters	1C	2B	3A		4
Cold Water Creek to Headwaters	1C	2B	3A		4
One House Creek to Headwaters	1C	2B	3A		4
Garner Creek to Headwaters	1C	2B	3A		4

13.8 Snake River Basin

a. Raft River Drainage (Box Elder County)

TABLE

Raft River and tributaries		2B	3A		4
Clear Creek and tributaries, from Utah-Idaho state line to headwaters		2B	3A		4
Onemile Creek and tributaries, from Utah-Idaho state line to headwaters		2B	3A		4
George Creek and tributaries, from Utah-Idaho state line to headwaters		2B	3A		4
Johnson Creek and tributaries, from Utah-Idaho state line to headwaters		2B	3A		4
Birch Creek and tributaries, from state line to headwaters		2B	3A		4
Pole Creek and tributaries, from state line to headwaters		2B	3A		4
Goose Creek and tributaries		2B	3A		4
Hardesty Creek and tributaries, from state line to headwaters		2B	3A		4
Meadow Creek and tributaries, from state line to headwaters		2B	3A		4
13.9 All irrigation canals and ditches statewide, except as otherwise designated		2B		3E	4
13.10 All drainage canals and ditches statewide, except as otherwise designated		2B		3E	

13.11 National Wildlife Refuges and State Waterfowl Management Areas

TABLE

Bear River National Wildlife Refuge, Box Elder County			3B		3D
Brown's Park Waterfowl Management Area, Daggett County		3A			3D
Clear Lake Waterfowl Management Area, Millard County				3C	3D
Desert Lake Waterfowl Management Area, Emery County				3C	3D
Farmington Bay Waterfowl Management Area, Davis and Salt Lake Counties				3C	3D

Fish Springs National Wildlife Refuge, Juab County			3C	3D
Harold Crane Waterfowl Management Area, Box Elder County			3C	3D
Howard Slough Waterfowl Management Area, Weber County			3C	3D
Locomotive Springs Waterfowl Management Area, Box Elder County		3B		3D
Ogden Bay Waterfowl Management Area, Weber County			3C	3D
Ouray National Wildlife Refuge, Uintah County		3B		3D
Powell Slough Waterfowl Management Area, Utah County			3C	3D
Public Shooting Grounds Waterfowl Management Area, Box Elder County			3C	3D
Salt Creek Waterfowl Management Area, Box Elder County			3C	3D
Stewart Lake Waterfowl Management Area, Uintah County			3B	3D
Timpie Springs Waterfowl Management Area, Tooele County			3B	3D

13.12 Lakes and Reservoirs (20 Acres or Larger). All lakes not listed in 13.12 are assigned by default to the classification of the stream with which they are associated.

a. Beaver County

TABLE

Anderson Meadow Reservoir		2B	3A	4
Manderfield Reservoir		2B	3A	4
LaBaron Reservoir		2B	3A	4
[~~Middle~~]Kent's Lake		2B	3A	4
Minersville Reservoir		2B	3A 3D	4
Puffer Lake		2B	3A	
Three Creeks Reservoir		2B	3A	4

b. Box Elder County

TABLE

Cutler Reservoir (including portion in Cache County)		2B	3B	3D	4
Etna Reservoir		2B	3A		4
Lynn Reservoir		2B	3A		4
Mantua Reservoir		2B	3A		4
Willard Bay Reservoir	1C 2A	2B	3B	3D	4

c. Cache County

TABLE

Hyrum Reservoir	2A	2B	3A **	4
Newton Reservoir		2B	3A	4
Porcupine Reservoir		2B	3A	4
Pelican Pond		2B	3B	4
Tony Grove Lake		2B	3A	4

d. Carbon County

TABLE

Grassy Trail Creek Reservoir	1C	2B	3A	4
Olsen Pond		2B	3B	4
Scofield Reservoir	1C	2B	3A	4

e. Daggett County

TABLE

Browne Reservoir		2B	3A	4
Daggett Lake		2B	3A	4
Flaming Gorge Reservoir (Utah portion)	1C 2A	2B	3A	4
Long Park Reservoir	1C	2B	3A	4
Sheep Creek Reservoir		2B	3A	4
Spirit Lake		2B	3A	4
Upper Potter Lake		2B	3A	4

f. Davis County

TABLE

Farmington Ponds		2B	3A	4
Kaysville Highway Ponds		2B	3A	4
Holmes Creek Reservoir		2B	3B	4

g. Duchesne County

TABLE

Allred Lake		2B	3A	4
Atwine Lake		2B	3A	4
Atwood Lake		2B	3A	4
Betsy Lake		2B	3A	4
Big Sandwash Reservoir	1C	2B	3A	4
Bluebell Lake		2B	3A	4
Brown Duck Reservoir		2B	3A	4
Butterfly Lake		2B	3A	4
Cedarview Reservoir		2B	3A	4
Chain Lake #1		2B	3A	4
Chepeta Lake		2B	3A	4
Clements Reservoir		2B	3A	4
Cleveland Lake		2B	3A	4

Cliff Lake		2B	3A	4
Continent Lake		2B	3A	4
Crater Lake		2B	3A	4
Crescent Lake		2B	3A	4
Daynes Lake		2B	3A	4
Dean Lake		2B	3A	4
Doll Lake		2B	3A	4
Drift Lake		2B	3A	4
Elbow Lake		2B	3A	4
Farmer's Lake		2B	3A	4
Fern Lake		2B	3A	4
Fish Hatchery Lake		2B	3A	4
Five Point Reservoir		2B	3A	4
Fox Lake Reservoir		2B	3A	4
Governor's Lake		2B	3A	4
Granddaddy Lake		2B	3A	4
Hoover Lake		2B	3A	4
Island Lake	[~~1C~~]	2B	3A	4
Jean Lake		2B	3A	4
Jordan Lake		2B	3A	4
Kidney Lake		2B	3A	4
Kidney Lake West		2B	3A	4
Lily Lake		2B	3A	4
Midview Reservoir (Lake Boreham)		2B	3B	4
Milk Reservoir		2B	3A	4
Mirror Lake		2B	3A	4
Mohawk Lake		2B	3A	4
Moon Lake	1C	2A	2B 3A	4
North Star Lake		2B	3A	4
Palisade Lake		2B	3A	4
Pine Island Lake		2B	3A	4
Pinto Lake		2B	3A	4
Pole Creek Lake		2B	3A	4
Potter's Lake		2B	3A	4
Powell Lake		2B	3A	4
Pyramid Lake	2A	2B	3A	4
Queant Lake		2B	3A	4
Rainbow Lake		2B	3A	4
Red Creek Reservoir		2B	3A	4
Rudolph Lake		2B	3A	4
Scout Lake	2A	2B	3A	4
Spider Lake		2B	3A	4
Spirit Lake		2B	3A	4
Starvation Reservoir	1C 2A	2B	3A	4
Superior Lake		2B	3A	4
Swasey Hole Reservoir		2B	3A	4
Taylor Lake		2B	3A	4
Thompson Lake		2B	3A	4
Timothy Reservoir #1		2B	3A	4
Timothy Reservoir #6		2B	3A	4
Timothy Reservoir #7		2B	3A	4
Twin Pots Reservoir	1C	2B	3A	4
Upper Stillwater Reservoir	1C	2B	3A	4
X - 24 Lake		2B	3A	4

h. Emery County

TABLE

Cleveland Reservoir		2B	3A	4
Electric Lake		2B	3A	4
Huntington Reservoir		2B	3A	4
Huntington North Reservoir	2A	2B	3B	4
Joe's Valley Reservoir	2A	2B	3A	4
Millsite Reservoir	1C 2A	2B	3A	4

i. Garfield County

TABLE

Barney Lake		2B	3A	4
Cyclone Lake		2B	3A	4
Deer Lake		2B	3A	4
Jacob's Valley Reservoir		2B	3C 3D	4
Lower Bowns Reservoir		2B	3A	4
North Creek Reservoir		2B	3A	4
Panguitch Lake		2B	3A	4
Pine Lake		2B	3A	4
Oak Creek Reservoir (Upper Bowns)		2B	3A	4
Pleasant Lake		2B	3A	4
Posey Lake		2B	3A	4
Purple Lake		2B	3A	4
Raft Lake		2B	3A	4

Row Lake #3		2B	3A	4
Row Lake #7		2B	3A	4
Spectacle Reservoir		2B	3A	4
Tropic Reservoir		2B	3A	4
West Deer Lake		2B	3A	4
Wide Hollow Reservoir		2B	3A	4

j. Iron County

TABLE

Newcastle Reservoir		2B	3A	4
Red Creek Reservoir		2B	3A	4
Yankee Meadow Reservoir		2B	3A	4

k. Juab County

TABLE

Chicken Creek Reservoir		2B	3C	3D	4
Mona Reservoir		2B	3B		4
Sevier Bridge (Yuba) Reservoir	2A	2B	3B		4

l. Kane County

TABLE

Navajo Lake		2B	3A	4

m. Millard County

TABLE

DMAD Reservoir		2B	3B		4
Fools Creek Reservoir		2B	3C	3D	4
Garrison Reservoir (Pruess Lake)		2B	3B		4
Gunnison Bend Reservoir		2B	3B		4

n. Morgan County

TABLE

East Canyon Reservoir	1C	2A	2B	3A	4
Lost Creek Reservoir	1C		2B	3A	4

o. Piute County

TABLE

Barney Reservoir		2B	3A	4
Lower Boxcreek Reservoir		2B	3A	4
Manning Meadow Reservoir		2B	3A	4
Otter Creek Reservoir		2B	3A	4
Piute Reservoir		2B	3A	4
Upper Boxcreek Reservoir		2B	3A	4

p. Rich County

TABLE

Bear Lake (Utah portion)	2A	2B	3A	4
Birch Creek Reservoir		2B	3A	4
Little Creek Reservoir		2B	3A	4
Woodruff Creek Reservoir		2B	3A	4

q. Salt Lake County

TABLE

Decker Lake		2B	3B	3D	4
Lake Mary	1C	2B	3A		
Little Dell Reservoir	1C	2B	3A		
Mountain Dell Reservoir	1C	2B	3A		

r. San Juan County

TABLE

Blanding Reservoir #4	1C	2B	3A		4
Dark Canyon Lake	1C	2B	3A		4
Ken's Lake		2B	3A**		4
Lake Powell (Utah portion)	1C	2A	2B	3B	4
Lloyd's Lake	1C		2B	3A	4
Monticello Lake			2B	3A	4
Recapture Reservoir			2B	3A	4

s. Sanpete County

TABLE

Duck Fork Reservoir			2B	3A	4
Fairview Lakes	1C		2B	3A	4
Ferron Reservoir			2B	3A	4
Lower Gooseberry Reservoir	1C		2B	3A	4
Gunnison Reservoir			2B	3C	4
Island Lake			2B	3A	4
Miller Flat Reservoir			2B	3A	4
Ninemile Reservoir			2B	3A	4
Palisade Reservoir	2A	2B	3A		4
Rolfson Reservoir			2B	3C	4
Twin Lakes			2B	3A	4
Willow Lake			2B	3A	4

t. Sevier County

TABLE

Annabella Reservoir	2B	3A	4
Big Lake	2B	3A	4
Farnsworth Lake	2B	3A	4
Fish Lake	2B	3A	4
Forsythe Reservoir	2B	3A	4
Johnson Valley Reservoir	2B	3A	4
Koosharem Reservoir	2B	3A	4
Lost Creek Reservoir	2B	3A	4
Redmond Lake	2B	3B	4
Rex Reservoir	2B	3A	4
Salina Reservoir	2B	3A	4
Sheep Valley Reservoir	2B	3A	4

u. Summit County

TABLE

Abes Lake		2B	3A	4
Alexander Lake		2B	3A	4
Amethyst Lake		2B	3A	4
Beaver Lake		2B	3A	4
Beaver Meadow Reservoir		2B	3A	4
Big Elk Reservoir		2B	3A	4
Blanchard Lake		2B	3A	4
Bridger Lake		2B	3A	4
China Lake		2B	3A	4
Cliff Lake		2B	3A	4
Clyde Lake		2B	3A	4
Coffin Lake		2B	3A	4
Cuberant Lake		2B	3A	4
East Red Castle Lake		2B	3A	4
Echo Reservoir	1C 2A	2B	3A	4
Fish Lake		2B	3A	4
Fish Reservoir		2B	3A	4
Haystack Reservoir #1		2B	3A	4
Henry's Fork Reservoir		2B	3A	4
Hoop Lake		2B	3A	4
Island Lake		2B	3A	4
Island Reservoir		2B	3A	4
Jesson Lake		2B	3A	4
Kamas Lake		2B	3A	4
Lily Lake		2B	3A	4
Lost Reservoir		2B	3A	4
Lower Red Castle Lake		2B	3A	4
Lyman Lake	2A	2B	3A	4
Marsh Lake		2B	3A	4
Marshall Lake		2B	3A	4
McPheters Lake		2B	3A	4
Meadow Reservoir		2B	3A	4
Meeks Cabin Reservoir		2B	3A	4
Notch Mountain Reservoir		2B	3A	4
Red Castle Lake		2B	3A	4
Rockport Reservoir	1C 2A	2B	3A	4
Ryder Lake		2B	3A	4
Sand Reservoir		2B	3A	4
Scow Lake		2B	3A	4
Smith Moorehouse Reservoir	1C	2B	3A	4
Star Lake		2B	3A	4
Stateline Reservoir		2B	3A	4
Tamarack Lake		2B	3A	4
Trial Lake	1C	2B	3A	4
Upper Lyman Lake		2B	3A	4
Upper Red Castle		2B	3A	4
Wall Lake Reservoir		2B	3A	4
Washington Reservoir		2B	3A	4
Whitney Reservoir		2B	3A	4

v. Tooele County

TABLE

Blue Lake		2B	3B	4
Clear Lake		2B	3B	4
Grantsville Reservoir		2B	3A	4
Horseshoe Lake		2B	3B	4
Kanaka Lake		2B	3B	4
Rush Lake		2B	3B	
Settlement Canyon Reservoir		2B	3A	4
Stansbury Lake		2B	3B	4
Vernon Reservoir		2B	3A	4

w. Uintah County

TABLE

Ashley Twin Lakes (Ashley Creek)	1C	2B	3A		4
Bottle Hollow Reservoir		2B	3A		4
Brough Reservoir		2B	3A		4
Calder Reservoir		2B	3A		4
Crouse Reservoir		2B	3A		4
East Park Reservoir		2B	3A		4
Fish Lake		2B	3A		4
Goose Lake #2		2B	3A		4
Matt Warner Reservoir		2B	3A		4
Oaks Park Reservoir		2B	3A		4
Paradise Park Reservoir		2B	3A		4
Pelican Lake		2B	3B		4
Red Fleet Reservoir	1C	2A	2B	3A	4
Steinaker Reservoir	1C	2A	2B	3A	4
Towave Reservoir		2B	3A		4
Weaver Reservoir		2B	3A		4
Whiterocks Lake		2B	3A		4
Workman Lake		2B	3A		4

x. Utah County

TABLE

Salem Pond		2A	3A		4
Silver Flat Lake Reservoir		2B	3A		4
Tibble Fork Resevoir		2B	3A		4
Utah Lake		2B	3B	3D	4

y. Wasatch County

TABLE

Currant Creek Reservoir	1C	2B	3A		4
Deer Creek Reservoir	1C	2A	2B	3A	4
Jordanelle Reservoir	1C	2A	3A		4
Mill Hollow Reservoir		2B	3A		4
Strawberry Reservoir	1C	2B	3A		4

z. Washington County

TABLE

Baker Dam Reservoir		2B	3A		4
Gunlock Reservoir	1C	2A	2B	3B	4
Ivins Reservoir		2B	3B		4
Kolob Reservoir		2B	3A		4
Lower Enterprise Reservoir		2B	3A		4
Quail Creek Reservoir	1C	2A	2B	3B	4
Upper Enterprise Reservoir		2B	3A		4

aa. Wayne County

TABLE

Blind Lake		2B	3A		4
Cook Lake		2B	3A		4
Donkey Reservoir		2B	3A		4
Fish Creek Reservoir		2B	3A		4
Mill Meadow Reservoir		2B	3A		4
Raft Lake		2B	3A		4

bb. Weber County

TABLE

Causey Reservoir		2B	3A		4
Pineview Reservoir	1C	2A	2B	3A**	4

13.13 Great Salt Lake

** For site specific temperature criteria See Table 2.14.2 Footnote 3.

TABLE

Box Elder, Davis, Salt Lake, Tooele, and Weber County	5

13.14 Unclassified Waters

All waters not specifically classified are presumptively classified as 2B, 3D.

R317-2-14. Numeric Criteria.

TABLE 2.14.1
NUMERIC CRITERIA FOR DOMESTIC, RECREATION, AND AGRICULTURAL USES

Parameter	Domestic Source 1C	Recreation and Aesthetics 2A	2B	Agriculture 4
BACTERIOLOGICAL (30-DAY GEOMETRIC MEAN) (NO.)/100 ML) (7)				
Max. Total Coliforms	5000	1000	5000	
Max. Fecal Coliforms	2000	200	200	
PHYSICAL				
pH (RANGE)	6.5-9.0	6.5-9.0	6.5-9.0	6.5-9.0
Turbidity Increase (NTU)		10	10	
METALS (DISSOLVED, MAXIMUM MG/L) (2)				
Arsenic	[~~0.05~~] 0.01			0.1
Barium	1.0			
Cadmium	0.01			0.01
Chromium	0.05			0.10

Copper		0.2
Lead	0.05	0.1
Mercury	0.002	
Selenium	[~~0.01~~] 0.05	0.05
Silver	0.05	
INORGANICS (MAXIMUM MG/L)		
Boron		0.75
Fluoride (3)	1.4-2.4	
Nitrates as N	10	
Total Dissolved Solids (4)	Irrigation	1200
	Stock Watering	2000
RADIOLOGICAL (MAXIMUM pCi/L)		
Gross Alpha	15	15
Radium 226, 228 (Combined)	5	
Strontium 90	8	
Tritium	20000	
ORGANICS (MAXIMUM UG/L)		
Chlorophenoxy Herbicides		
2,4-D	100	
2,4,5-TP	10	
[~~Endrin~~	~~0.2~~	
~~Hexachlorocyclohexane (Lindane)~~	~~4~~]	
Methoxychlor	100	
[~~Toxaphene~~	~~5~~]	
POLLUTION INDICATORS (5)		
Gross Beta (pCi/L)	50	50
BOD (MG/L)	5	5 5
Nitrate as N (MG/L)	4	4
Total Phosphorus as P (MG/L)(6)	0.05	0.05
[~~Total Suspended Solids (MG/L)~~	~~90~~	~~90~~]

FOOTNOTES:

(1) [~~These limits are not applicable to lower water levels in deep impoundments.~~]Reserved

(2) The dissolved metals method involves filtration of the sample in the field, acidification of the sample in the field, no digestion process in the laboratory, and analysis by atomic absorption or inductively coupled plasma (ICP) spectrophotometry.

(3) Maximum concentration varies according to the daily maximum mean air temperature.

TEMP (C)	MG/L
12.0	2.4
12.1-14.6	2.2
14.7-17.6	2.0
17.7-21.4	1.8
21.5-26.2	1.6
26.3-32.5	1.4

(4) Total dissolved solids (TDS) limits may be adjusted if such adjustment does not impair the designated beneficial use of the receiving water. The total dissolved solids (TDS) standards shall be at background where it can be shown that natural or un-alterable conditions prevent its attainment. In such cases rulemaking will be undertaken to modify the standard accordingly.

Site Specific Standards for Total Dissolved Solids (TDS)
Onion Creek: Confluence with Colorado River to road crossing above Stinking Springs, 3000 mg/l.

(5) Investigations should be conducted to develop more information where these pollution indicator levels are exceeded.

(6) Total Phosphorus as P (mg/l) [~~limit~~]indicator for lakes and reservoirs shall be 0.025.

(7) Exceedences of bacteriological numeric criteria from nonhuman nonpoint sources will generally be addressed through appropriate Federal, State, and Local nonpoint source programs.

TABLE 2.14.2
NUMERIC CRITERIA FOR AQUATIC WILDLIFE

Parameter	Aquatic Wildlife 3A	3B	3C	3D
PHYSICAL				
Total Dissolved Gases	(1)	(1)		
Minimum Dissolved Oxygen (MG/L) (2)				
30 Day Average	6.5	5.5	5.0	5.0
7 Day Average	9.5/5.0	6.0/4.0		
1 Day Average	8.0/4.0	5.0/3.0	3.0	3.0
Max. Temperature(C)(3)	20	27	27	
Max. Temperature Change (C)(3)	2	4	4	
pH (Range)	6.5-9.0	6.5-9.0	6.5-9.0	6.5-9.0
Turbidity Increase (NTU)	10	10	15	15
METALS [~~(3)~~](4) (DISSOLVED, UG/L) [~~(4)~~](5)				
Aluminum				
4 Day Average [~~(12)~~](6)	87	87	87	87
1 Hour Average	750	750	750	750
Arsenic (Trivalent)				
[~~4 Day Average~~	~~190~~	~~190~~	~~190~~	~~190~~
~~1 Hour Average~~	~~360~~	~~360~~	~~360~~	~~360~~]
4 Day Average	150	150	150	150
1 Hour Average	340	340	340	340
Cadmium [~~(5)~~](7)				
[~~4 Day Average~~	~~1.1~~	~~1.1~~	~~1.1~~	~~1.1~~
~~1 Hour Average~~	~~3.9~~	~~3.9~~	~~3.9~~	~~3.9~~]
4 Day Average	0.25	0.25	0.25	0.25
1 Hour Average	2.0	2.0	2.0	2.0
Chromium [~~(11)~~] (Hexavalent)				
4 Day Average	11	11	11	11
1 Hour Average	16	16	16	16
Chromium (Trivalent)[~~(5)~~](7)				
[~~4 Day Average~~	~~210~~	~~210~~	~~210~~	~~210~~
~~1 Hour Average~~	~~1700~~	~~1700~~	~~1700~~	~~1700~~]
4 Day Average	74	74	74	74
1 Hour Average	570	570	570	570
Copper [~~(5)~~](7)				
[~~4 Day Average~~	~~12~~	~~12~~	~~12~~	
~~1 Hour Average~~	~~18~~	~~18~~	~~18~~	~~18~~]
4 Day Average	9	9	9	9
1 Hour Average	13	13	13	13
Cyanide (Free)				
4 Day Average	5.2	5.2	5.2	
1 Hour Average	22	22	22	22
Iron (Maximum)	1000	1000	1000	1000
Lead [~~(5)~~](7)				
[~~4 Day Average~~	~~3.2~~	~~3.2~~	~~3.2~~	~~3.2~~
~~1 Hour Average~~	~~82~~	~~82~~	~~82~~	~~82~~]
4 Day Average	2.5	2.5	2.5	2.5
1 Hour Average	65	65	65	65
Mercury				
4 Day Average	0.012	0.012	0.012	0.012
1 Hour Average[~~(11)~~]	2.4	2.4	2.4	2.4
Nickel[~~(5)~~](7)				

[~~4 Day Average~~	~~160~~	~~160~~	~~160~~	~~160~~
~~1 Hour Average~~	~~1400~~	~~1400~~	~~1400~~	~~1400~~]
4 Day Average	52	52	52	52
1 Hour Average	470	470	470	470
Selenium				
[~~4 Day Average~~	~~5.0~~	~~5.0~~	~~5.0~~	~~5.0~~
~~1 Hour Average~~	~~20~~	~~20~~	~~20~~	~~20~~]
4 Day Average	4.6	4.6	4.6	4.6
1 Hour Average	18.4	18.4	18.4	18.4
Silver				
[~~1 Hour Average (5)~~	~~4.1~~	~~4.1~~	~~4.1~~	~~4.1~~]
1 Hour Average (7)	1.6	1.6	1.6	1.6
Zinc (5)				
[~~4 Day Average~~	~~110~~	~~110~~	~~110~~	~~110~~]
4 Day Average	120	120	120	120
1 Hour Average	120	120	120	120
INORGANICS				
(MG/L) [~~(3)~~](4)				
Total Ammonia as N				
[~~(6)~~](9)				
[~~4 Day Average~~	~~(6a)~~	~~(6a)~~]		
30 Day Average	(9a)	(9a)		
[~~1 Hour Average~~	~~(6b)~~	~~(6b)~~	~~(6b)~~	~~(6b)~~]
1 Hour Average	(9b)	(9b)	(9b)	(9b)
Chlorine (Total Residual)				
4 Day Average	0.011	0.011	0.011	
1 Hour Average	0.019	0.019	0.019	(7)
Hydrogen Sulfide (13) (Undissociated, Max. UG/L)	2.0	2.0	2.0	2.0
Phenol (Maximum)	0.01	0.01	0.01	0.01
RADIOLOGICAL				
(MAXIMUM pCi/L)				
Gross Alpha [~~(8)~~](10)	15	15	15	15
ORGANICS (UG/L)[~~(3)~~](4)				
[~~Aldrin (Maximum)~~	~~1.5~~	~~1.5~~	~~1.5~~	~~1.5~~]
Aldrin 1 Hour Average	1.5	1.5	1.5	1.5
Chlordane				
4 Day Average	0.0043	0.0043	0.0043	0.0043
1 Hour Average	1.2	1.2	1.2	1.2
[~~DDT and Metabolites~~				
~~4 Day Average~~	~~0.0010~~	~~0.0010~~	~~0.0010~~	~~0.0010~~
~~1 Hour Average~~	~~0.55~~	~~0.55~~	~~0.55~~	~~0.55~~]
4,4' -DDT				
4 Day Average	0.0010	0.0010	0.0010	0.0010
1 Day Average	0.55	0.55	0.55	0.55
Dieldrin				
[~~4 Day Average~~	~~0.0019~~	~~0.0019~~	~~0.0019~~	~~0.0019~~
~~1 Hour Average~~	~~1.25~~	~~1.25~~	~~1.25~~	~~1.25~~]
4 Day Average	0.056	0.056	0.056	0.056
1 Hour Average	0.24	0.24	0.24	0.24
Alpha-Endosulfan				
4 Day Average	0.056	0.056	0.056	0.056
1 Hour Average	0.11	0.11	0.11	0.11
beta-Endosulfan				
4 Day Average	0.056	0.056	0.056	0.056
1 Day Average	0.11	0.11	0.11	0.11
Endrin				
[~~4 Day Average~~	~~0.0023~~	~~0.0023~~	~~0.0023~~	~~0.0023~~
~~1 Hour Average~~	~~0.09~~	~~0.09~~	~~0.09~~	~~0.09~~]
4 Day Average	0.036	0.036	0.036	0.036
1 Hour Average	0.086	0.086	0.086	0.086
[~~Guthion (Maximum)~~	~~0.01~~	~~0.01~~	~~0.01~~	~~0.01~~]
Heptachlor				
4 Day Average	0.0038	0.0038	0.0038	0.0038
1 Hour Average	0.26	0.26	0.26	0.26
Heptachlor epoxide				
4 Day Average	0.0038	0.0038	0.0038	0.0038
1 Day Average	0.26	0.26	0.26	0.26
Hexachlorocyclohexane (Lindane)				
4 Day Average	0.08	0.08	0.08	0.08
1 Hour Average	1.0	1.0	1.0	1.0
Methoxychlor (Maximum)	0.03	0.03	0.03	0.03
Mirex (Maximum)	0.001	0.001	0.001	0.001
[~~Parathion (Maximum)~~	~~0.04~~	~~0.04~~	~~0.04~~	~~0.04~~]
Parathion				
4 Day Average	0.013	0.013	0.013	0.013
1 Hour Average	0.066	0.066	0.066	0.066
PCB's				
4 Day Average	0.014	0.014	0.014	0.014
1 Hour Average	2.0	2.0	2.0	2.0
Pentachlorophenol [~~(9)~~](11)				
[~~4 Day Average~~	~~13~~	~~13~~	~~13~~	~~13~~
~~1 Hour Average~~	~~20~~	~~20~~	~~20~~	~~20~~]
4 Day Average	15	15	15	15
1 Day Average	19	19	19	19
Toxaphene				
4 Day Average	0.0002	0.0002	0.0002	0.0002
1 Hour Average	0.73	0.73	0.73	0.73
POLLUTION				
INDICATORS [~~(8)~~](11)				
Gross Beta (pCi/L)	50	50	50	50
BOD (MG/L)	5	5	5	5
Nitrate as N (MG/L)	4	4	4	
Total Phosphorus as P (MG/L) [~~(10)~~](12)			0.05	0.05
[~~Total Suspended Solids (MG/L)(8)~~]	~~35~~	~~90~~	~~90~~	

FOOTNOTES:

(1) Not to exceed 110% of saturation.

(2) These limits are not applicable to lower water levels in deep impoundments. First number in column is for when early life stages are present, second number is for when all other life stages present.

(3) The temperature standard shall be at background where it can be shown that natural or un-alterable conditions prevent its attainment. In such cases rulemaking will be undertaken to modify the standard accordingly.

Site Specific Standards for Temperature
Ken's Lake: From June 1st - September 20th, 27 degrees C.

[~~(3)~~](4) Where criteria are listed as 4-day average and 1-hour average concentrations, these concentrations should not be exceeded more often than once every three years on the average.

[~~(4)~~](5) The dissolved metals method involves filtration of the sample in the field, acidification of the sample in the field, no digestion process in the laboratory, and analysis by atomic absorption spectrophotometry or inductively coupled plasma (ICP).

(6) The criterion for aluminum will be implemented as follows: Where the pH is equal to or greater than 7.0 and the hardness is equal to or greater than 50 ppm as CaCO3 in the receiving water after mixing, the 87 ug/l chronic criterion (expressed as total recoverable) will not apply, and aluminum will be regulated based on compliance with the 750 ug/l acute aluminum criterion (expressed as total recoverable).

[~~(5)~~](7) Hardness dependent criteria. 100 mg/l used. Conversion factors for ratio of total recoverable metals to dissolved metals must also be applied. In waters with a hardness greater than 400 mg/l as CaCO3, calculations will assume a hardness of 400 mg/l as CaCO3. See Table 2.14.3 for complete equations for hardness and conversion factors.

~~[(6) Un-ionized ammonia toxicity is dependent upon the temperature and pH of the waterbody. For detailed explanation refer to Federal Register, vol. 50, 30784, July 29, 1985.~~

~~The following equations are used to calculate criteria concentrations:~~

~~(6a) The 4 Day average (chronic) concentration of un-ionized ammonia in mg/l as N is (0.80 / FT / FPH / RATIO) * 0.822, where~~
~~FT = $10^{0.03(20-TCAP)}$; T is greater than or equal to TCAP and less than or equal to 30~~
~~= $10^{0.03(20-T)}$; T is greater than or equal to 0 and less than or equal to TCAP.~~
~~FPH = 1; pH is greater than or equal to 8.0 and less than or equal to 9.0.~~
~~= $(1 + 10^{7.4 - pH})$ / 1.25 pH is greater than or equal to 6.5 and less than 8.0~~
~~T = degrees C, and~~
~~TCAP = 15 C for salmonids or other sensitive coldwater species, or~~
~~= 20 C for salmonids and other sensitive coldwater species absent.~~
~~RATIO = 13.5; pH is greater than or equal to 7.7 and less than or equal to 9.0.~~
~~= $20(10^{7.7-pH})$ / $1 + 10^{7.4 - pH}$); pH is greater than or equal to 6.5 and less than or equal to 7.7.~~
~~(6b) The 1 Hour average (acute) concentration of un-ionized ammonia in mg/l as N is (0.52 / FT / FPH / 2) * 0.822~~
~~Where:~~
~~FT = $10^{0.03(20-TCAP)}$; T is greater or equal to TCAP and less than or equal to 30.~~
~~= $10^{0.03(20-T)}$; T is greater than or equal to 0 and less than or equal to TACP.~~
~~FPH = 1; pH is greater than or equal to 8.0 and less than or equal to 9.0.~~
~~= $(1 + 10^{7.4 - pH})$ / 1.25 pH is greater than or equal to 6.5 or less than 8.0.~~
~~T = degrees C, and~~
~~TCAP = 20 C for salmonids or other sensitive coldwater species, or~~
~~TCAP = 25 C for salmonids and other sensitive coldwater species absent.~~
~~(6c) Total Ammonia in mg/l as N is Un-ionized Ammonia in mg/l as N x $(1 + 10^{pKa - pH})$, where:~~
~~pKa = 0.09018 + 2729.92 / T~~
~~T = Temperature (C) + 273.2~~
~~For Tables of values, see following page.~~
~~(7) Numeric criteria will be established based on a site-specific assessment of potential impacts to aquatic wildlife.~~
~~(8) Investigations should be conducted to develop more information where these levels are exceeded.~~]

(8) Reserved

[~~(9) pH dependent criteria. pH 7.8 used in table. See Table 2.14.4 for equation.~~]

(9) The following equations are used to calculate Ammonia criteria concentrations:

(9a) The thirty-day average concentration of total ammonia nitrogen (in mg/l as N) does not exceed, more than once every three years on the average, the chronic criterion calculated using the following equations.

Fish Early Life Stages are Present:
mg/l as N (Chronic)= $((0.0577/1+10^{7.688-pH})+ (2.487/1+10^{PH-7.688}))$ * MIN (2.85, $1.45*10^{0.028*(25-T)}$)

Fish Early Life Stages are Absent:
mg/l as N (Chronic) = $((0.055/1+10^{7.688-pH}) + (2.487/1+10^{pH-7.688}))$ * $1.45*10^{0.028* (25-MAX(T-7))}$)

(9b) The one-hour average concentration of total ammonia nitrogen (in mg/l as N) does not exceed, more than once every three years on the average the acute criterion calculated using the following equations.

Class 3A:
mg/l as N (Acute) = $(0.275/(1+10^{7.204-pH})) + (39.0/1+10^{pH7.204}))$
Class 3B, 3C, 3D:
mg/l as N (Acute) = $0.411/(1+10^{7.204-pH})) + (58.4/(1+10^{pH-7.204}))$

In addition, the highest four-day average within the 30-day period should not exceed 2.5 times the chronic criterion.

The "Fish Early Life Stages are Present" 30-day average total ammonia criterion will be applied by default unless it is determined by the Division, on a site-specific basis, that it is appropriate to apply the "Fish Early Life Stages are Absent" 30-day average criterion for all or some portion of the year. At a minimum, the "Fish Early Life Stages are Present" criterion will apply from the beginning of spawning through the end of the early life stages. Early life stages include the pre-hatch embryonic stage, the post-hatch free embryo or yolk-sac fry stage, and the larval stage for the species of fish expected to occur at the site. The division will consult with the Division of Wildlife Resources in making such determinations. The Division will maintain information regarding the waterbodies and time periods where application of the "Early Life Stages are Absent" criterion is determined to be appropriate.

[~~(10) Total Phosphorus as P (mg/l) limit for lakes and reservoirs shall be 0.025.~~]

(10) Investigation should be conducted to develop more information where these levels are exceeded.

[~~(11) Total recoverable metals to dissolved metals conversion factors must be applied to arrive at correct dissolved metals criteria. The conversion factors are: chronic helavalent chromium criteria, 0.962; acute hexavalent chromium criteria, 0.982; acute mercury criteria, 0.850.~~]

(11) pH dependent criteria. pH 7.8 used in table. See Table 2.14.4 for equation.

[~~(12) The criterion for aluminum will be implemented as follows: Where the pH is equal to or greater than 7.0 and the hardness is equal to or greater than 50 ppm as CaCO3 in the receiving water after mixing, the 87 ug/l chronic criterion (expressed as total recoverable) will not apply, and aluminum will be regulated based on compliance with the 750 ug/l acute aluminum criterion.~~]

(12) Total Phosphorus as P (mg/l) indicator for lakes and reservoirs shall be 0.025.

(13) Formula to convert dissolved sulfide to un-disassociated hydrogen sulfide is: H_2S = Dissolved Sulfide * $e^{((1.92 + pH) + 12.85)}$

[~~TABLE~~
~~1 HOUR AVERAGE (ACUTE) CONCENTRATION OF~~
~~TOTAL AMMONIA AS N (MG/L)~~
~~FOR CLASS 3A WATERS~~
~~TEMPERATURE (C)~~

pH	0.00	5.00	10.00	15.00	20.00	25.00	30.00
6.50	28.7	26.8	25.4	24.4	23.8	16.6	11.8
7.00	23.1	21.6	20.5	19.7	19.2	13.4	9.52
7.50	14.3	13.4	12.7	12.3	12.0	8.42	5.99
8.00	6.55	6.14	5.86	5.68	5.59	3.97	2.87
8.50	2.11	1.99	1.93	1.90	1.92	1.40	1.05
9.00	0.70	0.68	0.68	0.70	0.75	0.59	0.48

~~TABLE~~
~~4 DAY AVERAGE (CHRONIC)CONCENTRATION OF~~
~~TOTAL AMMONIA AS N (MG/L)~~
~~FOR CLASS 3A WATERS~~
~~TEMPERATURE (C)~~

pH	0.00	5.00	10.00	15.00	20.00	25.00	30.00
6.50	2.49	2.33	2.21	2.12	1.46	1.02	0.72
7.00	2.49	2.33	2.21	2.13	1.47	1.03	0.73
7.50	2.50	2.34	2.22	2.14	1.48	1.04	0.74
8.00	1.49	1.40	1.33	1.29	0.90	0.64	0.46
8.50	0.48	0.45	0.44	0.43	0.31	0.23	0.17
9.00	0.16	0.16	0.16	0.16	0.12	0.10	0.08

~~TABLE~~
~~1 HOUR AVERAGE (ACUTE)CONCENTRATION OF~~
~~TOTAL AMMONIA AS N (MG/L)~~
~~FOR CLASS 3B, 3C, 3D WATERS~~
~~TEMPERATURE (C)~~

~~pH~~	~~0.00~~	~~5.00~~	~~10.00~~	~~15.00~~	~~20.00~~	~~25.00~~	~~30.00~~
~~6.50~~	~~28.7~~	~~26.8~~	~~25.4~~	~~24.4~~	~~23.8~~	~~23.5~~	~~16.6~~
~~7.00~~	~~23.1~~	~~21.6~~	~~20.5~~	~~19.7~~	~~19.2~~	~~19.0~~	~~13.5~~
~~7.50~~	~~14.3~~	~~13.4~~	~~12.7~~	~~12.3~~	~~12.0~~	~~11.9~~	~~8.47~~
~~8.00~~	~~6.55~~	~~6.14~~	~~5.86~~	~~5,68~~	~~5.59~~	~~5.61~~	~~4.05~~
~~8.50~~	~~2.11~~	~~1.99~~	~~1.93~~	~~1.90~~	~~1.92~~	~~1.98~~	~~1.49~~
~~9.00~~	~~0.70~~	~~0.68~~	~~0.68~~	~~0.70~~	~~0.75~~	~~0.83~~	~~0.68~~

~~TABLE~~
~~4 DAY AVERAGE (CHRONIC) CONCENTRATION OF~~
~~TOTAL AMMONIA AS N (MG/L)~~
~~FOR CLASS 3B WATERS~~
~~TEMPERATURE (C)~~

~~pH~~	~~0.00~~	~~5.00~~	~~10.00~~	~~15.00~~	~~20.00~~	~~25.00~~	~~30.00~~
~~6.50~~	~~2.49~~	~~2.33~~	~~2.21~~	~~2.12~~	~~2.07~~	~~1.44~~	~~1.02~~
~~7.00~~	~~2.49~~	~~2.33~~	~~2.21~~	~~2.13~~	~~2.07~~	~~1.45~~	~~1.03~~
~~7.50~~	~~2.50~~	~~2.34~~	~~2.22~~	~~2.14~~	~~2.09~~	~~1.47~~	~~1.04~~
~~8.00~~	~~1.49~~	~~1.14~~	~~1.33~~	~~1.29~~	~~1.27~~	~~0.90~~	~~0.65~~
~~8.50~~	~~0.48~~	~~0.45~~	~~0.44~~	~~0.43~~	~~0.44~~	~~0.32~~	~~0.24~~
~~9.00~~	~~0.16~~	~~0.16~~	~~0.16~~	~~0.16~~	~~0.17~~	~~0.13~~	~~0.11~~]

TABLE
1-HOUR AVERAGE (ACUTE) CONCENTRATION OF
TOTAL AMMONIA AS N (MG/L)

pH	Class 3A	Class 3B, 3C, 3D
6.5	32.6	48.8
6.6	31.3	46.8
6.7	29.8	44.8
6.8	28.1	42.0
6.9	26.2	39.1
7.0	24.1	36.1
7.1	22.0	32.8
7.2	19.7	29.5
7.3	17.5	26.2
7.4	15.4	23.0
7.5	13.3	19.9
7.6	11.4	17.0
7.7	9.65	14.4
7.8	8.11	12.1
7.9	6.77	10.1
8.0	5.62	8.40
8.1	4.64	6.95
8.2	3.83	5.72
8.3	3.15	4.71
8.4	2.59	3.88
8.5	2.14	3.20
8.6	1.77	2.65
8.7	1.47	2.20
8.8	1.23	1.84
8.9	1.04	1.56
9.0	0.89	1.32

TABLE
30-DAY AVERAGE (CHRONIC) CONCENTRATION OF
TOTAL AMMONIA AS N (MG/l)

	Fish Early Life Stages Present Temperature, C									
pH	0	14	16	18	20	22	24	26	28	30
6.5	6.67	6.67	6.06	5.33	4.68	4.12	3.62	3.18	2.80	2.46
6.6	6.57	6.57	5.97	5.25	4.61	4.05	3.56	3.13	2.75	2.42
6.7	6.44	6.44	5.86	5.15	4.52	3.98	3.50	3.07	2.70	2.37
6.8	6.29	6.29	5.52	5.03	4.42	3.89	3.42	3.00	2.64	2.32
6.9	6.12	6.12	5.56	4.89	4.30	3.78	3.32	2.92	2.57	2.25
7.0	5.91	5.91	5.37	4.72	4.15	3.65	3.21	2.82	2.48	2.18
7.1	5.67	5.67	5.15	4.53	3.98	3.50	3.08	2.70	2.38	2.09
7.2	5.39	5.39	4.90	4.41	3.78	3.33	2.92	2.57	2.26	1.99
7.3	5.03	5.08	4.61	4.06	3.57	3.13	2.76	2.42	2.13	1.87
7.4	4.73	4.73	4.30	3.78	3.32	2.92	2.57	2.26	1.98	1.74
7.5	4.36	4.36	3.97	3.49	3.06	2.69	2.37	2.08	1.83	1.61
7.6	3.98	3.98	3.61	3.18	2.79	2.45	2.16	1.90	1.67	1.47
7.7	3.58	3.58	3.25	2.86	2.51	2.21	1.94	1.71	1.50	1.32
7.8	3.18	3.18	2.89	2.54	2.23	1.96	1.73	1.52	1.33	1.17
7.9	2.80	2.80	2.54	2.24	1.96	1.73	1.52	1.33	1.17	1.03
8.0	2.43	2.43	2.21	1.94	1.71	1.50	1.32	1.16	1.02	0.90
8.1	2.10	2.10	1.91	1.68	1.47	1.29	1.14	1.00	0.88	0.73
8.2	1.79	1.79	1.63	1.43	1.26	1.11	0.07	0.86	0.75	0.66
8.3	1.52	1.52	1.39	1.22	1.07	0.94	0.83	0.73	0.64	0.56
8.4	1.29	1.29	1.17	1.03	0.91	0.80	0.70	0.62	0.54	0.48
8.5	1.09	1.09	0.99	0.87	0.77	0.67	0.59	0.52	0.46	0.40
8.6	0.92	0.92	0.84	0.74	0.65	0.57	0.50	0.44	0.39	0.34
8.7	0.78	0.78	0.71	0.62	0.55	0.48	0.42	0.37	0.33	0.29
8.8	0.66	0.66	0.60	0.53	0.46	0.41	0.36	0.32	0.28	0.24
8.9	0.57	0.57	0.51	0.45	0.40	0.35	0.31	0.27	0.24	0.21
9.0	0.49	0.49	0.44	0.40	0.34	0.30	0.26	0.23	0.20	0.18

TABLE
30-DAY AVERAGE (CHRONIC) CONCENTRATION OF
TOTAL AMMONIA AS N (MG/l)

	Fish Early Life Stages Present Temperature, C									
pH	0-7	8	9	10	11	12	13	14	16	
6.5	10.8	10.1	9.51	8.92	8.36	7.84	7.36	6.89	6.06	
6.6	10.7	10.1	9.37	9.37	8.79	8.24	7.72	7.24	6.36	
6.7	10.5	9.99	9.20	8.62	8.08	7.58	7.11	6.66	5.86	
6.8	10.2	9.81	8.98	8.42	7.90	7.40	6.94	6.51	5.72	
6.9	9.93	9.31	8.73	8.19	7.68	7.20	6.75	6.33	5.56	
7.0	9.60	9.00	8.43	7.91	7.41	6.95	6.52	6.11	5.37	
7.1	9.20	8.63	8.09	7.58	7.11	6.67	6.25	5.86	5.15	
7.2	8.75	8.20	7.69	7.21	6.76	6.34	5.94	5.57	4.90	
7.3	8.24	7.73	7.25	6.79	6.37	5.97	5.60	5.25	4.61	
7.4	7.69	7.21	6.76	6.33	5.94	5.57	5.22	4.89	4.30	
7.5	7.09	6.64	6.23	5.84	5.48	5.13	4.81	4.51	3.97	
7.6	6.46	6.05	5.67	5.32	4.99	4.68	4.38	4.11	3.61	
7.7	5.81	5.45	5.11	4.79	4.49	4.21	3.95	3.70	3.25	
7.8	5.17	4.84	4.54	4.26	3.99	3.74	3.51	3.29	2.89	
7.9	4.54	4.26	3.99	3.74	3.51	3.29	3.09	2.89	2.54	
8.0	3.95	3.70	3.47	3.26	3.05	2.86	2.68	2.52	2.21	
8.1	3.41	3.19	2.99	2.81	2.63	2.47	2.31	2.17	1.91	
8.2	2.91	2.73	2.56	2.40	2.25	2.11	1.98	1.85	1.63	
8.3	2.47	2.32	2.18	2.04	1.91	1.79	1.68	1.58	1.39	
8.4	2.09	1.96	1.84	1.73	1.62	1.52	1.42	1.33	1.17	
8.5	1.77	1.66	1.55	1.46	1.37	1.28	1.20	1.13	0.990	
8.6	1.49	1.40	1.31	1.23	1.15	1.08	1.01	0.951	0.836	
8.7	1.26	1.18	1.11	1.04	0.976	0.915	0.858	0.805	0.707	
8.8	1.07	1.01	0.944	0.885	0.829	0.778	0.729	0.684	0.601	
8.9	0.917	0.860	0.806	0.758	0.709	0.664	0.623	0.584	0.513	
9.0	0.790	0.740	.694	0.651	0.610	0.572	0.536	0.503	0.442	

pH	18	20	22	24	26	28	30
6.5	5.33	4.68	4.12	3.52	3.18	2.80	2.46
6.6	5.25	4.61	4.05	3.56	3.13	2.75	2.42
6.7	5.15	4.52	3.98	3.50	3.07	2.70	2.37
6.8	5.03	4.42	3.89	3.42	3.00	2.64	2.32
6.9	4.89	4.30	3.78	3.32	2.92	2.57	2.25
7.0	4.72	4.15	3.65	3.21	2.82	2.48	2.18
7.1	4.53	3.98	3.50	3.08	2.70	2.38	2.09
7.2	4.41	3.78	3.33	2.92	2.57	2.26	1.99
7.3	4.06	3.57	3.13	2.76	2.42	2.13	1.87
7.4	3.78	3.32	2.92	2.57	2.26	1.98	1.74
7.5	3.49	3.06	2.69	2.37	2.08	1.83	1.61
7.6	3.18	2.79	2.45	2.16	1.90	1.67	1.47
7.7	2.86	2.51	2.21	1.94	1.71	1.50	1.32
7.8	2.54	2.23	1.96	1.73	1.52	1.33	1.17
7.9	2.24	1.96	1.73	1.52	1.33	1.17	1.03
8.0	0.94	1.71	1.50	1.32	1.16	1.02	0.897
8.1	0.68	1.47	1.29	1.14	1.00	0.879	0.733

8.2	0.43	1.26	1.11	0.073	0.855	0.752	0.661
8.3	0.22	1.07	0.941	0.827	0.727	0.639	0.562
8.4	0.03	0.906	0.796	0.700	0.615	0.541	0.475
8.5	0.870	0.765	0.672	0.591	0.520	0.457	0.401
8.6	0.735	0.646	0.568	0.499	0.439	0.396	0.339
8.7	0.622	0.547	0.480	0.422	0.371	0.326	0.287
8.8	0.528	0.464	0.408	0.359	0.315	0.277	0.244
8.9	0.451	0.397	0.349	0.306	0.269	0.237	0.208
9.0	0.389	0.342	0.300	0.264	0.232	0.204	0.179

TABLE 2.14.3a
[~~EQUATIONS FOR PARAMETERS WITH HARDNESS (1) DEPENDENCE, INCLUDING CONVERSION FACTORS FOR TOTAL RECOVERABLE TO DISSOLVED METALS~~]
EQUATIONS TO CONVERT TOTAL RECOVERABLE METALS WITH HARDNESS (1) DEPENDENCE TO DISSOLVED METALS BY APPLICATION OF A CONVERSION FACTOR (CF).

Parameter	4-Day Average (Chronic) Concentration (UG/L)
[~~CADMIUM~~	~~CFx $e^{(0.7852(\ln(\text{hardness}))-3.490)}$ CF = 1.101672 - (ln hardness)(0.041838)~~]
CADMIUM	CF * $e^{(1.0166(\ln(\text{hardness}))-3.924)}$ CF = 1.136672 - (In hardness) (0.041838)
CHROMIUM III	[C~~fx $e^{(0.8190(\ln(\text{hardness}))+1.561)}$ CF = 0.860 (TRIVALENT)~~] CF * $e^{(0.8190(\ln(\text{hardness}))+0.6848)}$ CF = 0.860
COPPER	C[~~f~~]F[~~x~~] * $e^{(0.8545(\ln(\text{hardness}))[-1.465]-1.702)}$ CF = 0.960
LEAD	[~~Cfx~~] CF * $e^{(1.273(\ln(\text{hardness}))-4.705)}$ CF = 1.46203 - (ln hardness)(0.145712)
NICKEL	CF[~~x~~] * $e^{(0.8460(\ln(\text{hardness}))[+1.1645]+0.0584)}$ CF = 0.997
SILVER	N/A
ZINC	Cf[~~x~~] * $e^{(0.8473(\ln(\text{hardness}))[+0.7614]+0.884)}$ CF = 0.986

TABLE 2.14.3b
[~~EQUATIONS FOR PARAMETERS WITH HARDNESS (1) DEPENDENCE, INCLUDING CONVERSION FACTORS FOR TOTAL RECOVERABLE TO DISSOLVED METALS~~]
EQUATIONS TO CONVERT TOTAL RECOVERABLE METALS WITH HARDNESS (1) DEPENDENCE TO DISSOLVED METALS BY APPLICATION OF A CONVERSION FACTOR (CF).

Parameter	1-Hour Average (Acute) Concentration (UG/L)
[~~CADMIUM~~	~~CFx $e^{(1.128(\ln(\text{hardness}))-3.828)}$ CF = 1.136672 - (ln hardness)(0.41383)~~]
CADMIUM	CF * $e^{(1.0166(\ln(\text{hardness}))-3.924)}$ CF = 1.136672 - (ln hardness)(0.041838)
CHROMIUM (III) [~~TRIVALENT~~]	[~~CFx~~] CF * $e^{(0.8190(\ln(\text{hardness}))[+3.688]+3.7256)}$ CF = 0.316
COPPER	[~~CFx~~] CF * $e^{(0.9422(\ln(\text{hardness}))-[1.464]1.700)}$ CF = 0.960
LEAD	[~~CFx~~] CF * $e^{(1.273(\ln(\text{hardness}))-1.460)}$ CF = 1.46203 - (ln hardness)(0.145712)
NICKEL	[~~CFx~~] CF * $e^{(0.8460(\ln(\text{hardness}))[+3.3612]+2.255}$ CF= 0.998
SILVER	[~~CFx~~] CF * $e^{(1.72(\ln(\text{hardness}))-[6.52]6.59}$ CF = 0.85
ZINC	[~~CFx~~] CF * $e^{(0.8473(\ln(\text{hardness}))[+0.8604]+0.884}$ CF = 0.978

FOOTNOTE:
(1) Hardness as mg/l $CaCO_3$.

TABLE 2.14.4
EQUATIONS FOR PENTACHLOROPHENOL
(pH DEPENDENT)

4-Day Average (Chronic) Concentration (UG/L)	1-Hour Average (Acute) Concentration (UG/L)
$[e^{(1.005(pH))-5.290} / e^{(1.005(pH))-5.134}$	$e^{(1.005(pH))-4.830} / e^{(1.005(pH))-4.869}]$

TABLE 2.14.5
SITE SPECIFIC CRITERIA FOR [~~TOTAL AMMONIA AND~~]
DISSOLVED OXYGEN FOR JORDAN RIVER AND SURPLUS CANAL SEGMENTS
(SEE SECTION 2.13)

DISSOLVED OXYGEN:	
May-July	
7-day average	5.5 mg/l
30-day average	5.5 mg/l
Instantaneous minimum	4.5 mg/l
August-April	
30-day average	5.5 mg/l
Instantaneous minimum	4.0 mg/l

[~~Total Ammonia as N:~~

~~(1) The maximum concentration of unionized ammonia should not exceed the numerical value given by the following:~~

~~0.15 X (f(T) / f(pH)) X 2.989~~

~~where:~~

~~f(T) = 1; T greater than or equal to 10C~~

~~= $(1 + 10^{(9.73 - pH)}) / (1 + 10^{(pKt - pH)})$; T less than 10C~~

~~f(pH) = $1 + 10^{(1.03(7.32 - pH))}$~~

~~pkt = 0.090 + (2730 / (T + 273.2))~~

~~(2) The average concentration of unionized ammonia over any 30 consecutive days should be less than the value given by the following:~~

~~0.031 X (f(T) / f(pH)) X 2.10~~

~~where:~~

~~f(pH) = 1; pH greater than or equal to 7.7~~

~~= $10^{(0.74(7.7 - pH))}$; pH less than 7.7~~

~~f(T) = 1; T greater than or equal to 10C~~

~~= $(1 + 10^{(9.73 - pH)}) / (1 + 10^{(pKt - pH)})$; T less than 10C~~

~~(3) Total Ammonia in mg/l as N is Un-ionized Ammonia in mg/l as N x $(1 + 10^{(pKa - pH)})$, where:~~

~~pKa = 0.09018 + 2729.92 / T~~

~~T = Temperature (C) + 273.2~~

~~TABLE~~
~~MAXIMUM CONCENTRATION (ACUTE)~~
~~TOTAL AMMONIA AS N (MG/L)~~
~~TEMPERATURE (C)~~

pH	0.00	5.00	10.00	15.00	20.00	25.00	30.00
6.50	95.3	95.3	95.3	64.9	44.7	31.2	22.1
6.75	88.1	88.1	88.1	60.0	41.4	28.9	20.4
7.00	76.9	76.9	76.9	52.4	35.1	25.3	17.9
7.25	62.3	62.3	62.3	42.4	29.3	20.5	14.6
7.50	46.3	46.3	46.3	31.6	21.9	15.4	10.9
7.75	31.8	31.8	31.8	21.7	15.1	10.6	7.60
8.00	20.5	20.5	20.4	14.0	9.79	6.94	5.01
8.25	12.6	12.6	12.6	8.70	6.12	4.40	3.22
8.50	7.60	7.60	7.60	5.30	3.79	2.77	2.08
8.75	3.75	3.75	3.75	2.69	1.99	1.52	1.20
9.00	2.80	2.80	2.80	2.05	1.55	1.21	0.99

~~TABLE~~
~~30 DAY AVERAGE CONCENTRATION (CHRONIC)~~
~~TOTAL AMMONIA AS N (MG/L)~~
~~TEMPERATURE (C)~~

pH	0.00	5.00	10.00	15.00	20.00	25.00	30.00
6.50	14.3	14.3	14.3	9.74	6.72	4.69	3.32
6.75	12.3	12.3	12.3	8.40	5.79	4.05	2.86
7.00	10.6	10.6	10.6	7.24	5.00	3.49	2.47
7.25	9.17	9.72	9.16	6.24	4.31	3.02	2.14
7.50	7.91	7.91	7.91	5.40	3.73	2.62	1.86
7.75	6.29	6.29	6.28	4.30	2.98	2.10	1.50
8.00	3.56	3.56	3.56	2.44	1.71	1.21	0.87
8.25	2.03	2.03	2.03	1.40	0.99	0.71	0.52
8.50	1.17	1.17	1.17	0.82	0.58	0.43	0.32
8.75	0.56	0.56	0.56	0.40	0.30	0.23	0.18
9.00	0.41	0.41	0.41	0.30	0.23	0.18	0.15

~~TABLE 2.14.6~~

~~List of Human Health Criteria Included in the~~
~~1992 National Toxics Rule (NTR)~~
~~(Published in the Federal Register)~~
~~(For Arsenic, the Maximum Contaminate Level (MCL) applies~~
~~instead of the NTR Criteria~~

	Parameter	CAS No.	Class 1C Maximum Conc., ug/L	Class 3 Maximum Conc., ug/L
	Toxic Organics			
1	Acenaphthene	83-32-9	1200	2700
2	Acrolein	107-02-8	320	780
3	Acrylonitrile	107-13-1	0.059	0.66
4	Benzene	71-43-2	1.2	71
5	Benzidine	92-87-5	0.00012	0.00054
6	Carbon tetrachloride	56-23-5	0.25	4.4
7	Chlorobenzene	108-90-7	680	21000
8	1,2,4-Trichlorobenzene	120-82-1	-	-
9	Hexachlorobenzene	118-74-1	0.00075	0.00077
10	1,2-Dichloroethane	107-06-2	0.38	99
11	1,1,1-Trichloroethane	71-55-6	-	-
12	Hexachloroethane	67-72-1	1.9	8.9
13	1,1-Dichloroethane	75-34-3	-	-
14	1,1,2-Trichloroethane	79-00-5	0.61	42
15	1,1,2,2-Tetrachloroethane	79-34-5	0.17	11
16	Chloroethane	75-00-3	-	-
17	Bis(2-chloroethyl) ether	111-44-4	0.031	1.4
18	2-Chloroethyl vinyl ether	110-75-8	-	-
19	2-Chloronaphthalene	91-58-7	1700	4300
20	2,4,6-Trichlorophenol	88-06-2	2.1	6.5
21	p-Chloro-m-cresol	59-50-7	-	-
22	Chloroform (HM)	67-66-3	5.7	470
23	2-Chlorophenol	95-57-8	120	400
24	1,2-Dichlorobenzene	95-50-1	2700	17000
25	1,3-Dichlorobenzene	541-73-1	400	2600
26	1,4-Dichlorobenzene	106-46-7	400	2600
27	3,3'-Dichlorobenzidine	91-94-1	0.04	0.077
28	1,1-Dichloroethylene	75-35-4	0.057	3.2
29	1,2-trans-Dichloroethylenel	56-60-5	700	-
30	2,4-Dichlorophenol	120-83-2	93	790
31	1,2-Dichloropropane	78-87-5	0.52	39
32	1,3-Dichloropropylene	542-75-6	10	1700
33	2,4-Dimethylphenol	105-67-9	540	2300
34	2,4-Dinitrotoluene	121-14-2	0.11	9.1
35	2,6-Dinitrotoluene	606-20-2	-	-
36	1,2-Diphenylhydrazine	122-66-7	0.040	0.54
37	Ethylbenzene	100-41-4	3100	29000
38	Fluoranthene	206-44-0	300	370
39	4-Chlorophenyl phenyl ether	7005-72-3	-	-
40	4-Bromophenyl phenyl ether	101-55-3	-	-
41	Bis(2-chloroisopropyl) ether	39638-32-9	1400	170000
42	Bis(2-chloroethoxy) methane	111-91-1	-	-
43	Methylene chloride (HM)	75-09-2	4.7	1600
44	Methyl chloride (HM)	74-87-3	-	-
45	Methyl bromide (HM)	74-83-9		
46	Bromoform (HM)	75-25-2	4.3	360
47	Dichlorobromomethane (HM)	75-27-4	0.27	22
48	Chlorodibromomethane (HM)	124-48-1	0.41	34
49	Hexachlorobutadiene(c)	87-68-3	0.44	50
50	Hexachlorocyclopentadiene	77-47-4	240	17000
51	Isophorone	78-59-1	8.4	600
52	Naphthalene	91-20-3	-	-
53	Nitrobenzene	98-95-3	17	1900
54	2-Nitrophenol	88-75-5		
55	4-Nitrophenol	100-02-7	-	-
56	2,4-Dinitrophenol	51-28-5	70	14000
57	4,6-Dinitro-o-cresol	534-52-1	13	765
58	N-Nitrosodimethylamine	62-75-9	0.00069	8.1
59	N-Nitrosodiphenylamine	86-30-6	5.0	16
60	N-Nitrosodi-n-propylamine	621-64-7	0.005	1.4
61	Pentachlorophenol	87-86-5	0.28	8.2
62	Phenol	108-95-2	21000	4600000
63	Bis(2-ethylhexyl) phthalate	117-881-7	1.8	5.9
64	Butyl benzyl phthala	5-68-7	3000	5200
65	Di-n-butyl phthalate	84-74-2	2700	12000
66	Di-n-octyl phthlate	117-84-0	-	-
67	Diethyl phthalate	84-66-2	23000	120000
68	Dimethyl phthlate	131-11-3	313000	2900000
69	Benzo(a)anthracene (PAH)	56-55-3	0.0028	0.031
70	Benzo(a)pyrene (PAH)	50-32-8	0.0028	0.031
71	Benzo(b)fluoranthene (PAH)	205-99-2	0.0028	0.031
72	Benzo(k)fluoranthene (PAH)	207-08-9	0.0028	0.031
73	Chrysene (PAH)	218-01-9	0.0028	0.031
74	Acenaphthylene (PAH)	208-96-8	-	-
75	Anthracene (PAH)	120-12-7	9600	-
76	Benzo(g,h,i)perylene (PAH)	191-24-2	-	-
77	Fluorene (PAH)	86-73-7	1300	14000
78	Phenanthrene (PAH)	85-01-8	-	-
79	Dibenzo(a,h)anthracene (PAH)	53-70-3	0.0028	0.031
80	Indeno(1,2,3-cd)pyrene (PAH)	193-39-5	0.0028	0.031
81	Pyrene (PAH)	129-00-0	960	11000
82	Tetrachloroethylen	127-18-4	0.80	8.9
83	Toluene	108-88-3	6800	200000
84	Trichloroethylene	79-01-6	2.7	81
85	Vinyl chloride	75-01-4	2.0	525
	Pesticides			
86	Aldrin	309-00-2	0.00013	0.00014
87	Dieldrin	60-57-1	0.00014	0.00014
88	Chlordane	57-74-9	0.00057	0.00059
89	4,4'-DDT	50-29-3	0.00059	0.00059
90	4,4'-DDE	72-55-9	0.00059	0.00059
91	4,4'-DDD	72-54-8	0.00083	0.00084
92	alpha-Endosulfan	115-29-7	0.93	2.0
93	beta-Endosulfan	115-29-7	0.93	2.0
94	Endosulfan sulfate	1031-07-8	0.93	2.0
95	Endrin	72-20-8	0.76	0.81
96	Endrin aldehyde	7421-93-4	0.76	0.81
97	Heptachlor	76-44-8	0.00021	0.00021
98	eptachlor epoxide		-	-
99	alpha-hexachlorocyclohexane (alpha-BHC)	319-84-6	0.0039	0.013
100	beta-hexachlorocyclohexane (beta-BHC)	319-85-7	0.014	0.046

~~101 gamma-hexachlorocyclo-hexane (gamma-BHC) 58-89-9 0.019 0.063~~
~~102 delta-hexachlorocyclo-hexane (delta-BHC) 319-86-8 - -~~
~~PCB's~~
~~103 PCB-1242 (Arochlor 1242) 1336-36-3 0.000044 0.000045~~
~~104 PCB-1254 (Arochlor 1254) 1336-36-3 0.000044 0.000045~~
~~105 PCB-1221 (Arochlor 1221) 1336-36-3 0.000044 0.000045~~
~~106 PCB-1232 (Arochlor 1232) 1336-36-3 0.000044 0.000045~~
~~107 PCB-1248 (Arochlor 1248) 1336-36-3 0.000044 0.000045~~
~~108 PCB-1260 (Arochlor 1260) 1336-36-3 0.000044 0.000045~~
~~109 PCB-1016 (Arochlor 1016) 1336-36-3 0.000044 0.000045~~

~~Pesticide~~
~~110 Toxaphene 8001-35-2 0.00073 0.00075~~

~~Metals~~
~~111 Antimony 7440-36-0 14 4300~~
~~112 Arsenic 7440-38-2 50 -~~
~~113 Asbestos 1332-21-4 7000000 f/l -~~
~~114 Beryllium 7440-41-7 - -~~
~~115 Cadmium 7440-43-9 - -~~
~~116 Chromium (III) 440-47-3 - -~~
~~Chromium (VI) - - -~~
~~117 Copper 7440-50-8 1300 -~~
~~118 Cyanide 57-12-5 700 220000~~
~~119 Lead 7439-92-1 - -~~
~~120 Mercury 7439-97-6 0.14 0.15~~
~~121 Nickel 7440-02-0 610 4600~~
~~122 Selenium 7782-49-2 - -~~
~~123 Silver 7440-22-4 - -~~
~~124 Thallium 7440-28-0 1.7 6.3~~
~~125 Zinc 7440-66-6 - -~~
~~Dioxin~~
~~126 Dioxin (2,3,7,8-TCDD) 1746-01-6 0.000000013 0.000000014~~]

TABLE 2.14.6
LIST OF HUMAN HEALTH CRITERIA (CONSUMPTION)

Chemical Parameter	Water and Organism (ug/L) Class 1C	Organism Only (ug/L) Class 3A,3B,3C,3D
Antimony	5.6	640
Arsenic	A	A
Beryllium	C	C
Cadmium	C	C
Chromium III	C	C
Chromium VI	C	C
Copper	1,300	
Lead	C	C
Mercury	A	A
Nickel	610	4,600
Selenium	A	4,200
Silver		
Thallium	1.7	6.3
Zinc	7,400	26,000
Cyanide	700	220,000
Asbestos	7 million Fibers/L	
2,3,7,8-TCDD Dioxin	5.0 E -9 B	5.1 E-9 B
Acrolein	190	290
Acrylonitrile	0.051 B	0.25 B
Benzene	2.2 B	51 B
Bromoform	4.3 B	140 B
Carbon Tetrachloride	0.23 B1.6 B	
Chlorobenzene	680	21,000
Chlorodibromomethane	0.40 B	13 B
Chloroethane		
2-Chloroethylvinyl Ether		
Chloroform	5.7 B	470 B
Dichlorobromomethane	0.55 B	17 B
1,1-Dichloroethane		
1,2-Dichloroethane	0.38 B	37 B
1,1-Dichloroethylene	0.057 B	3.2 B
1,2-Dichloropropane	0.50 B	15 B
1,3-Dichloropropene	10	1,700
Ethylbenzene	3,100	29,000
Methyl Bromide	47	1,500
Methyl Chloride	F	F
Methylene Chloride	4.6 B	590 B
1,1,2,2-Tetrachloroethane	0.17 B	4.0 B
Tetrachloroethylene	0.69 B	3.3 B
Toluene	6,800	200,000
1,2 -Trans-Dichloroethylene	700	140,000
1,1,1-Trichloroethane	F	F
1,1,2-Trichloroethane	0.59 B	16 B
Trichloroethylene	2.5 B	30 B
Vinyl Chloride	2.0 B	530 B
2-Chlorophenol	81	150
2,4-Dichlorophenol	77	290
2,4-Dimethylphenol	380	850
2-Methyl-4,6-Dinitrophenol	13.0	280
2,4-Dinitrophenol	69	5,300
2-Nitrophenol		
4-Nitrophenol		
3-Methyl-4-Chlorophenol		
Penetachlorophenol	0.27 B	3.0 B
Phenol	21,000	1,700,000
2,4,6-Trichlorophenol	1.4 B	2.4 B
Acenaphthene	670	990
Acenaphthylene		
Anthracene	8,300	40,000
Benzidine	0.000086 B	0.00020 B
BenzoaAnthracene	0.0038 B	0.018 B
BenzoPyrene	0.0038 B	0.018 B
BenzobFluoranthene	0.0038 B	0.018 B
BenzoghiPerylene		
BenzokFluoranthene	0.0038 B	0.018 B
Bis2-ChloroethoxyMethane		
Bis2-ChloroethylEther	0.030 B	0.53 B
Bis2-Chloroisopropy1Ether	1,400	65,000
Bis2-EthylbexylPhthalate	1.2 B	2.2 B
4-Bromophenyl Phenyl Ether		
Butylbenzyl Phthalate	1,500	1,900
2-Chloronaphthalene	1,000	1,600
4-Chlorophenyl Phenyl Ether		
Chrysene	0.0038 B	0.018 B
Dibenzoa, hAnthracene	0.0038 B	0.018 B
1,2-Dichlorobenzene	2,700	17,000
1,3-Dichlorobenzene	320	960
1,4-Dichlorobenzene	400	2,600
3,3-Dichlorobenzidine	0.021 B	0.028 B
Diethyl Phthalate	17,000	44,000
Dimethyl Phthalate	270,000	1,100,000
Di-n-Butyl Phthalate	2,000	4,500
2,4-Dinitrotoluene	0.11 B	3.4 B
2,6-Dinitrotoluene		
Di-n-Octyl Phthalate		
1,2-Diphenylhydrazine	0.036 B	0.20 B
Fluoranthene	140	
Fluorene	1,100	5,300
Hexachlorobenzene	0.00028 B	0.00029 B
Hexachlorobutedine	0.44 B	18 B
Hexachloroethane	1.4 B	3.3 B
Hexachlorocyclopentadiene	240	17,000
Ideno 1,2,3-cdPyrene	0.0038 B	0.018 B
Isophorone	35 B	960 B
Naphthalene		
Nitrobenzene	17	690
N-Nitrosodimethylamine	0.00069 B	3.0 B
N-Nitrosodi-n-Propylamine	0.005 B	0.51 B
N-Nitrosodiphenylamine	3.3 B	6.0 B
Phenanthrene		
Pyrene	830	4,000

1,2,4-Trichlorobenzene	260	940
Aldrin	0.000049 B	0.000050 B
alpha-BHC	0.0026 B	0.0049 B
beta-BHC	0.0091 B	0.017 B
gamma-BHC (Lindane)	0.019 B	0.063 B
delta-BHC		
Chlordane	0.00080 B	0.00081 B
4,4-DDT	0.00022 B	0.00022 B
4,4-DDE	0.00022 B	0.00022 B
4,4-DDD	0.00031 B	0.00031 B
Dieldrin	0.000052 B	0.000054 B
alpha-Endosulfan	62	89
beta-Endosulfan	62	89
Endosulfan Sulfate	62	89
Endrin	0.76	0.81
Endrin Aldehyde	0.29	0.30
Heptachlor	0.000079 B	0.000079 B
Heptachlor Epoxide	0.000039 B	0.000039 B
Polychlorinated Biphenyls	0.000064 B,D	0.000064 B,D
PCB's	0.00028 B	0.00028 B
Toxaphene		

Footnotes:
A. See Table 2.14.2
B. Based on carcinogenicity of 10-6 risk.
C. EPA has not calculated a human criterion for this contaminant. Hoever, permit authorities should address this contaminant in NPDES permit actions using the State's existing narrative criteria for toxics
D. This standard applies to total PCBs.

KEY: water pollution, water quality standards
[~~December 7, 2001~~]2003
Notice of Continuation October 7, 2002
19-5

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-304

Income and Budgeting

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26202
FILED: 04/30/2003, 14:17

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule implements H.B. 37 passed by the 2003 Legislature. It modifies income deductions for the aged, blind, and disabled medically needy program. In addition, it clarifies the guidelines concerning premiums charged to people participating in the Medicaid work incentive program and changes the percentages used to calculate the premium. It also adds language about the requirement for deeming income from an alien's sponsor. Finally, it removes language about the Qualifying Individuals Group 2 Program that ended December 31, 2002, updates certain citations and makes some nonsubstantive corrections. (DAR NOTE: H.B. 37 is found at UT L 2003 Ch 321, and is effective as of May 5, 2003.)

SUMMARY OF THE RULE OR CHANGE: Subsection R414-304-1(2) clarifies the definition of basic maintenance standard, and adds definitions of "medically needy" and "sponsor." Subsection R414-304-2(2)(a) is clarified to include language about deeming from a sponsor; other clarifying language is added in several places; Subsection R414-304-2(10) is removed because it refers to the Qualifying Individuals Group 2 program that ended December 31, 2002. Subsection R414-304-5(2) is reworded for clarity. In Section R414-304-7, an income deduction is added for aged, blind, and disabled individuals who qualify as medically needy which has the effect of allowing them to spenddown to 100% of the federal poverty guideline. Language in the new Subsection R414-304-7(4) clarifies how health insurance premiums can be used to reduce a spenddown. Subsection R414-304-11(2) clarifies that an individual who qualifies for both the medically needy spenddown program and the Medicaid work incentive can choose the program he wants. A technical change in this same section for the Medicaid Work Incentive Program clarifies how premiums are calculated. A premium is calculated only after income of the individual and spouse exceeds the 100% federal poverty level test used in the aged and disabled 100% poverty-related Medicaid program. In addition, the percentage used to determine the premium is changed to 15% for all income amounts. Other changes are minor clarifications or corrections.

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

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 42 CFR 435.301, 435.601, 435.602, 435.640, and 435.725 through .832, 2001 ed.; 20 CFR 416.1102, 1103, 1110 through 1112, 1120 through 1148, 1150, 1151, 1163 through 1166, and Appendix K to Subpart 416, 2002 ed.

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: Annualized cost to the General Fund is $4,600,000.
❖LOCAL GOVERNMENTS: There will be increased payments to local governments of approximately $200,000 per year.
❖OTHER PERSONS: Aged, blind and disabled individuals will each save about $350 a month on their spenddown costs. Medicaid Work Incentive participants will save between 15% to 40% on their premium payment for eligibility.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs in terms of data system impacts should be very minimal for impacted providers. Each aged, blind, and disabled individuals will each save about $350 a month on their spenddown costs. Medicaid Work Incentive participants will save between 15% to 40% on their premium payment for eligibility.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The 2003 Legislature passed and funded H.B. 37. This rule implements that legislation. Aged, blind, and disabled Medicaid recipients with income slightly above the federal poverty level, will be greatly benefited by this rule, by being allowed to retain more of their

very limited income and still be Medicaid eligible. It is likely that providers will be benefited by having fewer patients asking for charity care. 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 gaylesix@utah.gov or rmartin@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 06/16/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 06/17/2003

AUTHORIZED BY: Rod L. 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 for 1931 Family Medicaid, and for coverage of the medically needy 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 for which an individual is eligible for Medicaid.

(4) "Federal poverty guidelines or (FPL)" 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 certain 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) "Medically needy" means medical assistance coverage under the provisions of 42 CFR 435.301, 2001 ed.

([~~6~~]7) "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.

(8) "Sponsor" means one or more persons who have signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997 for an alien immigrating to the United States on or after December 19, 1997.

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, [~~2000~~]2001 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, [~~2000~~]2002 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, or from a sponsor of an aged, blind or disabled qualified alien 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 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~~]that 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.~~]

(1[~~1~~]0) Payments under a contract, retroactive payments from SSI and SSA reimbursements of Medicare premiums are not considered lump sum payments.

(1[~~2~~]1) 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.

(1[~~3~~]2) 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, after allowable deductions, shall be compared to the BMS.

(I) If the non-covered spouse has deemable income, the countable income, after allowable deductions, 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, after allowable deductions, 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, after allowable deductions, 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, after allowable deductions, 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, after allowable deductions, 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.

(f) The Department shall determine household size and whose income counts for QMB, SLMB, and QI-1 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.

(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-1 assistance.

(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.

(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.

(1[~~4~~]3) 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.

(1[~~5~~]4) 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.

(1[~~6~~]5) 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.

(1[~~7~~]6) 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.

(1[~~8~~]7) 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, [~~2000~~]2002 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. The Department shall not count as income any payments [~~which~~]that 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 (1[~~2~~]1), and (1[~~5~~]4) through (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 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 the individual's parents to 250% of the federal poverty guideline for the household size involved.

R414-304-4. Family Medicaid and Institutional Family Medicaid Unearned Income Provisions.

(1) The Department adopts 42 CFR 435.725 through 435.832, [~~2000~~]2001 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, 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 [~~1~~]1, 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 "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.

(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) 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.

(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.

(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, [~~2000~~]2001 ed., and 20 CFR 416.1110 through 416.1112, [~~2000~~]2002 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~~]If an SSI recipient[~~s, who~~] [~~have~~]has a plan for achieving self support approved by the Social Security Administration, the Department shall not count income [~~to~~] set aside [~~income~~]in the plan that allows the[~~m~~] individual 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.

(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, [~~2000~~]2001 ed. and 45 CFR 233.20(a)(6)(iii) through (iv), 233.20(a)(6)(v)(B), 233.20(a)(6)(vi) through (vii), and 233.20(a)(11), 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 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, [~~2000~~]2001 ed., which is incorporated by reference.

(2) For aged, blind and disabled individuals eligible under 42 CFR 435.301(b)(2)(iii),(iv),and (v), described more fully in 42 CFR 435.320, .322 and .324, the Department shall allow an income deduction equal to the difference between 100% of the federal poverty guideline and the current BMS income standard for the applicable household size, to determine the spenddown amount.

([~~2~~]3) 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~~]4) Health insurance premiums paid in the application month or during the three month retroactive period which are not fully used as a deduction to reduce a spenddown in the month paid may be allowed as a deduction to reduce a spenddown in any month after the month paid but only through the month of application.

([~~3~~]5) Medicare premiums shall not be allowed as deductions if the state will pay the premium or will reimburse the client.

([~~4~~]6) 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 during the three-month time-period immediately preceding the 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~~]7) A medical expense shall not be allowed as a deduction more than once.

([~~6~~]8) A medical expense allowed as a deduction must be for a medically necessary service. The Department shall be responsible for deciding if services are not medically necessary.

([~~7~~]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 the client to receive Medicaid-covered services.

([~~8~~]10) 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~~]11) 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.

(1[~~0~~]2) 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. 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.

(1[~~1~~]3) Pre-paid medical expenses shall not be allowed as deductions.

(1[~~2~~]4) The Department elects not to set limits on the amount of medical expenses that can be deducted.

(1[~~3~~]5) Clients may choose to meet their spenddown obligation by incurring medical expenses or by paying a corresponding amount to the Department.

(1[~~4~~]6) For A, B and D Medicaid, institutional costs shall be allowed as deductions if the services are medically necessary. The Department shall be responsible for deciding if services for institutional care are not medically necessary.

(1[~~5~~]7) No one shall be required to pay a spenddown of less than $1.

(1[~~6~~]8) 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 (5).

(2) The Department shall apply the following deductions from income in determining 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 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 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 himself or other family members in the household shall be 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, 435.726, and 435.832, [~~2000~~]2001 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 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, [~~2000~~]2001 ed., which are incorporated by reference. The Department adopts 45 CFR 233.20(a)(3)(iii), 233.31, and 233.33, 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-1, 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, unless otherwise excluded under statute or regulation. 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 that 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 period, except when the income was not being received during, and was not intended to cover, those specific months in the retroactive 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, the income standards of either the Medically Needy (BMS) program or the Medicaid Work Incentive program may be applied. The individual may choose coverage under either program if the individual meets all other eligibility criteria for both programs.[~~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 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 the spouse is also eligible or has deemable income, exceeds 100% of the federal poverty guideline for the [~~number of eligible individuals~~]Aged and Disabled 100% FPL coverage group. When the eligible individual is a minor child, the Department shall charge a buy-in premium when 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~~]15% percent[~~age~~] of only 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 [~~i~~]Income [~~s~~]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-1 Filing Unit.

(1) The Department adopts 42 CFR 435.601 and 435.602, [~~2000~~]2001 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 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-1 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-1 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~~]2001 ed., 45 CFR 206.10(a)(1)(iii), 233.20(a)(1) and 233.20(a)(3)(vi), 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 income level or, in the case of poverty-related programs, which poverty guideline income 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), 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, [~~2000~~]2002 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 disclosures, income, budgeting
[~~July 2, 2002~~]2003
Notice of Continuation January 31, 2003
26-18-1

Human Resource Management, Administration
R477-1
Definitions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26207
FILED: 05/01/2003, 13:56

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments to this rule add new definitions and amend definitions to coincide with policy changes in the body of the Department of Human Resource Management (DHRM) rules and to clarify meaning.

SUMMARY OF THE RULE OR CHANGE: The amendments to definitions in this rule can be categorized into four groups. Group No. 1 comprises definitions that coincide with changes designed to strengthen the reduction in force (RIF) procedures. These coincide with amendments to Section R477-12-3 (see filing for Rule R477-12) and include: in Subsection R477-1-1(15), amendments clarify that bumping happens prior to a RIF and is included in the agency work force reduction plan and must be approved by DHRM; in Subsection R477-1-1(21), amendments are additions to the definition that require agencies to document why a RIF should be narrowed to a work unit smaller than the whole agency and sets criteria for the justification; in Subsection R477-1-1(100), amendments clarify who is placed on the reappointment register; in Subsection R477-1-1(113), the amendment clarifies that a RIF'd individual is not necessarily placed on the reappointment register but must elect to be placed. Group No. 2 comprises new definitions that coincide with clarifications and amendments to the State Drug and Alcohol testing policy. All are new definitions defining testing options available to agencies. They set criteria and coincide with amendments to Section R477-14-1 (see filing for R477-14) and include: adding Subsection R477-1-1(32), Critical Incident Drug or Alcohol Test; adding Subsection R477-1-1(55), Follow Up Drug or Alcohol Test; adding Subsection R477-1-1(92), Post Accident Drug or Alcohol Test; adding Subsection R477-1-1(93), Pre Employment Drug or Alcohol Test; adding Subsection R477-1-1(98), Random Drug or Alcohol Test; adding Subsection R477-1-1(102), Reasonable Suspicion Drug or Alcohol Test, and adding Subsection R477-1-1(109), Return to Duty Drug or Alcohol Test. Group No. 3 comprises two definitions that address the movement of employees through transfer and reassignment. These definitions are in rule because of a court ruling, Draughon v. Dept. of Financial Institutions, in 1999 that placed restrictions on management flexibility to move employees. These definitions have been amended from time to time with new legal developments arising from employee grievances. These definitions are: in Subsection R477-1-1(103), amendments make it clear that employee consent is required in order to move an employee to a lower salary range even though the actual salary is not effected; and in Subsection R477-1-1(121), amendments make it clear that the employee must initiate a transfer in response to a position vacancy. Group No. 4 comprises miscellaneous definitions amendments. They include: in Subsection R477-1-1(3), a technical amendment is made that coincides with the adoption of the new state payroll system and accompanying procedures amended in Subsections R477-4-6(3) and R477-8-2(1)(f) (see filings for Rules R477-4 and R477-8); in Subsection R477-1-1(98), a new definition to clarify the use of the term "position identification number" in the rules. This a device to manage full time equivalencies (FTEs); and in Subsection R477-1-1(99), the amendment changes the word "employee" to "individual" in response to a definitional difficulty from the Utah Code. Legally, an employee is someone on the state payroll. A former employee on the reappointment register is not on the payroll and thus not an employee. This amendment coincides with similar changes in Section R477-12-3 (see filing for Rule R477-12). (DAR NOTE: The amendments to the DHRM rules are found in this Bulletin under: R477-1, DAR No. 26207; R477-2, DAR No. 26208; R477-4, DAR No. 26217; R477-5, DAR No. 26219; R477-6, DAR No. 26220; R477-7, DAR No. 26221; R477-8, DAR No. 26222; R477-10, DAR No. 26224; R477-11, DAR No. 26225; R477-12, DAR No. 26227; and R477-14, DAR No. 26229.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: There is no anticipated cost impact to the state budget from these amendments to definitions. There will be some additional work to comply with the changes to definitions that impact RIFs but these situations happen very infrequently and should have minimal impact on agencies.
❖LOCAL GOVERNMENTS: By law, Section 67-19-15, this rule has no effect beyond the executive branch of state government.
❖OTHER PERSONS: By law, Section 67-19-15, this rule has no effect beyond the executive branch of state government. Any compliance costs will be minimal and easily absorbed by state

agencies. The only anticipated cost will be some additional work to produce the documentation now required for RIFs and work force adjustment plans. However, these situations occur very infrequently, maybe once in several years for most agencies, and thus, will have minimal impact.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Any compliance costs will be minimal and easily absorbed by agencies. The only anticipated cost will be some additional work to produce the documentation now required for RIFs and work force adjustment plans. However, these situations occur very infrequently, maybe once in several years for most agencies, and thus, will have minimal impact.

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 this rule 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@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 06/16/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2003

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: An act of 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 head or commissioner.

(7) Administrative Salary Increase: A salary increase of one or more pay steps based on special circumstances determined by an agency 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~~]prior to 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~~]as 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 complete[~~s~~] 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.~~]A job series within an agency that is designated by the agency head as having positions to be eliminated agency wide through a reduction in force. Category of work may be further reduced after review by DHRM as follows:

(a) a unit smaller than the agency upon providing justification and rationale for approval, for example:

(i) low org;

(ii) cost centers;

(iii) geographic locations;

(iv) agency programs.

(b) positions identified by a set of essential functions, for example:

(i) position analysis data;

(ii) certificates;

(iii) licenses;

(iv) special qualifications;

(v) degrees that are required or directly related to the position.

(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 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 R477-3-4. 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) Critical Incident Drug or Alcohol Test: A drug or alcohol test conducted on an employee as a result of the behavior, action, or inaction of an employee that is of such seriousness it requires an immediate intervention on the part of management.

([~~32~~]33) Demeaning Behavior: Any behavior which lowers the status, dignity or standing of any other individual.

([~~33~~]34) 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~~]35) Department: The Department of Human Resource Management.

([~~35~~]36) Derisive Behavior: Any behavior which insults, taunts, or otherwise belittles or shows contempt for another individual.

([~~36~~]37) 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~~]38) DHRM: The Department of Human Resource Management.

([~~38~~]39) 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~~]40) 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~~]41) Disciplinary Action: Action taken by management under the rules outlined in R477-11.

([~~41~~]42) 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~~]43) Dismissal: A separation from state employment for cause.

([~~43~~]44) 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~~]45) Employee Personnel Files: For purposes of Titles 67-18 and 67-19, the files maintained by DHRM and agencies as required by R477-2-6. This does not include employee information maintained by supervisors.

([~~45~~]46) 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~~]47) "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~~]48) Equal Employment Opportunity (EEO): Non-discrimination in all facets of employment by eliminating patterns and practices of illegal discrimination.

([~~48~~]49) 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~~]50) Fair Employment Opportunity and Practice: Assures fair treatment of applicants and employees in all aspects of human resource administration without regard to age, disability, national

origin, political or religious affiliation, race, sex, or any non-merit factor.

([~~50~~]51) Fitness For Duty Evaluation: Evaluation, assessment or study by a licensed professional to determine if an individual is able to meet the performance or conduct standards required by the position held, or is a direct threat to the safety of self or others.

([~~51~~]52) FLSA: Fair Labor Standards Act. The federal statute that governs overtime. See 29 USC 201 (1996).

([~~52~~]53) FLSA Exempt: Employees who are exempt from the Fair Labor Standards Act.

([~~53~~]54) FLSA Non-Exempt: Employees who are not exempt from the Fair Labor Standards Act.

(55) Follow Up Drug or Alcohol Test: Unannounced drug or alcohol tests conducted for up to five years on an employee who has previously tested positive or who has successfully completed a voluntary or required substance abuse treatment program.

([~~54~~]56) Full Time Equivalent (FTE): The budgetary equivalent of one full time position filled [~~full time~~] for one year.

([~~55~~]57) Furlough: A temporary leave of absence from duty without pay for budgetary reasons or lack of work.

([~~56~~]58) 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.

([~~57~~]59) 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.

([~~58~~]60) Gross Compensation: Employee's total earnings, taxable and untaxable, as shown on the employee's paycheck stub.

([~~59~~]61) Hiring List: A list of qualified and interested applicants who are eligible to be considered for appointment or conditional appointment to a specific position.

([~~60~~]62) 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.

([~~61~~]63) HRE: Human Resource Enterprise; the state human resource management information system.

([~~62~~]64) Immediate Supervisor: The employee or officer who exercises direct authority over an employee and who appraises the employee's performance.

([~~63~~]65) Incompetence: Inadequacy or unsuitability in performance of assigned duties and responsibilities.

([~~64~~]66) Inefficiency: Wastefulness of government resources including time, energy, money, or staff resources or failure to maintain the required level of performance.

([~~65~~]67) Interchangeability of Skills: Employees are considered to have interchangeable skills only for those positions they have previously held successfully in Utah state government employment or for those positions which they have successfully supervised and for which they satisfy job requirements.

([~~66~~]68) Intern: An individual in a college degree program assigned to work in an activity where on-the-job training is accepted.

([~~67~~]69) 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.[

~~(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.~~

~~(69) Job Proficiency Rating: An average of the last three annual performance evaluation ratings used in reduction in force proceedings.~~

~~(70) Job Requirements: Skill requirements defined a the job level.~~

~~(71) Job Description: A document containing the duties, distinguishing characteristics, knowledge, skills, and other requirements for a job.~~

~~(72) Job Identification Number: A unique number assigned to a job by DHRM.~~]

(70) Job Description: A document containing the duties, distinguishing characteristics, knowledge, skills, and other requirements for a job.

(71) Job Identification Number: A unique number assigned to a job by DHRM.

(72) Job Proficiency Rating: An average of the last three annual performance evaluation ratings used in reduction in force proceedings.

(73) Job Requirements: Skill requirements defined a the job level.

(74) 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.

([~~73~~]75) Legislative Salary Adjustment: A legislatively approved salary increase for a specific category of employees based on criteria determined by the Legislature.

([~~74~~]76) Malfeasance: Intentional wrongdoing, deliberate violation of law or standard, or mismanagement of responsibilities.

([~~75~~]77) Market Comparability Adjustment: Legislatively approved reallocation of a salary range for a job based on a compensation survey conducted by DHRM.

([~~76~~]78) Merit Increase: A legislatively approved and funded salary increase for employees to recognize and reward successful performance.

([~~77~~]79) Misfeasance: The improper or unlawful performance of an act that is lawful or proper.

([~~78~~]80) Nonfeasance: Failure to perform either an official duty or legal requirement.

([~~79~~]81) Performance Evaluation: A formal, periodic evaluation of an employee's work performance.

([~~80~~]82) 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.

([~~81~~]83) Performance Management: The ongoing process of communication between the supervisor and the employee which defines work standards and expectations, and assesses performance leading to a formal annual performance evaluation.

([~~82~~]84) Performance Plan: A written summary of the standards and expectations required for the successful performance of each job duty or task. These standards normally include completion dates and qualitative and quantitative levels of performance expectations.

([~~83~~]85) Performance Standard: Specific, measurable, observable and attainable objectives that represent the level of performance to which an employee and supervisor are committed during an evaluation period.

([~~84~~]86) 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.

([~~85~~]87) Position: A unique set of duties and responsibilities identified by DHRM authorized job and position management numbers.

([~~86~~]88) Position Description: A document that describes the detailed tasks performed, as well as the knowledge, skills, abilities, and other requirements of a specific position.

(89) Position Identification Number: A unique number assigned to a position for FTE management.

([~~87~~]90) 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.

([~~88~~]91) 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.

(92) Post Accident Drug or Alcohol Test: A Drug or alcohol test conducted on an employee who is involved in a vehicle accident while on duty:

(a) where a fatality occurs;

(b) where the employee receives a citation under state or local law for a moving traffic violation arising from the accident and the accident involves bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident;

(c) where the employee receives a citation under state or local law for a moving traffic violation arising from the accident and the accident involves one or more motor vehicles that incur disabling damage as a result of the accident that must be transported away from the scene by a tow truck or other vehicle;

(d) where there is reasonable suspicion that the employee had been driving while under the influence of a controlled substance.

(93) Pre Employment Drug Test: A drug test conducted on final candidates for a safety sensitive position or on a current employee prior to assuming safety sensitive duties.

([~~89~~]94) 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.

([~~90~~]95) 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.

([~~91~~]96) 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.

([~~92~~]97) Protected Activity: Opposition to discrimination or participation in proceedings covered by the anti[-]discrimination statutes or the Utah State Grievance and Appeal Procedure. Harassment based on protected activity can constitute unlawful retaliation.

(98) Random Drug or Alcohol Test: Unannounced drug or alcohol testing of a sample of safety sensitive employees done in accordance with federal regulations or state rules, policies, and procedures, and conducted in a manner such that each safety sensitive employee has an equal chance of being selected for testing.

([~~93~~]99) Reappointment: Return to work of an [~~employee~~]individual from the reappointment register. Accrued annual leave, converted sick leave, compensatory time and excess hours in their former position were cashed out at termination.

([~~94~~]100) Reappointment Register: A register of [~~career service employees~~]individuals 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.~~]

(a) held career service positions and been separated in a reduction in force;

(b) held career service positions and accepted career service exempt positions without a break in service and were not retained, unless discharged for cause;

(c) by Career Service Review Board decision been placed on the reappointment register.

([~~95~~]101) 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.

(102) Reasonable Suspicion Drug or Alcohol Test: A drug or alcohol test conducted on an employee based on reasonable suspicion that the employee may be under the influence of drugs or alcohol.

([~~96~~]103) 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 with employee written consent, when permitted by applicable [~~F~~]federal or state law, including, but not limited to the Americans with Disabilities Act. A reassignment may be to one or more of the following:

[~~A.~~](a) a different job or position;[

~~B. a different organizational unit; or~~

~~C. a different work location.~~]

(b) a different work location;

(c) a different organizational unit; or

(d) a different agency.

([~~97~~]104) 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.

([~~98~~]105) 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.

([~~99~~]106) 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~~]107) 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~~]108) Retaliation: An adverse employment action taken against an employee who has engaged in a protected [~~act~~]activity. The adverse action must have a causal link.

(109) Return to Duty Drug or Alcohol Test: A drug or alcohol test conducted on an employee prior to allowing the employee to return to duty after successfully completing a drug or alcohol treatment program.

([~~102~~]110) Requisition: An electronic document used for Utah Skill Match search and tracking purposes that includes specific information for a particular position.

([~~103~~]111) 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~~]112) Ridiculing Behavior: Any behavior specifically performed to cause humiliation or to mock, taunt or tease another individual.

([~~105~~]113) RIF'd [~~Employee~~]Individual: A[~~n~~]former employee who is [~~placed on the reappointment register~~]terminated as a result of a reduction in force.

([~~106~~]114) 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[-];or

(d) which require an employee to carry or have access to firearms.

([~~107~~]115) Salary Range: The segment of an approved pay plan assigned to a job.

([~~108~~]116) 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~~]117) Serious Health Condition: An illness, injury, impairment, physical or mental condition that involves:

(a) [~~I~~]in[-]patient care in a hospital, hospice, or residential medical care facility;

(b) [~~C~~]continuing treatment by a health care provider.

([~~110~~]118) 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~~]119) 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~~]120) 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~~]121) Transfer: An employee initiated [~~voluntary~~]movement [~~of an employee~~]from one job or position to another job or position for which the employee qualifies in response to a recruitment. A transfer may be to one or more of the following:

(a) a job or position with the same salary range;

(b) a job or position with a lower salary range;

(c) a different work location;

(d) a different organizational unit[-]; or

(e) a different agency.

([~~114~~]122) Underfill: DHRM authorization for an agency to fill a position at a lower salary range within the same job series.

([~~115~~]123) 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~~]124) 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~~]125) 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~~]126) 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~~]127) 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~~]128) Volunteer Experience Credit: Credit given in meeting job requirements to participants who gain experience through unpaid or uncompensated volunteer work with the state, its subdivisions or other public and private organizations.

KEY: personnel management, rules and procedures, definitions[~~*~~] [~~July 5, 2002~~]2003
Notice of Continuation June 11, 2002
67-19-6

Human Resource Management, Administration
R477-2
Administration

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26208
FILED: 05/01/2003, 13:57

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment removes language from Sections R477-2-3, Fair Employment Practice and R477-2-4, Grievance Procedure for Discrimination. This material is descriptive and repetitive of federal regulations and procedures that are posted in every agency in state government. This language will instead be attached to the Department of Human Resource Management (DHRM) rules as an appendix and posted on the Innerweb so employees will have access to them. Remaining sections are renumbered. Section R477-2-11, Alternate Dispute Resolution, is added allowing agencies to use Alternative Dispute Resolution techniques. Nonsubstantive amendments correct punctuation, capitalization, spelling, and style errors.

SUMMARY OF THE RULE OR CHANGE: Section R477-2-3 is amended to clearly define an employee's right to file a discrimination complaint with state or federal officials. The deleted material is descriptive and will be posted electronically so employees may access it. Section R477-2-4 is deleted from the rule but will be posted electronically along with the deleted material from Section R477-2-3 on the DHRM web page and as an appendix attached to printed versions of this rule produced by DHRM. Section R477-2-7 is amended to coincide with the name change of the Immigration and Naturalization Service (INS) to the Bureau of Citizenship and Immigration Services (BCIS). Section R477-2-11 is added allowing agencies to use the Alternate Dispute Resolution (ADR) technique to resolve disputes. (DAR NOTE: The amendments to the DHRM rules are found in this Bulletin under: R477-1, DAR No. 26207; R477-2, DAR No. 26208; R477-4, DAR No. 26217; R477-5, DAR No. 26219; R477-6, DAR No. 26220; R477-7, DAR No. 26221; R477-8, DAR No. 26222; R477-10, DAR No. 26224; R477-11, DAR No. 26225; R477-12, DAR No. 26227; and R477-14, DAR No. 26229.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: No costs are associated with the amendments to this rule. There are potential savings, however, associated with the use of ADR if agencies can resolve disputes at their level before they escalate to full blown and time consuming grievances. No mechanism is in place to track these savings.
❖LOCAL GOVERNMENTS: By law, Section 67-19-15, this rule has no effect beyond the executive branch of state government.
❖OTHER PERSONS: By law, Section 67-19-15, this rule has no effect beyond the executive branch of state government. Nothing in the amendments to this rule will compel any person to comply with any new mandate. No costs are associated with these changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Nothing in the amendments to this rule will compel any person to comply with any new mandate. No costs are associated with these changes.

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 this rule 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@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 06/16/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2003

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 R477-3 and R477-6.

(2) Non-state agencies with employees protected by the career service provisions of these rules in R477-4, R477-5, 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) [~~M~~]members of the Legislature and legislative employees;

(b) [~~M~~]members of the judiciary and judicial employees;

(c) [~~E~~]elected members of the executive branch and their direct staff who are career service-exempt employees;

(d) [~~O~~]officers, faculty, and other employees of state institutions of higher education;

(e) [~~A~~]any positions for which the salary is set by law;

(f) [~~A~~]attorneys in the [~~a~~]Attorney [~~g~~]General's [~~o~~]Office;

(g) [~~A~~]agency heads and other persons appointed by the governor when authorized by statute;

(h) [~~E~~]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 R477-4, R477-5, 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) If the employee does not agree with the decision of the agency head, the employee may also file a complaint with the Equal Employment Opportunity Commission.

([~~b~~]c) 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~~]4. Control of Personal Service Expenditures.

(1) Statewide control of personal service expenditures shall be the shared responsibility of the employing agency, the Governor's Office of Planning and Budget, the Department of Human Resource Management and the Division of Finance.

(2) 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-[~~6~~]5. Records.

(1) DHRM shall maintain a computerized file for each employee that contains the following, as appropriate:

(a) [~~P~~]performance ratings;

(b) [~~R~~]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) [~~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) [~~R~~]references to or copies of transcripts of academic, professional, or training certification or preparation[-];

(c) [~~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) [~~L~~]leave and time records[-]; and

(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. Requests for information shall be in writing. 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 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 document's 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-[~~7~~]6. Release of Information in a Reference Inquiry.

Reference checks or inquiries made regarding current or former public employees, volunteers, independent contractors, and members of advisory boards or commissions can be released if the information falls under a category outlined in R477-2-6(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-[~~8~~]7. 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)~~]Bureau of Citizenship and Immigration Services (BCIS) Regulations. The I-9 form shall be maintained in the agency personnel file.

R477-2-[~~9~~]8. Disclosure by Public Officers Supervising a Relative.

It is unlawful for a public officer to appoint, directly supervise, or to make salary or performance recommendations for relatives except as prescribed 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-[~~10~~]9. Employee Liability.

An employee who becomes aware of any occurrence which may give rise to a law suit, who receives notice of claim, or is sued because of an incident related to 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-[~~11~~]10. 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.

R477-2-11. Alternative Dispute Resolution.

Agency management may establish a voluntary alternative dispute resolution program in accordance with Chapter 63-46C, Utah Code Annotated.

KEY: administrative responsibility, confidentiality of information, fair employment practices, public information
[~~July 5, 2002~~]2003
Notice of Continuation June 11, 2002
52-3-1
63-2-204(5)
67-19-6
67-19-6.4
67-19-18

Human Resource Management, Administration
R477-4
Filling Positions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26217
FILED: 05/01/2003, 14:09

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments to this rule make technical legal changes to the process agencies must use to fill vacant positions, change the policy that restricts how the annual leave accrual rate is calculated when a former employee is rehired, change wording as directed by the 2003 Utah Legislature and make nonsubstantive changes to correct spelling, punctuation, grammar and style errors.

SUMMARY OF THE RULE OR CHANGE: Subsection R477-4-4(1) is amended to make it clear that reassignments and transfers to fill a vacant position prior to normal recruitment procedures can only be from within the agency. A second amendment to this section changes the term "career exchange assignment" to career mobility to be consistent with definitions and make it clear that these must be management initiated if they precede normal recruitment processes. Subsection R477-4-4(2) is amended to remove the requirement that an individual on the reappointment register must apply for a vacant position. Subsection R477-4-6(3) is removed because it is no longer necessary after the adoption of the new state payroll system. Subsection R477-4-7(1)(a)(i) is amended to give a former employee who is rehired an accrual rate that is based on all years of eligible previous service. In some situations, employees who were rehired in a ten year period from July 1, 1985, to July 1, 1995, were not allowed to do this. Some of these employees will see an upward adjustment in their accrual rate. But this will be prospective from July 1, 2003, and not retroactive to the date they were rehired. Section R477-4-8 is amended to delete the term "affirmative action" and replace it with the term "equal employment opportunity". This is done because of changes in the law made by H.B. 16, Equal Employment Opportunity - Technical Changes. Other amendments to this rule are nonsubstantive changes to correct spelling, punctuation, and numbering errors. (DAR NOTE: H.B. 16 is found at UT L 2003 Ch 4, and is as of effective May 5, 2003.) (DAR NOTE: The amendments to the DHRM rules are found in this Bulletin under: R477-1, DAR No. 26207; R477-2, DAR No. 26208; R477-4, DAR No. 26217; R477-5, DAR No. 26219; R477-6, DAR No. 26220; R477-7, DAR No. 26221; R477-8, DAR No. 26222; R477-10, DAR No. 26224; R477-11, DAR No. 26225; R477-12, DAR No. 26227; and R477-14, DAR No. 26229.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: There is a potential cost impact to the state with the policy change in Subsection R477-4-7(1)(a)(i). As explained above, some employees may have their annual leave accrual rate adjusted upward. An employee who is saving annual leave for its cash value at termination or retirement will be able to reach the maximum of 320 hours faster or have more accrued at termination. It is impossible to calculate how much this may be but the amount may not be significant. It only impacts the few employees rehired during the ten-year period described above. The prospective language in this rule prevents the accrual rate from being applied retroactively, thus helping to mitigate the costs.
❖LOCAL GOVERNMENTS: By law, Section 67-19-15, this rule has no effect beyond the executive branch of state government.
❖OTHER PERSONS: By law, Section 67-19-15, this rule has no effect beyond the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Most of the changes in this rule are for clarification purposes. The annual leave accrual policy adjustments can be implemented through adjustments in the Human Resource Management Information System and will impose no costs on agencies.

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 this rule 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@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 06/16/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2003

AUTHORIZED BY: Karen Suzuki-Okabe, Executive Director

R477. Human Resource Management, Administration.
R477-4. Filling Positions.
R477-4-1. 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.

R477-4-2. 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.

R477-4-3. Career Service (Schedule B) Positions.

(1) Selection of career service employees shall be governed by the following:

(a) DHRM standards and procedures;

(b) [~~C~~]career service principles;

(c) [~~E~~]equal employment opportunity principles;

(d) Utah Code governing nepotism found in Section 52-3-1[~~-~~];

(e) [~~R~~]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.

R477-4-4. 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) [~~R~~]reemployment of a veteran eligible under USERRA;

(b) [~~R~~]reassignment or transfer within an agency for the purposes of reasonable accommodation under the Americans with Disabilities Act;

(c) [~~F~~]fill positions as a result of return to work from long term disability or workers compensation at the same or lesser salary range;

(d) [~~R~~]reassignments made in order to avoid a reduction in force, or for reorganization or bumping purposes;

(e) [~~R~~]reassignments, management initiated career [~~exchange assignments~~]mobility, 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) [~~R~~]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 in compliance with R477-12-3(7) with the names of [~~employees~~]individuals who meet the [~~job~~]position 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 R477-5-1.(3).

(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.

R477-4-5. 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.

(c) Recruitment is not required for personnel actions outlined in R477-4-4.(1).

(d) Appointment of employees from the statewide reappointment register must comply with the order of selection specified in R477-4-4.

R477-4-6. 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~~]3) 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~~]4) 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.

R477-4-7. 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 who is rehired to a position which receives leave benefits[~~on or after July 1, 1995~~] shall be based on all [~~S~~]state employment in which the employee was eligible to accrue leave. Any adjustments to the accrual rate shall be prospective from July 1, 2003.

(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 [~~R~~]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.

R477-4-8. 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~~]equal employment opportunity, 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.

R477-4-9. 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~~]a documented job analysis;

(b) [~~A~~]an initial, unbiased screening of the individual's qualifications;

(c) [~~S~~]security of examinations and ratings;

(d) [~~T~~]timely notification of individuals seeking positions;

(e) [~~E~~]elimination from further consideration of individuals who abuse the process;

(f) [~~U~~]unbiased evaluation and results;

(g) [~~R~~]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.

R477-4-10. 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) [~~W~~]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[~~-~~];or

(b) [~~I~~]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.

R477-4-11. 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 R477-4-10(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.

R477-4-12. 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.

R477-4-13. 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.

R477-4-14. 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.

R477-4-15. 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.

R477-4-16. 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.

R477-4-17. 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 5, 2002~~]2003
Notice of Continuation June 11, 2002
67-19-6

Human Resource Management, Administration
R477-5
Employee Status and Probation

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26219
FILED: 05/01/2003, 14:13

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments to this rule make two needed changes to the policy governing the probationary period.

SUMMARY OF THE RULE OR CHANGE: Subsection R477-5-2(1)(a) is amended to make it clear that a probationary employee does not have career service protections and can be terminated at will without following career service procedures if performance is not acceptable. Subsection R477-5-2(2)(a) is amended to add one more circumstance under which the probationary period can be extended. This is a temporary transitional assignment which defines an accommodation for a temporary illness, injury, or Americans with Disabilities Act (ADA) accommodation. (DAR NOTE: The amendments to the DHRM rules are found in this Bulletin under: R477-1, DAR No. 26207; R477-2, DAR No. 26208; R477-4, DAR No. 26217; R477-5, DAR No. 26219; R477-6, DAR No. 26220; R477-7, DAR No. 26221; R477-8, DAR No. 26222; R477-10, DAR No. 26224; R477-11, DAR No. 26225; R477-12, DAR No. 26227; and R477-14, DAR No. 26229.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: None--Agencies are not required to make changes in procedures, policy or practices as a result of these amendments.
❖LOCAL GOVERNMENTS: By law, Section 67-19-15, this rule has no effect beyond the executive branch of state government.
❖OTHER PERSONS: By law, Section 67-19-15, this rule has no effect beyond the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Agencies will not be required to take any action to comply with this rule and, thus, will not incur any costs.

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 this rule 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@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 06/16/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2003

AUTHORIZED BY: Karen Suzuki-Okabe, Executive Director

R477. Human Resource Management, Administration.
R477-5. Employee Status and Probation.
R477-5-1. 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 R477-4-10(1), and completed a probationary period.

R477-5-2. 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) During the probationary period, an employee may be dismissed in accordance with R477-11-2(1).

([~~a~~]b) At the end of the probationary period, employees shall receive performance evaluations. Evaluations shall be entered into HRE as the performance evaluation [~~which~~]that 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, or temporary transitional assignment.

(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.

R477-5-3. 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.

R477-5-4. 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, 2002~~|2003
Notice of Continuation June 11, 2002
67-19-6
67-19-16(5)(b)

▼ ▼

Human Resource Management, Administration
R477-6
Compensation

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26220
FILED: 05/01/2003, 14:13

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Compensation policy is amended in four ways with the amendments to this rule. There is a clearer distinction between how employees qualify for step increases based on their position on the pay range, language is deleted that is no longer needed with the new state payroll system, state policy on the granting of incentive awards and severance is strengthened, and enrollment timelines and eligibility criteria for receiving benefits is clarified. Other nonsubstantive amendments correct spelling, punctuation, grammar and style errors.

SUMMARY OF THE RULE OR CHANGE: Subsections R477-6-4(1) and (2) are amended to make it clear that employees at the maximum step of their range are treated the same as employees in longevity status. Subsection R477-6-4(9) is deleted. This subsection is no longer needed with the adoption of the new state payroll system. Section R477-6-5 is amended to strengthen policy on the granting of incentive awards by agencies. Agencies are required to submit their incentive award plans to the Department of Human Resource Management (DHRM) for approval beginning this year. Awards can only be granted for workable cost savings, and effort or accomplishment beyond that expected on the job. All cash awards must be approved by the agency head or designee and proper documentation must be on file. Section R477-6-6 is amended to require an employee to wait for the open enrollment period if he fails to enroll in the insurance programs within 60 days of employment. Amendments at Subsection R477-6-6(5) set guidelines for eligibility based on the number of hours worked in a week. These are consistent with guidelines used by the Public Employees Health Program (PEHP). Section R477-6-9 is amended to place an effective cap on the accumulation of the benefit. This is set at 12 weeks or three months. The criteria for receiving the benefit is also clarified. (DAR NOTE: The amendments to the DHRM rules are found in this Bulletin under: R477-1, DAR No. 26207; R477-2, DAR No. 26208; R477-4, DAR No. 26217; R477-5, DAR No. 26219; R477-6, DAR No. 26220; R477-7, DAR No. 26221; R477-8, DAR No. 26222; R477-10, DAR No. 26224; R477-11, DAR No. 26225; R477-12, DAR No. 26227; and R477-14, DAR No. 26229.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-19-6, 67-19-12, and 67-19-15.1

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: There is a possible cost savings to the state budget with the restrictions these amendments place on the granting of incentive awards. Agencies will likely grant fewer awards. The savings are impossible to calculate, however, until DHRM can see the agency incentive award policies after the new fiscal year begins. Some agencies will be required to commit time and resources to change policies for incentive awards.

❖LOCAL GOVERNMENTS: By law, Section 67-19-15, this rule has no effect beyond the executive branch of state government.

❖OTHER PERSONS: By law, Section 67-19-15, this rule has no effect beyond the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: By law, Section 67-19-15, this rule has no effect beyond the executive branch of state government.

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 this rule 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@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 06/16/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2003

AUTHORIZED BY: Karen Suzuki-Okabe, Executive Director

R477. Human Resource Management, Administration.
R477-6. Compensation.
R477-6-1. Pay Plans.

(1) DHRM shall develop or modify pay plans for compensating employees.

(2) Market comparability salary range increases shall be legislatively approved.

R477-6-2. 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.

R477-6-3. 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.

R477-6-4. 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 and who are not at the maximum step of their salary range, 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 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 or who are at the maximum step of their salary range 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 R477-6-4(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 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) [~~T~~]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[~~.~~];and

(ii) [~~T~~]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 R477-4-11 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 Americans with Disabilities 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~~]9) 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~~]maximum 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) [~~E~~]either the employees or management can make the suggestion;

(ii) [~~E~~]employees and management agree;

(iii) [~~T~~]the agency head approves;

(iv) [~~A~~]a written program policy achieves increased productivity through labor/management collaboration;

(v) [~~T~~]the agency human resource representative approves;

(vi) [~~T~~]the position will be abolished from the position authorization plan for a minimum of one year;

(vii) [~~S~~]staff receives additional duties which are substantially above a normal full workload;

(viii) [~~T~~]the same or higher level of service or productivity is achieved without accruing additional overtime hours;

(ix) [~~T~~]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~~]10) Administrative Salary Increase.

The agency head or commissioner authorizes and approves [~~A~~]administrative [~~S~~]salary increases under the following parameters:

(a) Employees shall receive one or more steps up to the maximum of their salary range.

(b) Administrative [~~S~~]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) [~~I~~]in writing;

(ii) [~~A~~]approved by the agency head or commissioner;

(iii) [~~S~~]supported by issues such as: special agency conditions or problems or other unique situations or considerations in the agency.

(d) The agency head or commissioner is the final authority for salary actions authorized within these guidelines. The agency head or commissioner or designee shall answer any challenge or grievance resulting from an [~~A~~]administrative [~~S~~]salary [~~I~~]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~~]11) Administrative Salary Decrease.

The 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 agency head or commissioner; and

(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, or other unique situations or considerations in the agency.

(c) The agency head or commissioner is the final authority for salary actions within these guidelines. The agency head or commissioner or designee shall answer any challenge or grievance resulting from an administrative salary decrease.

R477-6-5. 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 approved annually by DHRM and be consistent with standards established in these rules and with

Department of Administrative Services, Division of Finance rules and procedures.

(1) Cash Incentive Awards

(a) Agencies may [~~reward~~]grant an employee[~~s~~] or group[~~s~~] of employees a cash incentive award who:[~~who propose workable cost saving measures and other worthy acts with a cash incentive award.~~]

(i) propose workable cost savings; or

(ii) demonstrate exceptional effort or accomplishment beyond what is normally expected on the job for a unique event or over a sustained period of time.

([~~a~~]b) Individual awards shall not exceed $4,000 per occurrence and $8,000 in a fiscal year.

([~~b~~]c) All cash [~~A~~]awards [~~of $100 or more~~] must be [~~documented, evaluated, and~~]approved by the agency head or designee. [~~A~~]They must be documented and 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.

R477-6-6. 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, vision, and dental plans within 60 days of the hire date to avoid having to provide proof of insurability. Employees who do not enroll within 60 days can only enroll during the annual open enrollment period for all state employees. Agencies shall submit the enrollment forms to Group [~~i~~]Insurance within three days of the date entered on the enrollment [~~card~~]form.

(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 in positions which normally require working less than 40 hours per pay period are ineligible for benefits. Employees, except those in positions specifically designated as ineligible for benefits, in a position which normally requires working 40 hours[~~,~~ ~~except those identified in R477-4-11,~~] or more per pay period shall be eligible for all benefits. L[~~l~~]eave benefits shall be determined on a pro[-]rated basis according to actual hours worked in a pay period.

(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.

R477-6-7. 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 status 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 R477-4.

(6) Agencies shall communicate to all impacted and future eligible employees the conditions and limitations of this incentive program.

R477-6-8. State Paid Life Insurance.

(1) A benefits eligible career service exempt employee on schedule AA, AB, AD, 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.

R477-6-9. Severance Benefit.

(1) A benefits eligible career service exempt employee on schedule AB, AD [~~and~~]or 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 R477-6-9(3) and R477-6-9(4).

(2) A benefits eligible career service exempt employee on schedule AB, AD [~~and~~]or 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 of pay multiplied by the number of accrued annual leave, converted sick leave and excess hours.

(3) An eligible employee shall not accrue a severance benefit in excess of twelve weeks.

([~~3~~]4) A severance benefit shall not be paid to an employee[~~s~~]:

(a) whose statutory term has expired without reappointment;

(b) who [~~are retiring from state service or are~~]is voluntarily separating from the executive branch;

(c) who is retiring from state service;

([~~c~~]d) who [~~are~~]is eligible for retirement without incurring any early retirement reductions; or

([~~d~~]e) who [~~are~~]is discharged for cause.

([~~4~~]5) An e[~~E~~]mployee[~~s~~] on schedule AC, AK, AM [~~and~~]or AS may be provided the same severance benefit at the discretion of the appointing authority.

R477-6-10. 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 5, 2002~~]2003
Notice of Continuation June 11, 2002
67-19-6
67-19-12
67-19-12.5
67-19-15.1(4)

Human Resource Management, Administration
R477-7
Leave

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26221
FILED: 05/01/2003, 14:22

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Several purposes are associated with the amendments to this rule. First, clarify language that has proven confusing on the meaning and intent of leave policies. Second, change state policy on the calculation of annual leave accrual rates for rehired employees. Third, change state policy on the granting of the maximum annual leave accrual rate for certain employees. Fourth, add restrictions to state policy on granting administrative leave. Fifth, adjust troublesome language on state policy for dealing with accommodations under the Americans with Disabilities Act (ADA). Sixth, make nonsubstantive changes to correct spelling, punctuation, grammar and style errors.

SUMMARY OF THE RULE OR CHANGE: Amendments to language that clarifies meaning and intent of current state leave policy is found in Subsections R477-7-1(7), R477-7-2(4), R477-7-5, R477-7-6(1)(b), R477-7-6(5), R477-7-16(2), and R477-7-17(1). Subsection R477-7-3(2) changes in the policy to give a former employee who is rehired an accrual rate that is based on all years of eligible previous service. In some situations, employees who were rehired in a ten year period from July 1, 1985, to July 1, 1995, were not allowed to do this. Some of these employees will see an upward adjustment in their accrual rate. But, this will be prospective from July 1, 2003, and not retroactive to the date they were rehired. This coincides with a change to Subsection R477-4-7(1)(a)(i). Subsection R477-7-3(7) is amended to change state policy by granting the maximum annual leave accrual rate to additional employees. The intent of this policy is to reward employees who accept high risk positions in the administration. A recent analysis of this policy revealed: 1) that many employees in these positions were not receiving this benefit; and 2) the criteria for deciding who receives it was not clear to agencies. This amendment extends the benefit to additional employees within clearer criteria set in Subsections R477-7-3(7)(a) and R477-7-3(7)(b). It also clarifies that an employee may receive this benefit only during the duration of the appointment to a qualifying position in Subsection R477-7-3(7)(c). Section R477-7-7 is amended to add restrictions on the granting of administrative leave for purposes of rewards in lieu of cash. Subsection R477-7-7(1)(c) limits to eight hours the amount of leave that may be granted without written approval of the agency head. Subsection R477-7-17(3) is amended to clarify the state's obligation to place an employee in a position when returning from long term disability leave with a disability. The state obligation is now the same as specified in the guidelines for the Americans with Disabilities Act. Numerous nonsubstantive changes throughout this rule correct errors in spelling, punctuation, grammar, and style. (DAR NOTE: The amendments to the DHRM rules are found in this Bulletin under: R477-1, DAR No. 26207; R477-2, DAR No. 26208; R477-4, DAR No. 26217; R477-5, DAR No. 26219; R477-6, DAR No. 26220; R477-7, DAR No. 26221; R477-8, DAR No.

26222; R477-10, DAR No. 26224; R477-11, DAR No. 26225; R477-12, DAR No. 26227; and R477-14, DAR No. 26229.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: There is a potential cost impact to the state with the policy change in Subsection R477-7-3(2). As explained above, some employees may have their annual leave accrual rate adjusted upward. An employee who is saving annual leave for its cash value at termination or retirement will be able to reach the maximum of 320 hours faster or have more accrued at termination. It is impossible to calculate how much this may be but the amount may not be significant. It only impacts the few employees rehired during the 10-year period described above. The prospective language in this rule prevents the accrual rate from being applied retroactively, thus helping to mitigate the costs.
❖LOCAL GOVERNMENTS: By law, Section 67-19-15, this rule has no effect beyond the executive branch of state government.
❖OTHER PERSONS: By law, Section 67-19-15, this rule has no effect beyond the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: As described under "anticipated costs or savings for state budgets" above, there are potential costs in the payout of accrued annual leave when an employee terminates employment. This cost will be reflected in the rates an agency pays into the termination pool administered by the Division of Finance. Any potential rate increase cannot be calculated until the impact of this rule on the behavior of the few affected employees is seen in the amount of annual leave they actually save. This could take from one to two years. The Department of Human Resource Management believes that there likely will be no impact on the termination pool rates because so few employees are impacted in any particular agency.

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 this rule 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.

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HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
Room 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
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@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 06/16/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2003

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 [~~S~~]state service shall be paid in a lump sum for all annual leave, excess hours, and converted sick leave. Employees who are FLSA non exempt shall also be paid in a lump sum for all compensatory hours. Retiring employees shall be paid for all eligible 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 are paid[~~normally work~~] in [~~a~~]the pay period in which the holiday falls[~~:~~].

(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 [~~S~~]state service:

(a) [~~Z~~]zero through five years -- four hours per pay period[~~.~~];

(b) [~~B~~]beginning of sixth year through ten years -- five hours per pay period[~~.~~];

(c) [~~B~~]beginning of eleventh year through twenty years --six hours per pay period[~~.~~];

(d) [~~B~~]beginning of the twenty-first year or more -- seven hours per pay period.

(2) The accrual rate for employees rehired to a position which receives leave benefits[~~hired on or after July 1, 1995~~] shall be based on all [~~S~~]state employment in which the employee was eligible to accrue leave. Any adjustments to the accrual rate shall be prospective from July 1, 2003.

(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) The maximum annual leave accrual rate shall be granted to certain employees under the following conditions:

(a) employees on the Executive Pay Plan, as described in 67-22-2, employees in schedules AA and AB, and d[~~D~~]epartment 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~~].

(b) employees who have direct reporting relationships to elected officials, executive directors, or deputy directors who are schedule A and FLSA exempt.

(c) The maximum accrual rate shall be effective from the day the employee is appointed through the duration of the appointment. Employees in these positions on July 1, 2003, shall have their leave accrual rate adjusted prospectively.

([~~a~~]d) They shall not be eligible for any transfer of leave from other jurisdictions.

([~~b~~]e) 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:

(a) an approved leave-without-pay status, not to exceed 12 months[~~,~~];

(b) an approved Family Medical Leave Status[~~,~~]; or

(c) 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 the last pay period of the [~~any~~] calendar year in which [~~he~~]the employee is eligible.

(1) To be eligible, an employee's sick leave account must have accrued a minimum total 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~~]. Employees who do not wish to have their leave converted shall notify their agency no later than the end of February. The converted sick leave hours will then be returned to the sick leave account.

(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 [~~S~~]state employees at the time the employee retires.

(iii) The retiree participation rate on premium payments shall be the same as the employee 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~~]retiree 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 [~~S~~]state employees at the time the employee retires.

(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 employee participation rate on premium payments shall be the same as the employee 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 or converted 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~~]administrative;

(i) governor approved holiday leave;

(ii) during management decisions that benefit the organization;

(iii) when no work is available due to unavoidable conditions or influences; or

(iv) other reasons consistent with agency policy.

(b) [~~personal decision-making prior to discipline~~]protected;

(i) suspension with pay pending hearing results;

(ii) personal decision making prior to discipline;

(iii) removal from adverse or hostile work environment situations;

(iv) fitness for duty or employee assistance; or

(v) other reasons consistent with agency policy.

(c) [~~suspension with pay - during removal from job site - pending hearing on charges~~]reward in lieu of cash;

(i) the agency head or designee may grant paid administrative leave up to eight hours per occurrence;

(ii) administrative leave in excess of eight hours may be granted with written approval by the agency head.

(d) [~~during management decision situations that benefit the organization~~]student educational assistance;[

~~(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) With the exception of administrative leave used as a reward, as described in R477-7(1)(c), t[~~T~~]he agency head or designee may grant paid administrative leave [~~for~~]up to [~~no more than~~] ten consecutive working days per occurrence. Administrative leave in excess of ten consecutive working days per occurrence may be granted by the agency head.[~~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)~~](3) 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) [~~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) [~~S~~]serve as a witness in a grievance hearing as provided in Section 67-19-31 and Title 67, Chapter 19a[~~;~~]; or

(c) [~~S~~]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, and 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~~]eight hours.

(1) Employees who are members of the National Guard or Military Reserves are entitled to military leave not to exceed [~~fifteen~~]15 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~~]15 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) [~~F~~]for service less than [~~thirty-one~~]31 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) [F]for service of more than [~~thirty-one~~]31 days but less than 181 days, submit an application for reemployment within [~~fourteen~~]14 days of release from service[~~,~~]; or

(c) [~~F~~]for service of more than 180 days, submit an application for reemployment within [~~ninety~~]90 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~~]12 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~~]12 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~~]12 weeks of family medical leave, the employee must be[—]:

(a) [~~E~~]employed by the state for at least 12 months[,]; and

(b) [~~E~~]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) [~~T~~]thirty days in advance for foreseeable needs; or

(b) [~~A~~]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 [~~S~~]schedule AB, AD and AR employees who have been denied restoration upon expiration of their leave time;

(ii) [~~E~~]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~~]12 weeks.

(7) For maternity and child placement leave, time must be taken in no less than [~~8~~]eight 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~~]5(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 and leave 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~~]22 months or until they are eligible for Medicare[~~/~~] or Medicaid, whichever occurs first. After [~~twenty-two~~]22 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 at the current hourly rate.

(iii) An employee with a converted sick leave balance at the time of LTD eligibility shall have the option to receive a lump[-] sum payout of all or part of the balance or to keep the balance intact to pay for health and life insurance upon retirement. The payout shall be at the rate at the time of LTD eligibility.

(iv) An employee who retires from state government directly from LTD may be eligible for 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 provided they are able to perform the essential functions of the job with or without a reasonable accommodation.

(b) If an employee is unable to perform the essential functions of the position because of a permanent disability that qualifies as a disability under the ADA, [~~the obligation to place the employee in the same or similar position shall be set aside. T~~]the [~~employing unit~~]agency shall place the employee in the best available, vacant position for which he is qualified[~~, if~~]and 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, vacations
[~~July 5, 2002~~]2003
49-9-203
63-13-2
67-19-6
67-19-12.9
67-19-14.5

Human Resource Management, Administration
R477-8
Working Conditions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26222
FILED: 05/01/2003, 14:24

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: There are four purposes for the amendments to this rule. First, adjust state policy for recording hours worked to accommodate the new state payroll system. Second, clarify what constitutes full time law enforcement duties in order to qualify for the law enforcement provisions of the Fair Labor Standards Act (FLSA). Third, adjust state policy for the pay down of compensatory time, and fourth, remove obsolete language concerning employee schedule TL.

SUMMARY OF THE RULE OR CHANGE: Subsection R477-8-2(1)(f) is amended to require employees to work in increments of 15 minutes or more. Rounding practices are to be used based on the incorporated federal regulation. This change is an accommodation for the new payroll system. The previous payroll system could not accommodate rounding practices. Language is added to Subsection R477-8-6(5)(a)(v) requiring that employees must have at least 80 percent law enforcement duties in order to qualify for the law enforcement provisions of the Fair Labor Standards Act (FLSA). Subsection R477-8-6(6) is amended to change the paydown policy for compensatory time. Previously, employees were paid when transferring to another agency. With this change, the employee must be FLSA nonexempt and will be paid down when changing positions through promotions, reclassifications, reassignments, and transfers to FLSA exempt positions. The paydown will be at the rate of the previous position. Language is removed from Subsection R477-8-6(7)(1) requiring an employee in a dual employment status to be placed in schedule TL. This schedule is no longer used. (DAR NOTE: The amendments to the DHRM rules are found in this Bulletin under: R477-1, DAR No. 26207; R477-2, DAR No. 26208; R477-4, DAR No. 26217; R477-5, DAR No. 26219; R477-6, DAR No. 26220; R477-7, DAR No. 26221; R477-8, DAR No. 26222; R477-10, DAR No. 26224; R477-11, DAR No. 26225; R477-12, DAR No. 26227; and R477-14, DAR No. 26229.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-19-6 and 67-19-6.7

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 29 CFR 785.48 (2000), and 29 CFR Parts 500 to 899 (2002)

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: Agencies will incur some minimal cost in time and resources to change and communicate policies concerning pay down of compensatory time. However, this will produce a savings to the state in the long run in two ways. First, the paydown is at the old rate which will be a lesser rate most of the time. Second, the overall state liability for compensatory time will be reduced as employees are paid down more frequently. It is posssible to report the number of compensatory hours that employees have accumulated and their value or cost. However, it is not possible to predict how often an employee will be promoted, transferred, reclassified or reassigned. Therefore, future savings to the state cannot be accurately predicted. These savings however, will become apparent over time.

❖LOCAL GOVERNMENTS: By law, Section 67-19-15, this rule has no effect beyond the executive branch of state government.

❖OTHER PERSONS: Employees who carry large amounts of compensatory time will lose some of the future value of that time since it may be paid down more frequently. The amount of value lost will be the same as the savings accumulated by agencies as described in box 7a above.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The vast majority of state employees will not be affected by this rule change. DHRM rules control overtime tightly and restrict its accumulation because of the potential costs to the state. However, some employees out of necessity accumulate large amounts of compensatory time and carry large balances on their records. The value of this time will vary greatly from employee to employee. For reasons explained under the "State budget" above, the cost to a particular employee cannot be calculated.

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 this rule 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@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 06/16/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2003

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.

(f) An employee must work in increments of 15 minutes or more to receive pay for hours worked and overtime hours worked. This rule incorporates by reference 29 CFR 785.48 for rounding practices when calculating time worked.

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) [~~E~~]establish a written policy governing telecommuting[~~,~~];

(b) [~~E~~]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; and[~~,~~]

(c) [~~N~~]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~~]2002).

(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) [~~P~~]prior supervisory approval for all overtime worked;

(b) [~~R~~]recordkeeping guidelines for all overtime worked;

(c) [~~V~~]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[~~/~~]or 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

(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;

(iii) have the power to arrest;[~~and~~]

(iv) be POST certified or scheduled for POST training[-]; and

(v) perform over 80 percent law enforcement duties.

(b) Agencies shall select one of the following maximum work[-] hour thresholds to determine when overtime compensation is granted to law enforcement or correctional officers designated FLSA non[-]exempt and covered under this rule.

(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 protection employees.

(i) 212 hours in a work period of 28 consecutive days; or

(ii) 106 hours in a work period of 14 consecutive days.

(d) 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) [~~T~~]the Fair Labor Standards Act, Section 207(k);

(ii) 29 CFR 553.230;

(iii) [~~T~~]the [~~S~~]state's payroll period;

(iv) [~~T~~]the approval of the Executive Director, DHRM.

(6) Compensatory Time

(a) Agency management shall arrange for an employee's use of compensatory time as soon as possible without unduly disrupting agency operations or endangering public health, safety or property.

(b) Compensatory time balances for FLSA nonexempt employees shall be [~~are~~] paid down to zero when [~~FLSA non-exempt employees~~] transferring from one agency to a different agency, or when promoted, reclassified, reassigned, or transferred to an FLSA exempt position. The pay down for unused compensatory time balances shall be based on the employee's hourly rate of pay in the old position.

(7) Time Reporting

(a) FLSA non[-]exempt employees must complete and sign a [~~S~~]state approved biweekly time sheet. Time sheets developed by the agency shall have the same elements of the [~~S~~]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 action[~~s~~].

(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) [~~T~~]the employee arrives voluntarily before their scheduled shift and waits before starting duties;

(ii) [~~T~~]the employee is completely relieved from duty and allowed to leave the job;

(iii) [~~T~~]the employee is relieved until a definite specified time;

(iv) [~~T~~]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~~]one 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~~]the employee 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) [~~P~~]paid off automatically in the same pay period accrued;

(B) [~~A~~]all hours accrued above 40;

(C) [~~A~~]all hours accrued above 80[~~-~~]; or

(D) [~~E~~]employees on schedule AB shall only be paid for excess hours at retirement or termination.

R477-8-7. 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~~]1) An employee may work in up to [4]four different positions in state government.

([~~3~~]2) An employee's benefit[~~s~~] status for any secondary position(s), regardless of schedule of any of the positions, shall be the same as the primary position.

([4]3) An employee's FLSA status (exempt or non[-]exempt) for any secondary position(s) shall be the same as the primary position.

([~~5~~]4) Leave accrual shall be based on all hours worked in all positions[~~,~~] and may not exceed the maximum amount allowed in the primary position.

([~~6~~]5) As a condition of dual employment, an employee in dual employment status is prohibited from accruing excess hours in either the primary or secondary positions. All excess hours earned shall be paid at straight time in the pay period in which the excess hours are earned.

([~~7~~]6) As a condition of dual employment, the Overtime[~~/~~]or Comp selection shall be as overtime paid regardless of FLSA status. An employee may not accrue comp hours while in dual employment status.

([~~8~~]7) Overtime shall be calculated at straight time or time and one half depending on the FLSA status of the primary position. [-]Time and a half overtime rates shall be calculated based on the weighted average rate of the multiple positions. Refer to Division of Finance's payroll policies, dual employment section.

([~~9~~]8) The Accepting Terms of Dual Employment form shall be completed, signed by the employee and supervisor, and placed in the employee's personnel file with a copy sent to the Division of Finance.

([~~10~~]9) Secondary positions may not interfere with the efficient performance of the employee's primary position or create a conflict of interest. An employee in dual employment status shall comply with conditions outlined in R477-9-2(1).

R477-8-8. 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.

R477-8-9. Fitness For Duty Evaluations.

Fitness for duty medical evaluations may be performed under any of the following circumstances:

(1) [~~R~~]return to work from injury or illness;

(2) [~~W~~]when management determines that there is a direct threat to the health or safety of self or others;

(3) [~~I~~]in conjunction with corrective action, performance or conduct issues, or discipline;

(4) [~~W~~]when a fitness for duty evaluation is a bona fide occupational qualification for selection, retention, or promotion.

R477-8-10. Temporary Transitional Assignment.

Temporary transitional assignments may be part of any of the following:

(1) [~~R~~]return to work from injury or illness;

(2) [~~W~~]when management determines that there is a direct threat to the health or safety of self or others;

(3) [~~I~~]in conjunction with corrective action, performance or conduct issues, or discipline;

(4) [~~W~~]where there is a bona fide occupational qualification for retention in a position;

(5) [~~A~~]as a temporary measure while an employee is being evaluated to determine if reasonable accommodation is appropriate.

R477-8-11. 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) [~~T~~]the policy is communicated to the employee at employment;

(b) [~~T~~]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: breaks, telecommuting, overtime, dual employment
[~~July 5, 2002~~]2003
Notice of Continuation June 11, 2002
67-19-6
67-19-6.7

Human Resource Management, Administration
R477-10
Employee Development

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26224
FILED: 05/01/2003, 14:30

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments to this rule add an employee protection to the corrective action process and make nonsubstantive changes to correct errors of punctuation and capitalization.

SUMMARY OF THE RULE OR CHANGE: Subsection R477-10-2(3) is added to the rule. This requires agency management to conclude a corrective action period with a written evaluation of the employee's performance. Nonsubstantive changes to this rule correct spelling, punctuation and style errors. (DAR NOTE: The amendments to the DHRM rules are found in this Bulletin under: R477-1, DAR No. 26207; R477-2, DAR No. 26208; R477-4, DAR No. 26217; R477-5, DAR No. 26219; R477-6, DAR No. 26220; R477-7, DAR No. 26221; R477-8, DAR No. 26222; R477-10, DAR No. 26224; R477-11, DAR No. 26225; R477-12, DAR No. 26227; and R477-14, DAR No. 26229.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: There will be no fiscal impact because of the changes to this rule. This change codifies a practice that agencies are already advised to take to protect employee due process and to protect the state in case of an appeal.
❖LOCAL GOVERNMENTS: By law, Section 67-19-15, this rule has no effect beyond the executive branch of state government.
❖OTHER PERSONS: By law, Section 67-19-15, this rule has no effect beyond the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Written evaluation of employee performance is standard management practice. This amendment only requires that this take place in very rare instances of corrective action and will impose no appreciable costs on agencies.

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 this rule 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.

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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@utah.gov

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THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2003

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[~~/~~]or 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 the employee's[~~:~~] 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, incompetence[~~y~~], 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) [~~C~~]closer supervision;

(ii) [~~T~~]training;

(iii) [~~R~~]referral for personal counseling by an agency head's approved designee;

(iv) [~~R~~]reassignment;

(v) [~~U~~]use of appropriate leave;

(vi) [~~C~~]career counseling and out[-]placement;

(vii) [~~P~~]period of constant review;

(viii) [~~O~~]opportunity for remediation;

(ix) [~~W~~]written warnings.

(2) The supervisor shall designate an appropriate corrective action period and shall provide [~~frequent~~]periodic evaluation of the employee's progress.

(3) At the conclusion of corrective action, a formal performance evaluation shall be written.

([~~3~~]4) If, after reasonable effort, the corrective action[~~s~~] taken does 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~~]5) 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, or both.

(1) Prior to granting education assistance, agencies shall establish policies which shall include the following conditions:

(a) The educational program will provide a benefit to the state.

(b) The employee shall successfully complete the required course work or the educational requirements of a program.

(c) The employee shall agree to repay any assistance received if the employee voluntarily terminates within 12 months of completing educational work.

(d) Education assistance shall not exceed $5,250 per employee in any one calendar year unless approved in advance by the agency head.

(2) Agency management shall be responsible for determining the taxable[~~/~~]or 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]2 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~~]2 (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 evaluations, employee productivity, training programs
[~~July 5, 2002~~]2003
Notice of Continuation June 11, 2002
67-19-6
67-19-12.4

Human Resource Management, Administration
R477-11
Discipline

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26225
FILED: 05/01/2003, 14:30

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments to this rule adjust wording that has proven difficult to interpret, especially by those not familiar with the state human resource management system. Nonsubstantive changes correct errors of punctuation, capitalization, grammar, and style.

SUMMARY OF THE RULE OR CHANGE: In Subsection R477-11-1(2), the term "In all such cases" is removed and the wording reorganized for clarification. The deleted term was creating problems with interpretation in grievance proceedings, especially among attorneys who are not familiar with the state disciplinary process. (DAR NOTE: The amendments to the DHRM rules are found in this Bulletin under: R477-1, DAR No. 26207; R477-2, DAR No. 26208; R477-4, DAR No. 26217; R477-5, DAR No. 26219; R477-6, DAR No. 26220; R477-7, DAR No. 26221; R477-8, DAR No. 26222; R477-10, DAR No. 26224; R477-11, DAR No. 26225; R477-12, DAR No. 26227; and R477-14, DAR No. 26229.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-19-6 and 67-19-18

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: This amendment is for clarification purposes only and does not change agency procedures for disciplining an employee. There will be no impact on the state budget.

❖LOCAL GOVERNMENTS: By law, Section 67-19-15, this rule has no effect beyond the executive branch of state government.

❖OTHER PERSONS: This amendment will not change the procedures for career service employees in the disciplinary process or in the appeals process.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule does not change agency procedures for disciplining an employee.

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 this rule 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.

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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,~~]The disciplinary process shall include all of the following, 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) [~~W~~]written reprimand;

(b) [~~S~~]suspension without pay up to 30 calendar days per incident requiring discipline;

(c) [~~D~~]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) [~~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) [~~P~~]paid administrative leave; or

(b) [~~T~~]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.

(i) At the hearing the employee may present, either in person, in writing, or with a representative, comments or reasons as to why the proposed disciplinary action should not be taken. The agency head or designee is not required to receive or allow other witnesses on behalf of the employee.

(ii) The employee may present documents, affidavits or other written materials at the hearing. However, the employee is not entitled to present or discover documents within the possession or control of the department or agency that are private, protected or controlled under 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) [~~C~~]consistent application of rules and standards;

(b) [~~P~~]prior knowledge of rules and standards;

(c) [~~T~~]the severity of the infraction;

(d) [~~T~~]the repeated nature of violations;

(e) [~~P~~]prior disciplinary/corrective actions;

(f) [~~P~~]previous oral warnings, written warnings and discussions;

(g) [~~T~~]the employee's past work record;

(h) [~~T~~]the effect on agency operations;

(i) [~~T~~]the potential of the violations for causing damage to persons or property.

KEY: discipline of employees, dismissal of employees, grievances, government hearings
[~~July 5, 2002~~]2003
Notice of Continuation June 11, 2002
67-19-6
67-19-18
63-2

Human Resource Management, Administration
R477-12
Separations

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26227
FILED: 05/01/2003, 14:35

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: There are four purposes for amending this rule. First, clarify the time frames for an employee to appeal a reduction in force (RIF). Second, change state policy regarding the salary a RIF'd employee may receive when reappointed. Third, make nonsubstantive changes to correct errors in spelling, punctuation, grammar, and style. Fourth, distinguish between employees and persons on the reappointment register.

SUMMARY OF THE RULE OR CHANGE: Subsection R477-12-3(6) is amended to make it clear that an employee has 20 working days from receipt of the notice of a reduction in force to submit a written appeal to the agency head. Some employees and their representatives were claiming that the old wording gave them 20 days after the notification of a reduction in force and then another 20 days after termination. This is not the intent of Subsection 67-19-18(6)(c)(ii). Subsection R477-12-3(7)(c)(ii) is added to the rule giving a RIF'd employee reappointment rights to a previously held position even if the salary range for that position has moved upward. Under old language, an individual on the reappointment register has no claim to a position with a higher salary than the last career service position held. This means that if an employee accepts an exempt position, serves for several years and is terminated through a reduction in force, he cannot be reappointed to his last career service position, even if it is vacant, because it is likely the salary will have increased through market adjustments. This amendment will now give the RIF'd employee reappointment rights to previously held career service positions, regardless of the salary. In several places in this rule, the term "employee" is changed to "individual" when the reference is to someone on the reappointment register. By definition in Section 67-19-3, an employee is someone in a paid status. Individuals on the reappointment register are terminated and, therefore, cannot be employees. There are several nonsubstantive changes to correct errors in punctuation, spelling, grammar, and style. In two places, there is an extensive reorganization of the text to accomplish this. These are at Subsections R477-12-3(3)(e) and R477-12-3(9). (DAR NOTE: The amendments to the DHRM rules are found in this Bulletin under: R477-1, DAR No. 26207; R477-2, DAR No. 26208; R477-4, DAR No. 26217; R477-5, DAR No. 26219; R477-6, DAR No. 26220; R477-7, DAR No. 26221; R477-8, DAR No. 26222; R477-10, DAR No. 26224; R477-11, DAR No. 26225; R477-12, DAR No. 26227; and R477-14, DAR No. 26229.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-19-6 and 67-19-18

ANTICIPATED COST OR SAVINGS TO:
- THE STATE BUDGET: None--There is no impact to the state budget with these amendments, as the changes only clarify the rule.
- LOCAL GOVERNMENTS: By law, Section 67-19-15, this rule has no effect beyond the executive branch of state government.
- OTHER PERSONS: By law, Section 67-19-15, this rule has no effect beyond the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: By law, Section 67-19-15, this rule has no effect beyond the executive branch of state government.

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 this rule 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@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 06/16/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2003

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) [~~T~~]the categories of work to be eliminated, including positions impacted through bumping, as determined by management[~~.~~];

(b) [~~A~~]a decision by agency management allowing or disallowing bumping[~~.~~];

(c) [~~S~~]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~~]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[~~,~~]or 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, including employees covered under USERRA in a leave without pay status, 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) [~~N~~]non-career service employees;

(b) [~~P~~]probationary employees;

(c) [~~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 notified of [~~separated~~]separation due to a reduction in force may appeal to the agency head for an administrative review[~~. Employees must submit~~] by submitting a written 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~~]individual.

(a) A RIF'd [~~employee~~]individual 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~~]4-4 applies for selection of [~~employees~~]individuals 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'd individual meets the job requirements for position vacancies.

(ii) A RIF'd [~~employee~~]individual 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.

(i) 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.

(ii) If the maximum step of the job or position previously held by the RIF'd individual has moved upward, the RIF'd individual shall be eligible to exercise RIF rights for vacancies with that job or position as long as the duties remain essentially the same as when the RIF'd individual held the job or position.

(d) A RIF'd [~~employee~~]individual who is reappointed to a career service position shall not be required to serve a probationary period. The RIF'd individual [~~employee~~] shall enjoy all the rights and privileges of a regular career service employee.

(e) At agency discretion, [~~employees~~]individuals 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~~]individual. [~~—~~]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~~]rules, shall[~~:~~] be placed on a reappointment register.

(a) The Executive Director, DHRM, shall maintain a reappointment register for this purpose. An individual on this register shall:

([~~a~~]i) [~~Be placed on a reappointment register and shall~~]be appointed to any half time or greater career service position for which the [~~employee~~]individual qualifies in a pay range comparable to the [~~employee's~~]individual's last position in the career service, provided an opening exists; or

([~~b~~]ii) [~~B~~]be appointed to any lesser career service position for which the [~~employee~~]individual 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.~~]

(b) The Executive Director, DHRM, shall make the final determination on whether an eligible individual meets the job requirements for position vacancies.

(c) The [~~employee~~]individual shall declare [~~his~~]a 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 procedures, employees' rights, grievances, retirement
[~~July 5, 2002~~]2003
Notice of Continuation June 11, 2002
67-19-6
69-19-17
69-19-18

Human Resource Management, Administration
R477-14
Substance Abuse and Drug-Free Workplace

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26229
FILED: 05/01/2003, 14:37

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: There are three purposes for the amendments to this rule. First, rewrite segments of Section R477-14-1 to clarify what type of drug and alcohol test an employee may be subject to based on the classification of the position. Second, establish more precise criteria for management to take corrective or disciplinary action. Third, make nonsubstantive changes to correct errors in punctuation, spelling, grammar, and style.

SUMMARY OF THE RULE OR CHANGE: The rewriting of Section R477-14-1 is a combination of reorganization of existing language and insertion of new language. The underlined language at Subsections R477-14-1(3) through R477-14-1(5) is current language that has been moved to this new location for clarification purposes. The underlined portion at Subsection R477-14-1(6) is new language. This defines five types of drug and alcohol tests an employee in a nonsafety-sensitive position is subject to under federal guidelines. The underlined portion at Subsection R477-14-1(9) is new language. It defines seven types of drug and alcohol tests an employee may be subject to who has a safety-sensitive position or is a candidate for such a position. These include the five for nonsafety-sensitive positions plus random tests and preemployment tests. Changes to Subsection R477-14-1(11) add further criteria for the conducting of a random test. The definitions of these tests are in amendments to Rule R477-1. New language is also added at Subsection R477-14-1(15) that gives criteria to management who wish to impose corrective or disciplinary action for drug or alcohol related incidents in the workplace. Nonsubstantive changes are made throughout this rule to correct spelling, punctuation, grammar and style errors. One nonsubstantive change involves reorganization of wording at Subsection R477-14-2(9). (DAR NOTE: The amendments to the DHRM rules are found in this Bulletin under: R477-1, DAR No. 26207; R477-2, DAR No. 26208; R477-4, DAR No. 26217; R477-5, DAR No. 26219; R477-6, DAR No. 26220; R477-7, DAR No. 26221;

R477-8, DAR No. 26222; R477-10, DAR No. 26224; R477-11, DAR No. 26225; R477-12, DAR No. 26227; and R477-14, DAR No. 26229.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-19-6, 67-19-18, and 67-19-34

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 49 CFR 40.29 (2002); 49 CFR 382.107 (2002); 49 CFR 382.201 (2002); and 49 CFR 382.505 (2002)

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: Implementation of these changes will require no new action from agencies and thus have no impact on state budget.
❖LOCAL GOVERNMENTS: By law, Section 67-19-15, this rule has no effect beyond the executive branch of state government.
❖OTHER PERSONS: By law, Section 67-19-15, this rule has no effect beyond the executive branch of state government.

COMPLIANCE COSTS FOR AFFECTED PERSONS: By law, Section 67-19-15, this rule has no effect beyond the executive branch of state government.

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 this rule 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@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 06/16/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2003

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) All drug or alcohol testing shall be done in compliance with applicable federal and state regulations and policies.

(4) All drug or alcohol testing shall be conducted by a federally certified or licensed physician or clinic, or testing service approved by DHRM.

(5) Drug or alcohol tests with positive results or a possible false positive result shall require a confirmation test.[~~(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.~~]

(6) Employees in non safety sensitive positions are subject to one or more of the following drug or alcohol tests:

(a) reasonable suspicion;

(b) critical incident;

(c) post accident;

(d) return to duty;

(e) follow up.

([~~c~~]7) 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~~]40, Sections 85 to 87(200[~~1~~]2), Laboratory Analysis Procedures.

([~~d~~]8) For employees in non[-]safety sensitive positions, the State of Utah will use a blood alcohol concentration level of .08 as the cut off for a positive alcohol test.

(9) Employees who hold safety sensitive positions, are final candidates for, are transferred to, or are assigned the duties of a safety sensitive position, and final applicants for safety sensitive positions are subject to one or more of the following drug or alcohol tests:

(a) preemployment;

(b) reasonable suspicion;

(c) post accident;

(d) critical incident;
(e) random;
(f) return to duty;
(g) follow up.

([~~e~~]10) 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 49CFR40. [~~29~~]40, Sections 85 to 87(200[~~+~~]2), Laboratory Analysis Procedures, 49CFR382.107 (200[~~+~~]2), Definitions, 49CFR382.201(200[~~+~~]2), Alcohol Concentration and 49CFR382.505 (200[~~+~~]2), 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 or exceed 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~~]11) Employees in safety sensitive positions, as approved by DHRM, are subject to random drug or alcohol testing without justification of reasonable suspicion or critical incident. Except when required by federal regulation or state policy, r[~~R~~]andom drug or alcohol testing of employees in safety sensitive positions shall be conducted [~~by~~]at the discretion of the employing agency[~~as authorized by the Executive Director, DHRM~~].

([~~a~~]12) 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~~]13) 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~~]14) 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.

(15) Management may take corrective or disciplinary action if:
(a) there is a positive confirmation test for controlled substances;
(b) results of a confirmation test for alcohol meet or exceed the established alcohol concentration cutoff level;
(c) 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.

([~~6~~]16) The agency's [~~H~~]human [~~R~~]resource [~~O~~]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) [~~I~~]if the employee's action directly affects the eligibility of the agency to receive grants or contracts in excess of $25,000.00[-];

(b) [~~I~~]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 for a violation occurring in the workplace, 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~~]five 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 5, 2002~~]2003
Notice of Continuation December 11, 2001
67-19-6
67-19-18
67-19-34
67-19-37
67-19-38

Human Services, Administration
R495-881
Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule Implementation

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 26196
FILED: 04/30/2003, 09:05

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule implements provisions required by the Federal HIPAA Privacy Rule, 45 CFR Part 164, Subpart E, dealing with the treatment of certain individually identifiable health insurance information held by the Department of Human Services (DHS).

SUMMARY OF THE RULE OR CHANGE: Federal law requires that covered entities implement administrative safeguards and policies to protect the rights of individuals to access and control access to their protected health information. This rule adopts those requirements for DHS programs covered by this rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-1-5 and 26-1-17; and 45 CFR Part 160, Subpart A; and 45 CFR Part 164, Subpart E

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: Implementation of this rule will have fiscal impact on DHS. These requirements are not federally funded and DHS will implement these requirements within existing budgets.
❖LOCAL GOVERNMENTS: DHS does not have jurisdiction over HIPAA compliance by local government. As HIPAA is federally mandated, all governments must comply and be supervised by the federal government.
❖OTHER PERSONS: DHS may charge a minimal cost-based fee for copies of protected health information.

COMPLIANCE COSTS FOR AFFECTED PERSONS: DHS may charge a minimal cost-based fee for copies of protected health information.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will not have a fiscal impact on businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
ADMINISTRATION
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Vanessa Thompson at the above address, by phone at 801-538-9877, by FAX at 801-538-4016, or by Internet E-mail at vthompson@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 06/16/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 06/17/2003

AUTHORIZED BY: Robin Arnold-Williams, Executive Director

R495. Human Services, Administration.
R495-881. Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule Implementation.
R495-881-1. Authority and Purpose.
(1) This rule implements provisions required by 45 CFR Part 164, subpart E, dealing with the treatment of certain individually identifiable health information held by the Department of Human Services.
(2) This rule is authorized by Utah Code Sections 26-1-5 and 26-1-17.

R495-881-2. Definitions.
As used in this rule:
(1) "Covered entity" means a program within the Department responsible for carrying out a covered function as that term is used in 45 CFR 164.501.
(2) "HIPAA" means the federal Health Insurance Portability and Accountability Act of 1997 and its implementing regulations.
(3) "Individual" means a natural person. In the case of a individual without legal capacity or a deceased person, the personal representative of the individual.

R495-881-3. General Compliance.
(1) This rule applies only to those functions of the Department that are covered functions as that term is used in 45 CFR Part 164.
(2) Covered entities shall comply with the privacy requirements of 45 CFR Part 164, Subpart E in dealing with individually identifiable health information and the subjects of that information.

R495-881-4. Changes to Rule.
The Department reserves the right to alter this rule and its notices of privacy practices required by HIPAA.

R495-881-5. Sanctions, Retaliation.

(1) An employee of a covered entity may be disciplined for failure to comply with the HIPAA requirements found in 45 CFR Part 164, Subpart E. Discipline may include termination and civil or criminal prosecution.

(2) An employee of a covered entity may not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against any person for exercising any right established by HIPAA or for opposing in good faith any act or practice made unlawful by HIPAA.

R495-881-6. Waiver of Rights Prohibited.

A covered entity may not require individuals to waive their rights under 45 CFR 160.306 or 45 CFR Part 164, Subpart E as a condition of the provision of treatment, payment, health plan enrollment, or eligibility for benefits.

R495-881-7. Complaints.

(1) An individual may seek a review of a covered entity's policies and procedures or its compliance with such policies and procedures through informal contact with the covered entity.

(2) An individual may file a formal complaint concerning a covered entity's policies and procedures implementing 45 CFR Part 164, Subpart E or its compliance with such policies and procedures or the requirements of 45 CFR Part 164, Subpart E by filing a complaint with the Office of the Executive Director of the Department requesting an agency action meeting the requirements of the Utah Administrative Procedures Act or with the Office of Civil Rights, U.S. Department of Health and Human Services.

R495-881-8. Right to Request Privacy Protection.

(1) An individual may request restrictions on use and disclosure of protected health information as permitted in 45 CFR 164.522 by submitting a written request to the designated privacy officer for the covered entity.

(2) The decision whether to grant the request, documentation of any restrictions, alternate communication methods, and conditions on providing confidential communications shall be in accordance with 45 CFR 164.522.

R495-881-9. Individual Access to Protected Health Information.

(1) An individual may request access to protected health information as permitted in 45 CFR 164.524 by submitting a written request to the designated privacy officer for the covered entity.

(2) The right to access, decision whether to grant access, review of denials, timeliness of responses, form of access, time and manner of access, documentation and other required responses shall be in accordance with 45 CFR 164.524.

R495-881-10. Amendment of Protected Health Information.

(1) An individual may request amendment to protected health information about that individual that the individual believes is incorrect as permitted in 45 CFR 164.526 by submitting a written request to the designated privacy officer for the covered entity.

(2) The decision whether to grant the request, the time frames for action by the covered entity, amendment of the record, requirements for denial, and acting on notices of amendment from third parties shall be in accordance with 45 CFR 164.526.

R495-881-11. Accounting for Disclosures.

(1) An individual may request an accounting of disclosures of protected health information as permitted in 45 CFR 164.528 by submitting a written request to the designated privacy officer for the covered entity.

(2) The content of the accounting and the provision of the accounting, shall be in accordance with 45 CFR 164.528.

KEY: HIPAA, privacy
2003
26-1-5
26-1-17

Insurance, Administration
R590-222
Viatical Settlements

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 26194
FILED: 04/29/2003, 14:10

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to implement procedures for the licensure of providers and producers of viatical settlements, their annual reports, disclosures, advertising, reporting of fraud, prohibited practices, standards for viatical settlement payments, and procedures for request for verification of coverage.

SUMMARY OF THE RULE OR CHANGE: This rule implements procedures for the licensure of providers and producers of viatical settlements, their annual reports, disclosures, advertising, reporting of fraud, prohibited practices, standards for viatical settlement payments, and procedures for request for verification of coverage.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201 and 31A-36-119

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: There will be no change in department personnel required. The general fund will be positively affected as a result of the provider licensing fee of $1,050 for the first year and the $950 annual renewal. It is estimated that three to ten companies will apply for this license.

❖LOCAL GOVERNMENTS: This rule will not affect local government. It only deals with the relationship between the state Insurance Department and the producers and providers of viatical settlements.

❖OTHER PERSONS: Applicants for provider licensing will be required to file an application, including financial responsibility information and pay $1,050 with the initial application and $950 with its renewal annually. We expect three to ten companies to apply for licensure. There are no education or examination requirements. Life insurers will be required to complete a form and mail it to each viatical provider when the provider purchases one of their policies but the impact should be minimal at this time. Since this business is new to Utah, it

is hard to say if it will grow or not. Life insurance companies will experience fewer lapsed policies as a result of this law. Instead of allowing them to lapse, informed consumers will try to sell them to the viatical companies. Insurers who work an estimated number of lapsed policies into the rates they charge may need to change their rates if the number of lapsed policies drops significantly. Viatical settlements provide cash to individuals for their life insurance policies when the need for that policy no longer exists.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Applicants for provider licensing will be required to file an application, including financial responsibility information and pay $1,050 with the initial application and $950 with its renewal annually. We expect three to ten companies to apply for licensure. There are no education or examination requirements. Life insurers will be required to complete a form and mail it to each viatical provider when the provider purchases one of their policies but the impact should be minimal at this time. Since this business is new to Utah, it is hard to say if it will grow or not. Life insurance companies will experience fewer lapsed policies as a result of this law. Instead of allowing them to lapse, informed consumers will try to sell them to the viatical companies. Insurers who work an estimated number of lapsed policies into the rates they charge may need to change their rates if the number of lapsed policies drops significantly. Viatical settlements provide cash to individuals for their life insurance policies when the need for that policy no longer exists.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The impact of this new law and rule on viatical companies will be significant. They go from being allowed to do life settlements in the state, to being allowed to do business here and with few restrictions. Providers will have to pay a licensing fee, which is below the national average. The effect on life insurance companies will be minor in the beginning. What will develop from here will depend on how the viatical business grows. Currently countrywide, this growth has been small.

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@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 06/16/2003

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 6/03/2003 at 9:00 AM, State Office Building, Room 3112, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 06/17/2003

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-222. Viatical Settlements.
R590-222-1. Authority.

This rule is promulgated by the insurance commissioner pursuant to the authority provided in Subsection 31A-2-201(3), authorizing rules to implement the provisions of Title 31A, and Section 31A-36-119, authorizing rules to implement the provisions of Title 31A, Chapter 36.

R590-222-2. Purpose and Scope.

The purpose of this rule is to implement procedures for licensure of providers and producers of viatical settlements, provider and producer annual reports, disclosures, advertising, reporting of fraud, prohibited practices, standards for viatical settlement payments, and procedures for requests for verification of coverage.

This rule applies to all providers and producers of viatical settlements and to insurers whose policies are being viaticated.

R590-222-3. Incorporation by Reference.

The following appendices are hereby incorporated by reference within this rule and are available at http://www.insurance.utah.gov/ruleindex.html:

(1) Appendix A, Utah Provider of Viatical Settlement Application, dated 2003.

(2) Appendix B, Utah Provider of Viatical Settlement Annual Report, dated 2003.

(3) Appendix C, Utah Producer of Viatical Settlement Annual Report, dated 2003.

(4) Appendix D, NAIC Viatical Settlement brochure, dated 2002.

(5) Appendix E, NAIC Verification of Coverage for Individual Policies, dated 2003.

(6) Appendix F, NAIC Verification of Group Life Insurance Benefits, dated 2003.

R590-222-4. Definitions.

In addition to the definitions in Section 31A-1-301 and 31A-36-102, the following definitions apply to this rule:

(1) For purposes of this rule, "insured" means the person covered under the policy being considered for viatication.

(2) "Life expectancy" means the mean number of months the individual insured under the life insurance policy to be viaticated can be expected to live as determined by the provider of viatical settlements considering medical records and appropriate experiential data.

(3) "Net death benefit" means the amount of the life insurance policy or certificate to be viaticated less any outstanding debts or liens.

(4) "Patient identifying information" means an insured's address, telephone number, facsimile number, electronic mail address, photograph or likeness, employer, employment status, social security number, or any other information that is likely to lead to the identification of the insured.

R590-222-5. License Requirements.

(1) Provider of Viatical Settlements License.

(a) A person may not perform, or advertise any service as a provider of viatical settlements in Utah, without a valid license.

(b) A provider of viatical settlements license shall be issued on an annual basis upon:

(i) the submission of a complete initial or renewal application; and

(ii) the payment of the applicable fees under Section 31A-3-103.

(c) An applicant for a license shall:

(i) use the application form prescribed by the commissioner and available on the department's website, see Appendix A;

(ii) provide a copy of the applicant's plan of operation that is to:

(A) describe the market the applicant intends to target;

(B) explain who will produce business for the applicant and how these people will be recruited, trained, and compensated;

(C) estimate the applicant's projected Utah business over the next 5 years;

(D) describe the corporate organizational structure of the applicant, its parent company, and all affiliates;

(E) describe the procedures used by the applicant to insure that viatical settlement proceeds will be sent to the viator within three business days as required by Subsection 31A-36-110 (3); and

(F) describe the procedures used by the applicant to insure that the identity, financial information, and medical information of an insured are not disclosed except as authorized under Section 31A-36-106;

(iii) provide the antifraud plan as required by Section 31A-36-117;

(iv) provide any other information requested by the commissioner; and

(v) provide evidence of financial responsibility in the amount of $50,000 in the form of a surety bond issued by an authorized corporate surety or a deposit of cash, certificates of deposit or securities or any combination thereof:

(A) The evidence of financial responsibility shall remain in force for as long as the license is active.

(B) The bond, deposit or combination thereof, shall not be terminated without 30 days prior written notice to the licensee and the commissioner.

(C) The commissioner may accept as evidence of financial responsibility, proof that a financial instrument, in accordance with the requirements in subsection 1(c)(v), has been filed with the commissioner of any other state where the provider of viatical settlements is licensed as a provider of viatical settlements.

(d) The commissioner may refuse to issue or renew a license of a provider of viatical settlements if any officer, one who is a holder of more than 10% of the provider's stock, partner, or director fails to meet the standards of Title 31A, Chapter 36.

(e) If a provider of viatical settlements fails to pay the renewal fee within the time prescribed or fails to submit the reports required in Section R590-222-6, the nonpayment or failure to submit the required reports shall:

(i) result in lapse of the license; and

(ii) subject the provider to administrative penalties and forfeitures.

(f) If a provider of viatical settlements has, at the time of license renewal, viatical settlements where the insured has not died, the provider of viatical settlements shall:

(i) renew or maintain its current license status until the earlier of the following events:

(A) the date the provider of viatical settlements properly assigns, sells, or otherwise transfers the viatical settlements where the insured has not died; or

(B) the date that the last insured covered by viatical settlement transaction has died;

(ii) designate, in writing, either the provider of viatical settlements that entered into the viatical settlement or the producer who received commission from the viatical settlement, if applicable, or any other provider or producer of viatical settlements licensed in this state, to make all inquiries to the viator, or the viator's designee, regarding health status of the insured or any other matters.

(g) The commissioner shall not issue a license to a nonresident provider of viatical settlements unless a written designation of an agent for service of process is filed and maintained with the commissioner.

(2) Producer of Viatical Settlements license.

(a) Producers of viatical settlements will be licensed in accordance with Title 31A, Chapter 23a.

(b) If a producer of viatical settlements fails to pay the renewal fee within the time prescribed or fails to submit the reports required in Section R590-222-6, the nonpayment or failure to submit the required reports shall:

(i) result in lapse of the license; and

(ii) subject the producer to administrative penalties and forfeitures.

R590-222-6. Annual Reports.

(1) By March 1 of each calendar year, each provider of viatical settlements licensed in this state shall report to the commissioner all viatical settlement transactions where the viator is a resident of this state. This report shall be submitted in the format in Appendix B and contain the following information for the previous calendar year:

(a) for viatical settlements contracted during the reporting period:

(i) date of viatical settlement;

(ii) life expectancy of the insured at time of settlement in months;

(iii) face amount of policy viaticated;

(iv) net death benefit viaticated;

(v) estimated total premiums to keep policy in force for mean life expectancy;

(vi) net amount paid to viator;

(vii) contestable or within suicide period, or both, at the time of viatical settlement; and

(viii) name and address of the producer of the viatical settlement, if any, through whom the reporting provider purchased the policy.

(b) for viatical settlements where death has occurred during the reporting period:

(i) date of viatical settlement;

(ii) life expectancy of the insured at time of settlement in months;

(iii) net death benefit collected;

(iv) total premiums paid to maintain the policy (indicate as dollar amount and provide reason for zero amount, i.e. waiver of premium, paid-up policy, etc.);
(v) net amount paid to viator;
(vi) date of death;
(vii) amount of time between date of settlement and date of death in months;
(viii) difference between the number of months that passed between the date of settlement and the date of death and the life expectancy in months as determined by the reporting company; and
(ix) contestable or within suicide period, or both, at the time of viatical settlement.
(c) number of policies reviewed and rejected; and
(d) number of policies purchased from an individual or entity other than the original viator as a percentage of total policies purchased.
(2) By March 1 of each calendar year, each producer of viatical settlements licensed in this state shall report to the commissioner all viatical settlement transactions where the viator is a resident of this state. This report shall be submitted in the format in Appendix C and contain the following information for the previous calendar year:
(a) date of viatical settlement;
(b) face amount of policy viaticated;
(c) net amount paid to viator;
(d) contestable or within suicide period, or both, at the time of the viatical settlement;
(e) provider's name and address for each transaction.

R590-222-7. Payment Requirements.
(1) Payment of the proceeds of a viatical settlement pursuant to Subsection 31A-36-110(3), shall be by means of wire transfer to an account designated by the viator or by certified check or cashier's check.
(2) Payment of the proceeds to the viator pursuant to a viatical settlement shall be made in a lump sum except where the provider of viatical settlements has purchased an annuity or similar financial instrument issued by a licensed insurance insurer or bank, or an affiliate of either. Retention of a portion of the proceeds, not disclosed or described in the viatical settlement by the provider of viatical settlements or escrow agent, is not permissible without written consent of the viator.

R590-222-8. Disclosures.
(1) As required by Subsection 31A-36-108(1), the disclosure, which is to be provided no later than the time the application for the viatical settlement, shall be provided in a separate document that is signed by the viator and the provider of viatical settlements or producer of viatical settlements, and shall contain the following information:
(a) There are possible alternatives to a viatical settlement, including any accelerated death benefits or policy loans offered under the viator's life insurance policy.
(b) Some or all of the proceeds of the viatical settlement may be taxable under federal income tax and state franchise and income taxes, and assistance should be sought from a professional tax advisor.
(c) Proceeds of the viatical settlement could be subject to the claims of creditors.
(d) Receipt of the proceeds of a viatical settlement may adversely affect the viator's eligibility for Medicaid or other government benefits or entitlements, and advice should be obtained from the appropriate government agencies.
(e) The viator has the right to terminate a viatical settlement within 15 calendar days after the receipt of the viatical settlement proceeds by the viator as provided by Subsection 31A-36-109(7). If the insured dies during the 15 day period, the settlement is terminated, subject to repayment of all viatical settlement proceeds and any premiums, loans and loan interest to the viatical settlement provider or purchaser.
(f) Funds will be sent to the viator within three business days after the provider of viatical settlements has received the insurer or group administrator's acknowledgment that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated.
(g) Entering into a viatical settlement may cause other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate, to be forfeited by the viator. Assistance should be sought from a financial adviser.
(h) Disclosure to a viator shall include distribution of a copy of the National Association of Insurance Commissioners (NAIC) Viatical Settlement brochure, dated 2002, that describes the process of viatical settlements, see Appendix D.
(i) The disclosure document shall contain the following language: "All medical, financial or personal information solicited or obtained by a provider of viatical settlements or producer of viatical settlements about an insured, including the insured's identity or the identity of family members, a spouse or a significant other may be disclosed as necessary to effect the viatical settlement between the viator and the provider of viatical settlements. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years."
(j) The insured may be contacted by either the provider or producer of viatical settlements or its authorized representative for the purpose of determining the insured's health status. This contact is limited to once every three months if the insured has a life expectancy of more than one year, and no more than once per month if the insured has a life expectancy of one year or less.
(2) A provider of viatical settlements shall provide the viator with at least the following disclosures no later than the date the viatical settlement is signed by all parties. The disclosures shall be conspicuously displayed in the viatical settlement or in a separate document signed by the viator and the provider of viatical settlements or producer of viatical settlements, and provide the following information:
(a) State the affiliation, if any, between the provider of viatical settlements and the issuer of the insurance policy to be viaticated.
(b) The document shall include the name, address and telephone number of the provider of viatical settlements.
(c) A producer of viatical settlements shall disclose to a prospective viator the existence and source of the producer's compensation. The term "compensation" includes anything of value paid or given to a producer of viatical settlements for the placement of a policy.

(d) If an insurance policy to be viaticated has been issued as a joint policy or involves family riders or any coverage of a life other than the insured under the policy to be viaticated, the viator shall be informed of the possible loss of coverage on the other lives under the policy and shall be advised to consult with his or her insurance producer or the insurer issuing the policy for advice on the proposed viatical settlement.

(e) State the dollar amount of the current death benefit payable to the provider of viatical settlements under the policy or certificate. If known, the provider of viatical settlements shall also disclose the availability of any additional guaranteed insurance benefits, the dollar amount of any accidental death and dismemberment benefits under the policy or certificate and the provider of viatical settlements interest in those benefits.

(f) State the name, business address, and telephone number of the independent third party escrow agent, and the fact that the viator or owner may inspect or receive copies of the relevant escrow or trust agreements or documents.

(3) If the provider transfers ownership or changes the beneficiary of the insurance policy, the provider shall communicate the change in ownership or beneficiary to the insured within 20 days after the change.

R590-222-9. Standards for Evaluation of Reasonable Payments.

The provider of viatical settlements is responsible for assuring that the net proceeds from the viatical settlement exceed the benefits that are available under the terms of the policy including cash surrender, long-term care, and accelerated death benefits.

R590-222-10. Requests for Verification of Coverage.

(1) Insurers, authorized to do business in this state, whose policies are being viaticated, shall respond to a request for verification of coverage from a provider of viatical settlements or a producer of viatical settlements within 30 calendar days of the date a request is received, subject to the following conditions:

(a) a current authorization consistent with applicable law, signed by the policyholder or certificate holder, accompanies the request;

(b) in the case of an individual policy, submission of a form substantially similar to the NAIC Verification of Coverage for Individual Policies, dated 2003, which has been completed by the provider of viatical settlements or the producer of viatical settlements in accordance with the instructions on the form, see Appendix E;

(c) in the case of group insurance coverage:

(i) submission of a form substantially similar to the NAIC Verification of Group Life Insurance Benefits dated 2003, which has been completed by the provider of viatical settlements or producer of viatical settlements in accordance with the instructions on the form, see Appendix F; and

(ii) which has previously been referred to the group policyholder and completed to the extent the information is available to the group policyholder.

(2) An insurer whose policy is being viaticated may not charge a fee for responding to a request for information from a provider of viatical settlements or producer of viatical settlements in compliance with this rule in excess of any usual and customary charges to policyholders, certificateholders or insureds for similar services.

(3) The insurer whose policy is being viaticated shall send an acknowledgment of receipt of the request for verification of coverage to the policyholder or certificateholder and, where the policyholder or certificateholder is other than the insured, to the insured. The acknowledgment may contain a general description of any accelerated death benefit or similar benefit that is available under a provision of or rider to the life insurance contract.

R590-222-11. Advertising.

(1) This section shall apply to advertising of viatical settlements, related products, or services intended for dissemination in this state. Failure to comply with any provision of this section is determined to be a violation of Section 31A-36-112.

(2) The form and content of an advertisement of a viatical settlement shall be sufficiently complete and clear so as to avoid misleading or deceiving the reader, viewer, or listener. It shall not contain false or misleading information, including information that is false or misleading because it is incomplete.

(3) Information required to be disclosed shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.

(4) An advertisement shall not omit material information or use words, phrases, statements, references or illustrations if the omission or use has the capacity, tendency or effect of misleading or deceiving viators, as to the nature or extent of any benefit, loss covered, premium payable, or state or federal tax consequence.

(5) An advertisement shall not use the name or title of an insurer or an insurance policy unless the affected insurer has approved the advertisement.

(6) An advertisement shall not state or imply that interest charged on an accelerated death benefit or a policy loan is unfair, inequitable or in any manner an incorrect or improper practice.

(7) The words "free," "no cost," "without cost," "no additional cost", "at no extra cost," or words of similar import shall not be used with respect to any benefit or service unless true. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the payment or use other appropriate language.

(8) Testimonials, appraisals or analysis used in advertisements must be genuine; represent the current opinion of the author; be applicable to the viatical settlement product or service advertised, if any; and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective viators as to the nature or scope of the testimonials, appraisal, analysis or endorsement. In using testimonials, appraisals or analysis, the viatical settlement licensee makes, as its own, all the statements contained therein, and the statements are subject to all the provisions of this section.

(a) If the individual making a testimonial, appraisal, analysis or an endorsement has a financial interest in the provider of viatical settlements or related entity as a stockholder, director, officer, employee or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.

(b) An advertisement shall not state or imply that a viatical settlement benefit or service has been approved or endorsed by a group of individuals, society, association or other organization unless that is the fact and unless any relationship between an organization and the viatical settlement licensee is disclosed. If the entity making the endorsement or testimonial is owned, controlled or managed by the viatical settlement licensee, or receives any payment or other consideration from the viatical settlement licensee for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.

(c) When an endorsement refers to benefits received under a viatical settlement, all pertinent information shall be retained for a period of five years after its use.

(9) An advertisement shall not contain statistical information unless it accurately reflects recent and relevant facts. The source of all statistics used in an advertisement shall be identified.

(10) An advertisement shall not disparage insurers, providers of viatical settlements, producers of viatical settlements, viatical settlement investment agents, anyone who may recommend a viatical settlement, insurance producers, policies, services or methods of marketing.

(11) The name of the viatical settlement licensee shall be clearly identified in all advertisements about the licensee or its viatical settlement, products or services, and if any specific viatical settlement is advertised, the viatical settlement shall be identified either by form number or some other appropriate description. If an application is part of the advertisement, the name and administrative office address of the provider of viatical settlements shall be shown on the application.

(12) An advertisement shall not use a trade name, group designation, name of the parent company of a viatical settlement licensee, name of a particular division of the viatical settlement licensee, service mark, slogan, symbol or other device or reference without disclosing the name of the viatical settlement licensee, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the viatical settlement licensee, or to create the impression that a company other than the viatical settlement licensee would have any responsibility for the financial obligation under a viatical settlement.

(13) An advertisement shall not use any combination of words, symbols or physical materials that by their content, phraseology, shape, color or other characteristics are so similar to a combination of words, symbols or physical materials used by a government program or agency or otherwise appear to be of such a nature that they tend to mislead prospective viators into believing that the solicitation is in some manner connected with a government program or agency.

(14) An advertisement may state that a viatical settlement licensee is licensed in the state where the advertisement appears, provided it does not exaggerate that fact or suggest or imply that a competing viatical settlement licensee may not be so licensed. The advertisement may ask the audience to consult the licensee's web site or contact the department of insurance to find out if the state requires licensing and, if so, whether the provider of viatical settlements or producer of viatical settlements is licensed.

(15) An advertisement shall not create the impression that the provider of viatical settlements, its financial condition or status, the payment of its claims, or the merits, desirability, or advisability of its viatical settlements are recommended or endorsed by any government entity.

(16) The name of the actual licensee shall be stated in all of its advertisements. An advertisement shall not use a trade name, any group designation, name of any affiliate or controlling entity of the licensee, service mark, slogan, symbol or other device in a manner that would have the capacity or tendency to mislead or deceive as to the true identity of the actual licensee or create the false impression that an affiliate or controlling entity would have any responsibility for the financial obligation of the licensee.

(17) An advertisement shall not directly or indirectly create the impression that any division or agency of the state or of the U.S. government endorses, approves or favors:

(a) any viatical settlement license or its business practices or methods of operations;

(b) the merits, desirability or advisability of any viatical settlement;

(c) any viatical settlement; or

(d) any life insurance policy or life insurance insurer.

(18) If the advertisement emphasizes the speed with which the viatication will occur, the advertising must disclose the average time frame from completed application to the date of offer and from acceptance of the offer to receipt of the funds by the viator.

(19) If the advertising emphasizes the dollar amounts available to viators, the advertising shall disclose the average purchase price as a percent of face value obtained by viators contracting with the licensee during the past six months.

R590-222-12. Reporting of Fraud.

(1) A person engaged in the business of viatical settlements under Title 31A, Chapter 36, that knows or has reasonable cause to believe that any person has violated or will violate any provision of Section 31A-36-113, shall, upon acquiring the knowledge, promptly notify the commissioner and provide the commissioner with a complete and accurate statement of all of the relevant facts and circumstances. Any other person acquiring such knowledge may furnish the information to the commissioner in the same manner. The report is a protected communication and when made without actual malice does not subject the person making the report to any liability whatsoever. The commissioner may suspend, revoke, or refuse to renew the license of any person who fails to comply with this section.

R590-222-13. Prohibited Practices.

(1) A provider of viatical settlements or producer of viatical settlements shall obtain from a person that is provided with patient identifying information a signed affirmation that the person or entity will not further divulge the information without procuring the express, written consent of the insured for the disclosure. Notwithstanding the foregoing, if a provider of viatical settlements or producer of viatical settlements is served with a subpoena and, therefore, compelled to produce records containing patient identifying information, it shall notify the viator and the insured in writing at their last known addresses within five business days after receiving notice of the subpoena.

(2) A provider of viatical settlements shall not also act as a producer of viatical settlements in the same viatical settlement, whether entitled to collect a fee directly or indirectly.

(3) A producer of viatical settlements shall not seek or obtain any compensation from the viator without the written agreement of the viator obtained prior to performing any services in connection with a viatical settlement.

(4) A provider of viatical settlements or producer of viatical settlements shall not unfairly discriminate in the making or soliciting of viatical settlements, or discriminate between viators with dependents and without dependents.

(5) A provider of viatical settlements or producer of viatical settlements shall not pay or offer to pay any finder's fee, commission or other compensation to any insured's physician, or to an attorney, accountant or other person providing medical, legal or financial planning services to the viator, or to any other person acting as an agent of the viator, other than a producer of viatical settlements, with respect to the viatical settlement.

R590-222-14. Filing of Forms.

(1) All forms to be used for a viatical settlement shall be filed with the commissioner prior to use. The department is not required to review each form and does not provide approval for a filing. The forms will be identified as "filed for use" when submitted to the department with all requirements. The forms to be filed include the viatical settlement, disclosure to the viator, notice of intent to viaticate, verification of coverage, and application.

(2) A form filing consists of:

(a) the uniform transmittal form that is available at the department's website at www.insurance.utah.gov/L&AH_Transmittal.pdf. Because the targeted user of the universal transmittal form is an insurer, all information requested on the form may not be applicable to a filing for a viatical settlement; therefore, complete only the areas of the form that will identify and describe your filing. The transmittal form is to be the top document of your filing;

(b) a cover letter on company letterhead that is to properly identify the viatical settlement provider. The cover letter must provide the following:

(1) a list of the forms being filed by title and any number given the document; and

(ii) a description of the reason for the filing. Indicate whether the form is new or replacing a form. If the form is replacing a previously filed form, provide the replaced form number, the date filed in Utah, and the changes being made;

(c) a copy of each form to be filed; and

(d) return materials, if you wish to receive notification that the filing has been filed with the commissioner. Return materials consist of one copy of the cover letter and a self-addressed stamped envelope. The department will not send notice that the filing has been received unless you provide the means to do so.

(3) If a filing has been rejected as incomplete, the response to the rejection must include all items required for the filing and a copy of the rejection form.

(4) If an Order to Prohibit Use has been issued, the response to the Order must include:

(a) a resubmission letter identifying the changes made;

(b) one copy of the revised document; and

(c) return materials which include a copy of the resubmission letter and a self addressed stamped envelope.

(5) Companies may request the status of their filing by telephone, email or mail after 30 days from the date of submission.

R590-222-15. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule 45 days from the rule's effective date.

R590-222-16. Severability.

If any provision or clause of this rule or its application to any person or situation is held to be invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: insurance, viatical
2003
31A-2-201
31A-36-119

▼ ▼

Natural Resources, Wildlife Resources
R657-5
Taking Big Game

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26241
FILED: 05/01/2003, 17:04

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 R657-5-57 is being amended to allow a person to apply for and obtain an antlerless elk permit even if the person has previously obtained any other elk permit. Section R657-5-61 is being amended to add that any remaining permits for hunts with season dates ending prior to the posting date of the remaining antlerless permit drawing, shall not be offered in the remaining drawing. Section R657-5-62 is being amended to provide consistency and correct to the text.

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 a person to apply for and obtain an antlerless elk permit even if the person has previously obtained any other elk permit. 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 a person to apply for and obtain an antlerless elk permit even if the person has previously obtained any other elk permit. 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 a person to apply for and obtain an antlerless elk permit even if the person has previously obtained any other elk permit. 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 debbiesundell@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 06/16/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 06/17/2003

AUTHORIZED BY: Kevin Conway, Director

R657. Natural Resources, Wildlife Resources.
R657-5. Taking Big Game.
R657-5-57. 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,~~]a doe pronghorn permit[~~,~~] or antlerless moose permit, respectively, except as provided in Section R657-5-61.

(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 R657-5-59(3) and R657-5-61(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~~]preprinted 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.

R657-5-61. Drawing for Remaining Antlerless Permits and Over-the-counter Permit Sales After the Antlerless Drawings.

(1)(a) The list of remaining permits will be available by the date provided in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) Remaining permits for hunts with season dates ending prior to the posting date of the remaining antlerless permit drawing, shall not be offered in the remaining drawing.

(2) Residents and nonresidents may apply for, and draw any of the following remaining permits, except as provided in Subsection (3):

(a) antlerless deer;

(b) antlerless elk;

(c) doe pronghorn; and

(d) antlerless moose.

(3) Any person who has obtained:

(a) an antlerless deer permit may not apply for an antlerless deer permit;

(b) two elk permits may not apply for an antlerless elk permit;

(c) a pronghorn permit may not apply for a doe pronghorn permit; or

(d) a moose permit may not apply for an antlerless moose permit.

(4) Residents and nonresidents may apply for any remaining permits.

(5) The same application form used for the antlerless drawing must be used when applying for remaining permits. The handling fees are nonrefundable.

(6) Applications for remaining permits 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.

(7) Applicants who apply for remaining permits will not be provided an opportunity to correct a rejected or invalid application on the drawing for remaining antlerless permits.

(8) The drawing results for remaining antlerless permits will be posted at the Lee Kay Center, Cache Valley Hunter Education Center, division offices and on the division Internet address 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.

(9) Permits remaining after both drawings will be sold over-the-counter, in person, or through the mail, on a first-come, first-served basis only at the Salt Lake Division office beginning on 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.

R657-5-62. Application Withdrawal.

(1)(a) [~~A person~~]An applicant 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.

(b) The applicant must send their notarized signature with a statement requesting that their application be withdrawn to the Salt Lake Division office.

(c) Handling fees will not be refunded.

(2)(a) An applicant may amend their application for the 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 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.

(d) Handling fees will not be refunded.

KEY: wildlife, game laws, big game seasons[~~*~~]
2003
Notice of Continuation November 30, 2000
23-14-18
23-14-19
23-16-5
23-16-6

Public Safety, Peace Officer Standards and Training

R728-409-3

Cause to Evaluate Certification for the Refusal, Suspension, or Revocation of Peace Officer Certification or Authority

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26179
FILED: 04/16/2003, 15:31

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The change removes the language dealing with specific penalties for successive convictions for driving under the influence (DUI).

SUMMARY OF THE RULE OR CHANGE: This rule change deletes language setting forth: 1) the specific penalties involved for successive DUI convictions; and 2) the factors that constitute aggravating circumstances in connection with DUI convictions.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 53-6-211

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: This rule change will have no impact on the state budget because it does not require the state to do anything it is not already doing.
❖LOCAL GOVERNMENTS: This rule change will have no impact on local government budgets because local government is not involved in enforcing the rule.
❖OTHER PERSONS: This rule change will have no fiscal impact on other persons because other persons are not involved in enforcing the rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons because there are no compliance costs for anyone.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule will have no fiscal 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:
Richard D. Wyss at the above address, by phone at 801-538-9600, by FAX at 801-366-0221, or by Internet E-mail at rwyss@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 06/16/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 06/17/2003

AUTHORIZED BY: Robert Flowers, Commissioner

R728. Public Safety, Peace Officer Standards and Training.
R728-409. Refusal, Suspension, or Revocation of Peace Officer Certification.
R728-409-3. Cause to Evaluate Certification for the Refusal, Suspension, or Revocation of Peace Officer Certification or Authority.

The division may initiate an investigation when it receives an allegation that grounds for refusal, suspension, or revocation of certification exist. The initial allegation may come from any responsible source, including those provisions of R728-409-5. Pursuant to the purpose and intent of 53-6-211, revocation is a permanent deprivation of peace officer certification or authority, and except as outlined in R728-409-28 does not allow for a person who has been revoked in the State of Utah to be readmitted into any peace officer training program conducted by or under the approval of the division, or to have peace officer certification or authority reinstated or restored by the division.

Any of the following provisions may constitute cause for refusal, suspension, or revocation of peace officer certification or authority:

A. Any willful falsification of any information provided to the division to obtain certified status. The information could be in the form of written application, supplementary documentation requested or required by the division, testimony or other oral communication to the division, or any other form of information which could be considered fraudulent or false for purposes of Subsection 53-6-211(1)(d)(i).

B. "Physical or mental disability" for purposes of Section 53-6-211(1)(d)(ii), shall be defined as set forth in Utah Administrative Code, Rule R728-403-9, Physical, Emotional, or Mental Condition Requirement, and division medical guidelines.

C. Conviction of any drug related offense including the provisions of Title 58 Chapter 37.

D. "Addiction to drug or narcotics" for purposes of Section 53-6-211(1)(d)(iii) means addiction to any drug or narcotic as defined in Title 58, Chapter 37.

1. Peace officers who, in the normal course of their peace officer duties and functions, possess, attempt to simulate, unintentionally use or are forced to use, narcotics, drugs, or drug paraphernalia, shall be exempt from the provisions of Section 53-6-211(1)(d)(iii) and (v), so long as their conduct:

a. is authorized by their law enforcement employer; and

b. does not jeopardize the public health, safety or welfare.

2. Addiction to drugs or narcotics as a direct result of the legitimate treatment of a physical, emotional or psychological disease, or injury which is currently being treated by a licensed physician or medical practitioner licensed in this state or any other state, and which has been reported, in writing, to the law enforcement employer and P.O.S.T., shall not be considered a violation of Section 53-6-211(1)(d)(iii) so long as the addiction does not jeopardize the public health, safety or welfare.

a. Addiction to unlawfully obtained drugs or narcotics arising from circumstances not involving (a) the legitimate treatment of a physical disease; (b) circumstances involving surgery or serious injury; (c) from psychological illness; and (d) which has not been treated by a licensed physician or medical practitioner, licensed in this state or any other state, shall be considered a violation of Section 53-6-211(1)(d)(iii).

b. No applicant shall be granted peace officer certification or authority if it is demonstrated that the applicant has a drug addiction which is not under control.

c. A peace officer may have peace officer certification or authority temporarily suspended for the duration of drug rehabilitation. If the peace officer has demonstrated control of the drug addiction as determined by a division medical consultant, peace officer certification or authority shall be restored.

d. Criminal conduct by a person asserting the conduct was the result of drug addiction or dependence shall be grounds for refusal, suspension or revocation of peace officer certification or authority despite the fact that rehabilitation has not occurred prior to the peace officer certification or authority being refused, suspended or revoked.

3. Notwithstanding anything contained in this administrative rule to the contrary, a peace officer may have peace officer certification or authority revoked for conduct in violation of Section 53-6-211(1)(d)(iii), if, prior to the conduct in question, the peace officer has had a previous suspension or revocation of peace officer certification or authority under Section 53-6-211(1)(d)(iii), or similar statute of another jurisdiction.

E. Conviction of a felony.

F. "Crimes involving dishonesty" for purposes of Section 53-6-211(1)(d)(iv) means conviction for criminal conduct, under the statutes of this state or any other jurisdiction, which under the rules of evidence can be used to impeach a witness or involving, but not limited to, any of the following:

1. theft;
2. fraud;
3. tax evasion;
4. issuing bad checks;
5. financial transaction credit card offenses;
6. deceptive business practices;
7. defrauding creditors;
8. robbery;
9. aggravated robbery;
10. bribery or receiving a bribe;
11. perjury;
12. extortion;
13. falsifying government records;
14. forgery;
15. receiving stolen property;
16. burglary or aggravated burglary.

G. "Crimes involving unlawful sexual conduct" for purposes of Section 53-6-211(1)(d)(iv) means any violation described in Title 76, Chapter 5, Part 4; Chapter 5a; Chapter 7, Part 1; Chapter 10, Part 13; or Chapter 9, Part 7, Section 702 and 702.5.

H. "Crimes involving physical violence" for purposes of Section 53-6-211(1)(d)(iv) means any violation of Part 1, Assault and Related Offenses, and Part 2, Criminal Homicide, of Title 76, Chapter 5.

I. "Driving under the influence of alcohol or drugs" for purposes of Section 53-6-211(1)(d)(iv) means any violation of Section 41-6-44.

[~~1. Convictions for violations of Section 41-6-44, in which no aggravating circumstances are present shall be considered in the following manner for purposes of Section 53-6-211(1)(d)(iv):~~

~~a. a first conviction shall result in a letter of censure from the director to the peace officer, with a copy of the letter sent to the law enforcement employer.~~

~~b. a second conviction shall result in suspension of peace officer certification or authority for a period of 0 to 12 months, as determined by the director with the concurrence of the council.~~

~~c. a third conviction, shall result in revocation of peace officer certification or authority.~~

~~2. Any conviction for a violation of Section 41-6-44, in which one or more aggravating circumstances are present may result in refusal, suspension or revocation of peace officer certification or authority.~~

~~3. For purposes of section (1) and (2) of R728-409-3(I) above, an aggravating circumstance includes, but is not limited to, one or more of the following:~~

~~a. false information to a peace officer;~~

~~b. resisting arrest;~~

~~c. felony or misdemeanor evading a peace officer;~~

~~d. disorderly person;~~

~~e. driving on a suspended or revoked driver license at the time of the arrest;~~

~~f. involvement in a traffic accident while under the influence of alcohol or drugs;~~

~~g. possession of drugs;~~

~~h. contributing to the delinquency of a minor; or~~

~~i. previous conviction for driving under the influence of alcohol or drugs, prior to obtaining peace officer certification or authority, whether or not the charge was reduced to reckless driving or a lesser traffic violation, and whether or not the charge was dismissed for assistance in other law enforcement investigations.~~

~~4.~~]Criminal conduct by an individual asserting the conduct was a result of drug addiction or dependence shall be grounds for refusal, suspension or revocation despite the fact that rehabilitation has not occurred prior to the refusal, suspension or revocation.

J. "Conduct or pattern of conduct" for purposes of Section 53-6-211(1)(d)(v) means an act or series of acts by a person which occur prior to or following the granting of peace officer certification or authority.

1. Conduct that shall be considered as grounds for violation of Section 53-6-211(1)(d)(v) shall include:

a. uncharged conduct which includes the conduct set forth in Rule R728-409-3, which could be considered criminal, although such conduct does not result in the filing of criminal charges against the person, but where the evidence shows that the criminal act did occur, that the person committed the act, and that the burden of proof by a preponderance of the evidence could be established by the division;

b. criminal conduct where a criminal charge is filed, a conviction is not obtained, but where the evidence shows that the criminal act did occur, that the person committed the act, and that the burden of proof by a preponderance of the evidence appears to exist;

c. criminal conduct as enumerated in Section 53-6-211(1)(d)(iv) and 53-6-203, where the filing of a criminal charge has resulted in a finding of guilt based on evidence presented to a judge or jury, a guilty plea, a plea of nolo contendere, a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation, diversion agreements, or conviction which has been expunged, dismissed, or treated in a similar manner to either of these procedures;

d. violations of Section 53-6-211(1)(d)(i) or the refusal to respond, or the failure to respond truthfully, to the questions of POST investigators asked pursuant to R728-409-5;

e. violations of Section 53-6-211(1)(d)(iii) which involve criminal conduct or jeopardize the public health, safety or welfare;

f. sexual harassment which is:

(i) conduct which rises to the level of behavior of a criminal sexual nature which includes, but is not limited to, the unwelcomed touching of the breasts of a female, buttocks or genitals of another, and or taking of indecent liberties with another;

(ii) behavior by a supervisor which creates the perception in the mind of the subordinate that the granting or withholding of tangible job benefits shall be based on the granting of sexual favors.

g. sexual conduct which is:

(i) subject to criminal punishment; or

(ii) substantially diminishes or, if known, would tend to diminish public confidence and respect for law enforcement; or

(iii) damages or, if known, would tend to damage a law enforcement department's efficiency or morale; or

(iv) impairs or, if known, would tend to impair the ability of the peace officer to objectively and diligently perform the duties and functions of a peace officer;

h. sexual activity protected by the right of privacy, that does not hamper law enforcement, shall not be grounds for refusal, suspension or revocation of peace officer certification or authority.

i. Other conduct, whether charged or uncharged, which constitutes: malfeasance in office, non-feasance in office, violates the peace officer's oath of office, or a willful and deliberate violation of Title 53, Chapter 6, or the administrative rules contained in Utah Administrative Code, Agency R728.

(i) Malfeasance for purposes of subsection (h) shall include the commission of some act which is wholly wrongful or unlawful that affects, interrupts or interferes with the performance of official duties.

(ii) Non-feasance for purposes of subsection (h) shall include the omission of an act which a peace officer by virtue of his employment as such is charged to do.

(iii) oath of office for purposes of subsection (h) shall include the swearing of a person, upon employment as a peace officer defined in Title 77, Chapter 1a, to an oath to support, obey and defend the Constitution of the United States and the Constitution of the State of Utah and discharge the duties of the office with fidelity, or, a similar oath of a county, city or town.

j. arrest for driving under the influence of alcohol or drugs, where the elements of the offense could be established by a preponderance of the evidence.[

~~(i) A first conviction, with no aggravating circumstance, shall result in a letter of censure from the director to the peace officer, with a copy of the letter sent to the law enforcement employer.~~

~~(ii) A second conviction, with no aggravating circumstance shall result in suspension of peace officer certification or authority for a period of 0 to 12 months, as determined by the director with the concurrence of the council.~~

~~(iii) A third conviction shall result in revocation of peace officer certification or authority.~~]

k. Addiction to alcohol:

(i) if it is demonstrated that a peace officer or applicant for peace officer certification or authority has an alcohol addiction which is not under control;

(ii) a peace officer with an alcohol addiction may have peace officer certification or authority temporarily suspended for the duration of alcohol rehabilitation. If the peace officer has demonstrated control of the alcohol addiction as determined by a division medical consultant, peace officer certification or authority may be restored;

(iii) criminal conduct by an individual asserting the conduct was a result of alcohol addiction or dependence shall be grounds for refusal, suspension or revocation despite the fact that rehabilitation has not occurred prior to the refusal, suspension or revocation.

l. Acts of gross negligence or misconduct which is "clearly outrageous" or shock the conscience of a reasonable person;

(i) violations of the Law Enforcement Code of Ethics as adopted by the Council;

(ii) lying under the Garrity warning

m. A dismissal from military service under any of the following circumstances:

(i) Bad conduct discharge (BCD)

(ii) Dishonorable discharge (DD)

(iii) Administrative discharge of "General under honorable conditions" (GEN).

KEY: law enforcement officers, certification, investigations, rules and procedures
[~~October 30, 2000~~]2003
Notice of Continuation October 3, 2002
53-6-211

Public Service Commission, Administration
R746-347-5
Customer Survey for New or Expanded EAS

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26197
FILED: 04/30/2003, 10:33

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to make the presumption of additional or new Extended Area Service (EAS) to be in the public interest when the approving residential customer survey result percentage is 67% rather than 75%.

SUMMARY OF THE RULE OR CHANGE: Lower the percentage, from 75% to 67%, of approving residential customers surveyed in petitioning exchanges to support the public interest presumption.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 54-3-1, 54-54-4-1, 54-4-4, and 54-4-12

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: None--This amendment does not affect the State budget because only the necessary number of customers willing to pay the proposed EAS charge will be lower, facilitating the addition of EAS to all telephone customers.
❖LOCAL GOVERNMENTS: None--This amendment does not affect local government because only the necessary number of customers willing to pay the proposed EAS charge will be lower, facilitating the addition of EAS to all telephone customers.
❖OTHER PERSONS: The proposed charge for any specific EAS proposal will not be affected by the rule change, only the necessary number of customers, willing to pay the proposed EAS charge will be lower facilitating the addition of EAS to all telephone customers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed charge for any specific EAS proposal will not be affected by the rule change, only the necessary number of customers, who are willing to pay the proposed EAS charge, will be lower facilitating the addition of EAS to all telephone customers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The existing rule presumes there is a public interest supporting additional EAS when 75% of residential customers surveyed indicate they are willing to pay for the proposed EAS. The proposed amendment will change that percentage to 67%. The proposed charge for any specific EAS proposal will not be affected by the rule change, only the necessary number of customers, who are willing to pay the proposed EAS charge will be lower, facilitating the addition of EAS to all telephone customers.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SERVICE COMMISSION
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:
Barbara Stroud or Sandy Mooy at the above address, by phone at 801-530-6714 or 801-530-6708, by FAX at 801-530-6796 or 801-530-6796, or by Internet E-mail at bstroud@utah.gov or smooy@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 06/16/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 06/17/2003

AUTHORIZED BY: Barbara Stroud, Paralegal

R746. Public Service Commission, Administration.
R746-347. Extended Area Service (EAS).
R746-347-5. Customer Survey for New or Expanded EAS.

A. When to Conduct Survey -- Upon approval by the Commission of the proposed prices pursuant to Section R746-347-4,

a survey shall be conducted of residential telephone subscribers of the incumbent telephone corporation in each petitioning and each non-petitioning local exchange area proposed to be included in the new or expanded EAS. The Division, Committee and involved incumbent telephone corporations shall arrange to conduct a poll within the affected local exchange areas.

B. Who to Survey -- A statistical sample of residential subscribers, sized to produce a final result with at least a ten percent level of significance with a plus or minus five percent margin of error shall be surveyed.

C. Public Interest -- The Commission will presume that the proposed EAS is in the public interest if:

1. the survey results indicate that at least [~~75~~]67 percent of the customers of the incumbent telephone corporation in each petitioning local exchange area desire EAS at the price represented in the survey questionnaire, and

2. the survey results further show that at least 30 percent of customers of the incumbent telephone corporation in each non-petitioning local exchange area desire EAS at the price represented in the survey questionnaire.

D. Minimum Monthly Increase -- Notwithstanding R746-347-5-C.2, if the cost study results show that the EAS rate increase in the non-petitioning exchange represents less than a 3.5 percent monthly increase in the local exchange carriers tariff for a basic dial-tone line and local usage, then the residential customer survey need not be conducted in the non-petitioning local exchange area. The Commission will presume that the proposed EAS is in the public interest if [~~75~~]67 percent of the customers in the petitioning local exchange areas desire EAS at the price represented in the survey questionnaire.

E. When Customers Pay Entire Cost of EAS -- If the customer survey indicates that the criterion for R746-347-5.C.2 has not been met, the customers of the petitioning exchange area(s) may pay the entire cost of establishing the EAS route(s). In this instance, the Commission will presume that the proposed EAS is in the public interest if the survey results indicate that [~~75~~]67 percent of the customers of the incumbent telephone corporation in each petitioning local exchange areas desire EAS at a price representing the petitioning exchange area(s) paying the entire cost of the proposed EAS.

KEY: extended area service, public utilities, telecommunications
2003
54-3-3
54-8b-11

Transportation, Operations, Maintenance

R918-4

Using Volunteer Groups for the Adopt-a-Highway Program

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 26184
FILED: 04/23/2003, 13:03

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to set forth the criteria and conditions for volunteer participation in the Adopt-a-Highway litter clean-up program.

SUMMARY OF THE RULE OR CHANGE: The rule establishes the program, sets forth the need for conditions, and establishes the conditions of participation, as well as a form application.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 72-1-201

ANTICIPATED COST OR SAVINGS TO:
- THE STATE BUDGET: There will be a small cost to the state for building and installing recognition signs. The fiscal impact that the department suffers through the building and installation of recognition signs outweighs the cost that the state would otherwise incur from using employees. Actual costs are currently unknown.
- LOCAL GOVERNMENTS: This rule does not apply to local governments.
- OTHER PERSONS: There is no cost to others to participate in the program. It is voluntary.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule imposes no costs on others.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no new costs. The program is in operation and is voluntary, and the only change is the new application form. The state takes care of the signs.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TRANSPORTATION
OPERATIONS, MAINTENANCE
CALVIN L RAMPTON COMPLEX
4501 S 2700 W
SALT LAKE CITY UT 84119-5998, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
James Beadles at the above address, by phone at 801-965-4168, by FAX at 801-965-4796, or by Internet E-mail at jbeadles@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 07/01/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2003

AUTHORIZED BY: John R. Njord, Executive Director

R918. Transportation, Operations, Maintenance.
R918-4. Using Volunteer Groups for the Adopt-a-Highway Program.
R918-4-1. Purpose of Procedure.

To establish a procedure for using volunteer groups for litter pickup. To provide additional resources to increase UDOT's litter control effort at a minimal cost. This program is not operated for the purpose of providing a highway signing program for a free speech forum.

R918-4-2. Application.

A group or person who wishes to participate in a program to pick up litter along UDOT right-of-way may apply with the UDOT Region in which the right-of-way is located. The application shall contain, at a minimum, the name of the organization or person, the right-of-way requested, along with alternatives if desired, and the name and address of a contact person, and the text requested in the Recognition Sign.

R918-4-3. Conditions to Participation.

If the application is granted, UDOT shall notify the applicant's contact person in writing and promptly send to him or her a contract that sets forth the following basic conditions:

(1) the location of the right-of-way;

(2) a hold harmless agreement, waiver of liability, and indemnification for third-party claims;

(3) safety rules;

(4) information concerning safety apparel that must be used and that is recommended;

(5) the name of the entity or organization that is applying for the permit;

(6) an explanation of the condition in which UDOT expects the applicant to keep the roadway and notification that the decision whether or not the applicant has done so is solely within UDOT's discretion;

(7) notification of reasons for termination, which include failure to comply with any part of the agreement, fraud in the application, failure to follow safety requirements or commands;

(8) a date when the agreement will terminate, along with any automatic renewal provisions;

(9) volunteer groups shall provide a responsible supervisor to properly control the activities of the group, with the expertise and degree of supervision to be decided by UDOT;

(10) no person under the age of 11 may participate in the litter pick-up program or be on the right-of-way;

(11) volunteers shall accept and receive safety instructions by the Region Safety/Risk Manager, or designee;

(12) volunteers shall stay off the traveled area of the roadway, except when traveled area must be crossed, with any crossing being done by the entire group together along with the signing, flagging, or supervision directed by the Region Safety/Risk Manager or designee;

(13) volunteers shall stay off the traveled areas of Interstate Freeways at all times, except when crossing in the manner specified in paragraph (12);

(14) in areas where the Region Director or Safety/Risk Manager or Traffic Engineer believes it appropriate, the applicant shall use advance warning signs;

(15) work shall be done during daylight hours;

(16) such other information as UDOT believes may be required to adequate advise the applicant of its responsibilities and provide for the public safety; and

(17) clean up the assigned right-of-way at least three times a year as well as when UDOT specifically requests.

R918-4-4. UDOT discretion to allow use of right-of-way.

Nothing in this rule or other UDOT rule may be construed to require UDOT to make any particular portion of right-of-way available for litter pick up. The decision whether to do so is exclusively within UDOT's discretion. Similarly, the decision to take a route out of the litter pick-up program is also within UDOT's exclusive discretion even if the route is currently available and being used for litter pick-up.

R918-4-5. Recognition Signs.

If the applicant's authorized representative (contact person) signs the contract sent to him or her by UDOT, UDOT will place a recognition sign along the route, with text to identify the group or person carrying out the litter pick-up. Only the name of the organization or person may be placed on the sign. UDOT will not place either slogans or logos on a sign. The applicant's name may be edited to comply with space limitations.

R918-4-6. Replacement of Signs.

UDOT has neither the duty nor responsibility to replace damaged or missing signs. However, UDOT may replace the sign if it believes that replacement appropriate given all the circumstances. The decision to do so is solely within UDOT's discretion. If the sign is damaged or becomes missing and UDOT does not replace it within 90 days or the applicant has not paid for the cost of replacement within 90 days, the contract shall be considered terminated.

R918-4-7. UDOT's Responsibilities.

UDOT shall:

(1) furnish volunteers with UDOT-standard vests, which, when the contract is terminated shall be returned;

(2) furnish the litter bags, which, when filled, shall be placed along the shoulder of the road for collection by UDOT personnel.

KEY: adopt-a-highway, highways, transportation
2003
72-1-201

▼ ▼

Workforce Services, Employment Development
R986-100
Employment Support Programs

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26232
FILED: 05/01/2003, 14:52

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to bring the rule into compliance with recent statutory changes.

SUMMARY OF THE RULE OR CHANGE: Subsection R986-100-117(8) is being amended to reflect food stamp regulations and prevent fraud. The amendment provides that all adults who were, or should have been, included in the household when fraud was committed are also liable for the overpayments and subject to the same disqualifications as the client who actually received the public assistance payments. Subsection R986-100-123(2) is being amended to make the time for filing an appeal equal in all cases. Currently an appeal is due 90 days after the effective date of the action, not the date of the notice of the action. The date of the notice can be, and often is, different from the date of the action. For instance, if a new application is denied, it is denied effective the date the application was filed but the notice does not go out until the Department completes its eligibility determination which can take 30 days. Under this amendment, the client will be given 90 days from the date of the notice instead of 90 days from the date the application was filed. In cases where the notice is issued before the effective date, the client will still have a full 90 days from the notice in which to appeal. Section R986-100-124 is being amended to reflect current law on telephone and in-person hearings. Currently all hearings are originally set for a telephone hearing but a client can request an in-person hearing. This rule sets forth the federal clarification on how those in person hearings are conducted. Sections R986-100-129 through R986-100-132 are being amended to reflect current law on requesting a reconsideration if a client fails to participate in a hearing and to make the rules for public assistance the same as for unemployment. Previously, the Department allowed a client to miss one hearing, now the client will have to show excusable neglect which is required by Utah Administrative Procedures Act. The excusable neglect standard is not difficult to meet and will be applied liberally at least in the first instance. In practice, this change will make little difference in how the Department grants rehearings. Section R986-100-134 is being amended to allow a continuation of Employment Support Child Care pending an appeal of a decision on the issue of failure to cooperate with the Office of Recovery Services (ORS) in the establishment of paternity. Currently clients are not eligible for child care pending appeal. A majority of the cases involving this issue are reversed on appeal and this change will help insure that clients who may be found eligible on appeal do not lose their employment pending appeal. If the decision is not reversed on appeal the client will have an overpayment and be required to repay the child care. The section is also being amended to reflect the "good cause" language in effect throughout the division of adjudication. It is not our intent to actually change the standard but to use the same language as the definition of good cause whenever possible. H.B. 31 passed during the 2003 General Session transferred the responsibility for the collection of overpayments from ORS to the Department. All other changes in these sections are being made to reflect that statutory directive from the legislature. The Department is not making changes in how overpayments are collected but will be using the procedures set forth in statute and federal regulation. (DAR NOTE: H.B. 31 is found at UT L 2003 Ch 90, and will be effective July 1, 2003.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 35A-3-101, 35A-3-301, and 35A-3-401

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: There will be no costs or savings to the state budget. This rule reflects changes in federally-funded programs and the legislative transfer of the responsibility for the collection of overpayments to the Department.

❖LOCAL GOVERNMENTS: This program does not impact local governments are they are state-run, federally-funded programs.

❖OTHER PERSONS: There will be no costs or savings to any persons as a result of these changes. Any costs to those persons were contemplated in H.B. 31.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with these changes. Any costs to those persons were contemplated in H.B. 31.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on any business in Utah.

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

WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2003

AUTHORIZED BY: Raylene G. Ireland, Executive Director

R986. Workforce Services, Employment Development.
R986-100. Employment Support Programs.
R986-100-102. Scope.

(1) These rules establish standards for the administration of the following programs[~~:~~], for the collection of overpayments as defined in 35A-3-602(7) and/or disqualifications from any public assistance program provided under a state or federally funded benefit program;

(a) Food Stamps
(b) Family Employment Program (FEP)
(c) Family Employment Program Two Parent (FEPTP)
(d) Refugee Resettlement Program (RRP)
(e) Working Toward Employment (WTE)

(f) General Assistance (GA)
(g) Child Care Assistance (CC)
(h) Emergency Assistance Program (EA)
(i) Adoption Assistance Program (AA)

(2) The rules in the 100 section (R986-100 et seq.) apply to all programs listed above. Additional rules which apply to each specific program can be found in the section number assigned for that program. Nothing in R986 et seq. is intended to apply to Unemployment Insurance.

R986-100-110. Release of Information Other Than at the Request of the Client.

(1) Information obtained from or about a client will not be published or open to public inspection in any manner which would reveal the client's identity except:

(a) unless if there has been a criminal conviction against the client for fraud in obtaining public assistance. In that instance, the Department will only can provide information available in the public record on the criminal charge; or

(b) if an abstract has been docketed in the district court on an overpayment, the Department can provide information that is a matter of public record in the abstract.[~~(1) Information obtained from or about a client will not be published or open to public inspection in any manner which would reveal the client's identity unless there has been a criminal conviction against the client for fraud in obtaining public assistance. In that instance, the Department will only provide information available in the public record on the criminal charge.~~]

(2) Any information obtained by the Department pursuant to an application for or payment of public assistance may not be used in any court or admitted into evidence in an action or proceeding, except:

(a) in an action or proceeding arising out of the client's receipt of public assistance, including fraudulently obtaining or retaining public assistance, or any attempt to fraudulently obtain public assistance; or

(b) where obtained pursuant to a court order.

(3) If the case file, or any information about a client in the possession of the Department, is subpoenaed by an outside source, legal counsel for the Department will ask the court to quash the subpoena or take such action as legal counsel deems appropriate.

(4) Information obtained by the Department from the client or any other source, except information obtained from an income match, may be disclosed to:

(a) an employee of the Department in the performance of the employee's duties unless prohibited by law;

(b) an employee of a governmental agency that is specifically identified and authorized by federal or State law to receive the information;

(c) an employee of a governmental agency to the extent the information will aid in the detection or avoidance of duplicate, inconsistent, or fraudulent claims against public assistance programs, or the recovery of overpayments of public assistance funds;

(d) an employee of a law enforcement agency to the extent the disclosure is necessary to avoid a significant risk to public safety or to aid a felony criminal investigation except no information regarding a client receiving food stamps can be provided under this paragraph;

(e) to a law enforcement officer when the client is fleeing to avoid prosecution, custody or confinement for a felony or is in violation of a condition of parole or probation or when the client has information which will assist a law enforcement officer in locating or apprehending an individual who is fleeing to avoid prosecution, custody or confinement for a felony or is in violation of a condition of parole or probation and the officer is acting in his official capacity. The only information under this paragraph which can be released on a client receiving food stamps is the client's address, SSN and photographic identification;

(f) to a law enforcement official, upon written request, for the purpose of investigating an alleged violation of the Food Stamp Act 7 USCA 2011 or any regulation promulgated pursuant to the Act. The written request shall include the identity of the individual requesting the information and his/her authority to do so, the violation being investigated, and the identity of the person being investigated. Under this paragraph, the Department can release to the law enforcement official, more than just the client's address, SSN and photo identification;

(g) an educational institution, or other governmental entity engaged in programs providing financial assistance or federal needs-based assistance, job training, child welfare or protective services, foster care or adoption assistance programs, and to individuals or other agencies or organizations who, at the request of the Department, are coordinating services and evaluating the effectiveness of those services;

(h) to certify receipt of assistance for an employer to get a tax credit; or

(i) information necessary to complete any audit or review of expenditures in connection with a Department public assistance program. Any information provided under this part will be safeguarded by the individual or agency receiving the information and will only be used for the purpose expressed in its release.

(5) Any information released under paragraph (4) above can only be released if the Department receives assurances that:

(a) the information being released will only be used for the purposes stated when authorizing the release; and

(b) the agency making the request has rules for safeguarding the information which are at least as restrictive as the rules followed by the Department and that those rules will be adhered to.

(6) Case records or files will not be removed from the local office except by court order, [~~or~~]at the request of authorized Department employees, the Department's Information Disclosure Officer, or the Department's Quality Control office[~~, or ORS~~].

(7) In an emergency, as determined to exist by the Department's Information Disclosure Officer, information may be released to persons other than the client before permission is obtained.

(8) For clients receiving CC, the Department may provide the following information to the child care provider identified by the client as the provider:

(a) the date on which the CC payment was issued by the Department; and

(b) the amount of the check issued by the Department.

(9) Taxpayer requests to view public assistance payrolls will be denied.

R986-100-114. A Client's Continuing Obligation to Provide Verification and Information.

(1) A client who is eligible for assistance must provide additional verification and information, which may affect household eligibility or ongoing eligibility, after the application is approved if requested by the Department.

(2) The client must provide information to determine if eligibility was appropriately established and if payments made under these rules were appropriate. This information may be requested by an employee of the Department or a person authorized to obtain the information under contract with the Department such as an employee of ORS.

R986-100-116. Overpayments[~~ of Public Assistance~~].

(1) A client is responsible for repaying any overpayment [~~of public assistance~~]for any program listed in R986-100-102 regardless of who was at fault in creating the overpayment.[

~~(2) All suspected overpayments will be referred by the Department to ORS.~~]

([~~3~~]2) Underpayments may be offset against overpayments.

([~~4~~]3) If a change is not reported as required by R986-100-113 it may result in an overpayment.

(4) The Department will collect overpayments for all programs listed in R986-100-102 as provided by federal regulation for food stamps unless otherwise noted in this rule or inconsistent with federal regulations specific to those other programs.

(5) This rule will apply to overpayments determined under contract with the Department of Health.

(6) If an obligor has more than one overpayment account and does not tell the Department which account to credit, the Department will make that determination.

R986-100-117. Disqualification For Fraud ([~~i~~]Intentional [~~p~~]Program [~~v~~]Violations or IPVs).

(1) Any person who is at fault in obtaining or attempting[~~obtains, or attempts~~] to obtain, [~~public~~]an overpayment of assistance, as defined in Section 35A-1-502 from any of the programs listed in R986-100-102 or 35A-3-602 or otherwise intentionally breaches any program rule either personally or through a representative is guilty of an intentional program violation (IPV). Acts which constitute an IPV include but are not limited to:

(a) knowingly making false or misleading statements;

(b) misrepresenting, concealing, or withholding facts or information;

(c) posing as someone else;

(d) not reporting the receipt of a public assistance payment the individual knew or should have known they were not eligible to receive;

(e) not reporting a material change within 10 days after the change occurs in accordance with these rules; and

(f) committing an act intended to mislead, misrepresent, conceal or withhold facts or propound a falsity.

(2) An IPV occurs when a person commits any of the above acts in an attempt to obtain, maintain, increase or prevent the decrease or termination of any public assistance payment(s).[

~~(3) If the Department suspects any person of having committed an IPV, the Department will refer the matter to ORS for a determination. If ORS determines the person has committed an IPV, ORS will notify the Department and refer the matter for criminal prosecution if appropriate.~~]

(3[~~4~~]) When the Department determines or receives notice from [~~ORS or~~]a court that fraud or an IPV has occurred, the client is disqualified from receiving assistance of the same type [~~for the following~~]for the time period[~~s:~~] as set forth in statute or federal regulation.[

~~(a) one year for the first IPV;~~

~~(b) two years for the second IPV; and~~

~~(c) permanently for the third IPV.~~

~~(5) The disqualification period begins the month after the month in which the Department receives notification of the IPV.~~]

([~~6~~]4) Disqualifications run consecutively. If an individual is disqualified for a second IPV before the expiration of the one year disqualification for the first IPV, the two year disqualification period does not begin to run on the second IPV until the expiration of the first disqualification period.

([~~7~~]5) All income and assets of a person who has been disqualified from assistance for an IPV continue to be counted and affect the eligibility and assistance amount of the household assistance unit in which the person resides.

(6) If a client is disqualified from assistance for an IPV, all other adults living in the household who were or should have been included in the household at the time the fraud was committed and knew or should have known that the fraud was being committed are jointly and severally liable for the overpayment and may be subject to the same disqualification provisions as the client who was actually receiving assistance.

([~~8~~]7) If an individual has been disqualified in another state, the disqualification period for the IPV in that State will apply in Utah provided the act which resulted in the disqualification would have resulted in a disqualification had it occurred in Utah. If the individual has been disqualified in another state for an act which would have led to disqualification had it occurred in Utah and is found to have committed an IPV in Utah, the prior periods of disqualification in any other State count toward determining the length of disqualification in Utah.

([~~9~~]8) [~~Upon notice from ORS that an IPV disqualification is in effect, the Department will notify the client. ~~]The client will be notified that a disqualification period has been determined. The disqualification period begins the month after [~~notification from ORS~~]the disqualification decision has been issued or as soon thereafter as possible and continues in consecutive months until the disqualification period has expired.

([~~10~~]9) Nothing in these rules is intended to limit or prevent a criminal prosecution for fraud based on the same facts used to determine the IPV.

R986-100-122. Advance Notice of Department Action.

(1) Except as provided in (2) below, clients will be notified in writing when a decision concerning eligibility, amount of assistance payment or action on the part of the Department which affects the client's eligibility or amount of assistance has been made. Notice will be sent prior to the effective date of any action to reduce or terminate assistance payments. The Department will send advance notice of its intent to collect overpayments or to disqualify a household member.

(2) Advance notice is not required when:

(a) the client requests in writing that the case be closed;

(b) the client has been admitted to an institution under governmental administrative supervision;

(c) the client has been placed in skilled nursing care, intermediate care, or long-term hospitalization;

(d) the client's whereabouts are unknown and mail sent to the client has been returned by the Post Office with no forwarding address;

(e) it has been determined the client is receiving public assistance in another State;

(f) a child in the household has been removed from the home by court order or by voluntary relinquishment;

(g) a special allowance provided for a specific period is ended and the client was informed in writing at the time the allowance began that it would terminate at the end of the specified period;

(h) [~~an individual in the household has been disqualified from assistance because of an intentional program violation;~~]a household member has been disqualified for an IPV in accordance with 7 CFR 273.16, or the benefits of the remaining household members are reduced or terminated to reflect the disqualification of that household member;

(i) the Department has received factual information confirming the death of a client or payee if there is no other relative able to serve as a new payee;

(j) the client's certification period has expired;

(k) the action to terminate assistance is based on the expiration of the time limits imposed by the program;

(l) the client has provided information to the Department, or the Department has information obtained from another source, that the client is not eligible or that payment should be reduced or terminated; or

(m) the Department determines that the client willfully withheld information.

(3) For food stamp recipients and recipients of assistance under R986-300, no action will be taken until 10 days after notice was sent unless one of the exceptions in (2)(a) through (k) above apply.

(4) Notice is complete if sent to the client's last known address. If notice is sent to the client's last known address and the notice is returned by the Post Office with no forwarding address, the notice will be considered to have been properly served.

R986-100-123. The Right To a Hearing and How to Request a Hearing.

(1) A client has the right to a review of an adverse Department action by requesting a hearing.

(2) A client must request a hearing in writing or orally within 90 days of the date of the notice of agency action with which the client disagrees[~~.~~], unless the notice of agency action sets forth a shorter time period. Any oral request for a hearing will be reduced to writing by the Department and the client will be requested to sign the request.

(3) Only a clear expression by the client to the effect that the client wants an opportunity to present his or her case is required.

(4) The request for a hearing can be made at the local office or the Division of Adjudication.

(5) If the client disagrees with the level of food stamp benefits paid or payable, the client can request a hearing within the certification period, even if that is longer than 90 days.

(6) If a request for restoration of lost food stamp benefits is made within one year of the loss of benefits a client may request a hearing within 90 days of the date of the denial of restoration.

(7) [~~If the appeal involves an overpayment, the portion of the appeal which involves an overpayment will be referred to ORS.~~]In the case of an overpayment and/or IPV the obligor may contact the presiding officer and attempt to resolve the dispute. If the dispute cannot be resolved, the obligor may still request a hearing provided it is filed within the time limit provided in the notice of agency action.

R986-100-124. How Hearings Are Conducted.

(1) Hearings are held at the state level and not at the local level.

(2) Where not inconsistent with federal law or regulation governing hearing procedure, the Department will follow the Utah Administrative Procedures Act.

(3) Hearings for all programs listed in R986-100-102 and overpayments and IPVs in Section 35A-3-601 et seq. are declared to be informal.

(4) Hearings are conducted by an ALJ or a Hearing Officer in the Division of Adjudication. A Hearing Officer has all of the same rights, duties, powers and responsibilities as an ALJ under these rules and the terms are interchangeable.

(5) Hearings [~~may be conducted by~~]are usually scheduled as telephone [~~at the option of the ALJ~~]hearings.

(6) If the client prefers an in-person hearing the client must contact the ALJ assigned to hear the case in advance of the hearing and request that the hearing be converted to an in-person hearing. An in-person hearing is conducted in one of the following ways, at the option of the client:

(a) the client can request that the hearing be conducted in the office of the ALJ and appear personally before the ALJ, but the Department representative and Department witnesses will be allowed to participate by telephone; or

(b) the client can participate from the local Employment Center with the witnesses and Department employees who work in that particular Employment Center. The ALJ and any Department employees or witnesses who are in another location will participate from that location or locations by telephone.

(7) the Department is not responsible for any travel costs incurred by the client in attending an in-person hearing.

(8) the Division of Adjudication will permit collect calls from parties and their witnesses participating in telephone hearings.

R986-100-129. Rescheduling or Continuance of Hearing.

(1) The ALJ may adjourn, reschedule, continue or reopen a hearing on the ALJ's own motion or on the motion of the client or the Department.

(2) [~~A party who is~~]If a party knows in advance of the hearing that they will be unable to proceed with or participate in the hearing on the date or time scheduled, the party must request that the hearing be rescheduled or continued to another day or time.

(a) The request [~~for rescheduling~~]must be [~~made~~]received prior to the hearing.

(b) The request must be made orally or in writing to the ALJ who is scheduled to hear the case. If the request is not received prior to the hearing, the party must show cause for failing to make a timely request.

(c) The party [~~who requests rescheduling~~]making the request must show [~~a reasonable reason~~]cause for the request.

(d) [~~More than one request to reschedule will not normally be granted.~~]Normally, a party will not be granted more than one request for a continuance.

(3) The rescheduled hearing must be held within 30 days of the original hearing date.

R986-100-130. Default Order for Failure to [~~Appear For or~~]Participate[~~ In a Hearing~~].

(1) The Department will issue a default order if an obligor in an overpayment and/or IPV case fails to participate in the administrative process. Participation for an obligor means:

(a) signing and returning to the Department an approved stipulation for repayment and making all of the payments as agreed,

b) requesting and participating in a hearing, or

c) pay the overpayment in full.

2) If a hearing has been scheduled at the request of a client or an obligor and the client or obligor[~~one of the parties~~] fails to appear at or participate in the hearing, either in person or through a representative, the ALJ will, unless a continuance or rescheduling has been requested, issue a [~~decision based on the available evidence~~]default order.

(3) A default order will be based on the record and best evidence available at the time of the order.

R986-100-131. Setting Aside A Default and/or Reopening the Hearing After the Hearing Has Been Concluded.

(1) Any party who fails to participate personally or by authorized representative [~~at a hearing~~]as defined in R986-100-130 may request that the default order be set aside and a hearing or a new hearing be scheduled[~~hearing be reopened~~]. If a party failed to participate in a hearing but no decision has yet been issued, the party may request that the hearing be reopened.

[~~(2) If the request is made by a client prior to the ALJ issuing a decision or within 10 days of the issuance of the decision, the request to reopen will be granted if it is the first time the client has been granted a request to reopen for failure to participate.~~

~~(3) If the client requests reopening more than 10 days after the decision of the ALJ has been issued, or the client has already been granted a reopening on one or more occasions, the decision can be set aside and the hearing reopened only if:~~

~~(a) the request is made in writing; and~~

~~(b) the client shows good cause for not participating; and~~

~~(c) the client shows good cause for not requesting reopening within 10 days.~~

~~(4) If the request to reopen for failure to participate is made by the Department, the request will only be considered if it is in writing and establishes good cause for failure to participate. A request made by the Department more than 10 days after the decision will not be granted.~~](2) The request must be in writing, must set forth the reason for the request and must be mailed, faxed or delivered to the ALJ or presiding officer who issued the default order within ten days of the issuance of the default. If the request is made after the expiration of the ten day time limit, the party requesting reopening must show good cause for not making the request within ten days.

(3) The ALJ has the discretion to schedule a hearing to determine if a party requesting reopening satisfied the requirements of this rule or may grant or deny the request on the basis of the record in the case.

(4) If a presiding officer issued the default, the officer shall issue a decision either granting or denying the request. If the request is granted the obligor will be given 10 days in which to enter into a stipulation and repayment agreement. If the obligor does not sign the stipulation within 10 days, the matter will be set for a hearing on the merits.

(5) The ALJ or presiding officer may, on his or her own motion, reschedule, continue or reopen a case if it appears necessary to take continuing jurisdiction based on a mistake as to facts or if the denial of a hearing would be an affront to fairness.

([~~5~~]6) If a request to set aside the default or a request for reopening is not granted, the ALJ or presiding officer will issue a decision denying the request to reopen. A copy of the decision will be given or mailed to each party, with a clear statement of the right of appeal or judicial review. A defaulted party may appeal a denial of a request to set aside a default by following the procedure in R986-100-135. The appeal can only contest the denial of the request to set aside the default and not the underlying merits of the case. If the default is set aside on appeal, the Executive Director or designee will remand the case to an ALJ for a hearing on the merits.

R986-100-132. What Constitutes Grounds to Set Aside a Default[~~Good Cause for Failure to Participate in the Hearing~~].

(1) A request to reopen or set aside for failure to participate:

(2) will be granted if the party was prevented from participating and/or appearing at the hearing due to circumstances beyond the party's control;

(b) may be granted upon such terms as are just for any of the following reasons: mistake, inadvertence, surprise, excusable neglect or any other reason justifying relief from the operation of the decision. The determination of what sorts of neglect will be considered excusable is an equitable one, taking into account all of the relevant circumstances including:

(i) the danger that the party not requesting reopening will be harmed by reopening,

(ii) the length of the delay caused by the party's failure to participate including the length of time to request reopening,

(iii) the reason for the request including whether it was within the reasonable control of the party requesting reopening,

(iv) whether the party requesting reopening acted in good faith, and

(v) whether the party was represented by another at the time of the hearing. Attorneys and representatives are held to a higher standard, and

(vi) whether based on the evidence of record and the parties arguments or statements, setting aside the default and taking additional evidence might effect the outcome of the case.

(2) Requests to reopen or set aside are remedial in nature and thus must be liberally construed in favor of providing parties with an opportunity to be heard and present their case. Any doubt must be resolved in favor of granting reopening.[~~(1) Failure to report as instructed at the time and place of the scheduled hearing is the equivalent of failing to participate, even if the party reports at another time or place. In such circumstances the party must request that the hearing be reopened.~~

~~(2) Good cause for failing to participate in a hearing may not include such things as:~~

~~(a) failure to read and follow instructions on the notice of hearing;~~

~~(b) failure to arrange personal circumstances such as transportation or child care;~~

~~(c) failure to arrange for receipt or distribution of mail;~~

~~(d) failure to delegate responsibility for participation in the hearing; or~~

~~(e) forgetfulness.~~]

R986-100-134. Payments of Assistance Pending the Hearing.

(1) A client is entitled to receive continued assistance pending a hearing contesting a Department decision to reduce or terminate food stamps, RRP, FEPTP, or FEP financial assistance if the client's request for a hearing is received no later than 10 days after the date of the notice of the reduction, [~~denial,~~]or termination[~~became effective~~]. The assistance will continue unless the certification period expires until a decision is issued by the ALJ. If the certification period expires while the hearing or decision is pending, assistance will be terminated. If a client becomes ineligible or the assistance amount is reduced for another reason pending a hearing,

assistance will be terminated or reduced for the new reason unless a hearing is requested on the new action.

(2) If the client is otherwise eligible, ES CC can be paid pending an appeal of a decision from ORS that the client is not cooperating in the establishment of paternity. The client's request for a hearing must be received no later than 10 days after the date of the notice of denial or termination. The ES CC assistance will continue until a decision is issued by an ALJ regardless of when the certification period expires. If a client becomes ineligible or the assistance amount is reduced for another reason pending a hearing, assistance will be terminated or reduced for the new reason. If a client files a new application after a decision by an ALJ denying assistance, the new application will be denied and the client will have no right to appeal that denial unless there has been a change in circumstances.

([~~2~~]3) If the client can show good cause for not requesting the hearing within 10 days of the [~~action~~]notice, assistance may be continued if the client can show good cause for failing to file in a timely fashion. Good cause in this paragraph means that the delay in filing was due to circumstances beyond the client's control or for circumstances which were compelling and reasonable[~~client made every effort to comply~~]. Because the Department allows a client to request a hearing by telephone or mail, good cause does not mean illness, lack of transportation or temporary absence.

([~~3~~]4) A client can request that payment of assistance not be continued pending a hearing but the request must be in writing.

([4]5) If payments are continued pending a hearing, the client is responsible for any overpayment in the event of an adverse decision.

([~~5~~]6) If the decision of the ALJ is adverse to the client, the client is not eligible for continued assistance pending any appeal of that decision.

([~~6~~]7) If a decision favorable to the client is rendered after a hearing, and payments were not made pending the decision, retroactive payment will be paid back to the date of the adverse action if the client is otherwise eligible.

([~~7~~]8) [~~A client's CC subsidy or f~~]Financial assistance payments under GA or WTE, and CC subsidies, except as provided in paragraph (2) above will not continue during the hearing process regardless of when the appeal is filed.

([~~8~~]9) Financial assistance under the RRP will not extend for longer than the eight-month time limit for that program under any circumstances.

([~~9~~]10) Clients receiving financial assistance under the FEPTP program must continue to participate to receive financial assistance during the hearing process.

([~~10~~]11) Financial assistance under the FEPTP program will not extend for longer than the seven-month time limit for that program under any circumstance.

([~~11~~]12) Assistance is not allowed pending a hearing from a denial of an application for assistance.

R986-100-135. Further Appeal From the Decision of the ALJ or Presiding Officer.

Either party has the option of appealing the decision of the ALJ or presiding officer to either the Executive Director or person [~~designee~~]designated by the Executive Director or to the District Court. [~~Either~~]The appeal must be filed, in writing, within 30 days of the issuance of the decision of the ALJ or presiding officer.

KEY: employment support procedures
[~~July 1, 2002~~]2003
35A-3-101 et seq.
35A-3-301 et seq.
35A-3-401 et seq.

Workforce Services, Employment Development
R986-200
Family Employment Program

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26210
FILED: 05/01/2003, 13:58

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To reflect the changes being made in the field of health care by allowing our clients a greater option in choosing medical health providers and to reflect federal law regarding eligibility of Americorps*Vista volunteers.

SUMMARY OF THE RULE OR CHANGE: These amendments to Sections R986-200-235 and R986-200-236 are being made to reflect federal law. Payments to most Americorps volunteers and all Job Corps participants are not considered "earned income" so they have been moved to the "unearned income" section. Americorps*Vista volunteers are considered to be working so payments made to those volunteers are considered "earned income" for purposes of this rule. The amendments to Sections R986-200-202 and R986-200-218 are being made because the Department currently accepts medical proof from a medical doctor, a doctor of osteopathy, or a licensed psychologist only. Our clients do not have the resources to pay for medical care and the clinics they can use are staffed by Physician Assistants and Advanced Practice Registered Nurses to provide services. The same is true in rural areas. The Department needs to accept medical verification from these additional licensed professionals to better serve our clients.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-3-301 et seq.

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: There will be no costs or savings to the state budget as this is a federally funded program.
❖LOCAL GOVERNMENTS: These changes will have no effect on local government as the Family Employment Program is a federally funded state run program.
❖OTHER PERSONS: There will be no costs or savings to any person as a result of these rule changes.

COMPLIANCE COSTS FOR AFFECTED PERSONS: These changes are cost neutral and there are no compliance costs for any persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: These changes will have no fiscal impact on any business.

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

WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2003

AUTHORIZED BY: Raylene G. Ireland, Executive Director

R986. Workforce Services, Employment Development.
R986-200. Family Employment Program.
R986-200-202. Family Employment Program (FEP).

(1) The goal of FEP is to increase family income through employment, and where appropriate, child support and/or disability payments.

(2) FEP is for families with only one able bodied parent in the household. If the family has two able bodied parents in the household, the family is not eligible for FEP but may be eligible for FEPTP. Able bodied means capable of earning at least $500 per month.

(3) If a household has two parents, and at least one parent is incapacitated, the parent claiming incapacity must verify that incapacity in one of the following ways:

(a) receipt of disability benefits from SSA;

(b) 100 percent disabled by VA; or

(c) by submitting a written statement from:

(i) a licensed medical doctor;

(ii) a doctor of osteopathy; [~~or~~]

(iii) a licensed/certified psychologist[~~-~~];

(iv) a licensed Advanced Practice Registered Nurse; or

(v) a licensed Physician's Assistant,

(4) Incapacity means not capable of earning $500 per month. The incapacity must be expected to last 30 days or longer.

(5) An applicant or client must cooperate in the obtaining of a second opinion regarding incapacity if requested by the Department. Only the costs associated with a second opinion requested by the Department will be paid for by the Department. The Department will not pay the costs associated with obtaining a second opinion if the client requests the second opinion.

(6) An incapacitated parent is included in the FEP household assistance unit and the parent's income and assets are counted toward establishing eligibility unless the parent is a SSI recipient. If the parent is a SSI recipient, none of the income or assets of the SSI recipient is counted.

(7) An incapacitated parent must still negotiate, sign and agree to participate in an employment plan. If the incapacity is such that employment is not feasible now or in the future, participation may be limited to cooperating with ORS and filing for any assistance or benefits to which the parent may be entitled. If it is believed the incapacity might not be permanent, the parent will also be required to seek assistance in overcoming the incapacity.

(8) If a household unit is eligible under both FEP and FEPTP, payment will be made under FEP.

R986-200-218. Exceptions to the Time Limit.

Exceptions to the time limit may be allowed on a month by month basis for up to 20 percent of the average monthly number of families receiving financial assistance from FEP and FEPTP during the previous Federal fiscal year for the following reasons:

(1) A hardship under Section 35A-3-306 is determined to exist when a parent:

(a) is determined to be medically unable to work. The client must provide proof of inability to work in one of the following ways:

(i) receipt of disability benefits from SSA; or

(ii) receipt of VA Disability benefits based on the parent being 100 percent disabled; or

(iii) placement on the Division of Services to People with Disabilities' waiting list. Being on the waiting list indicates the person has met the criteria for a disability; or

(iv) is currently receiving Temporary Total or Permanent Total disability Worker's Compensation benefits; or

(v) a medical statement completed by a medical doctor, a licensed Advanced Practice Registered Nurse, a licensed Physician's Assistant, or a doctor of osteopathy, stating the parent has a medical condition supported by medical evidence, which prevents the parent from engaging in work activities capable of generating income of at least $500 a month. The statement must be completed by a professional skilled in both the diagnosis and treatment of the condition; or

(vi) a statement completed by a licensed clinical social worker, licensed psychologist, or psychiatrist stating that the parent has been diagnosed with a mental health condition that prevents the parent from engaging in work activities capable of generating income of at least $500 a month. Substance abuse is considered the same as mental health condition; or

(b) is under age 19 through the month of their nineteenth birthday; or

(c) is currently engaged in an approved full-time job preparation, educational or training activity which the parent was expected to complete but completion within the 36 months was not possible through no fault of the parent. Additionally, if the parent has previously received, beginning with the month of January 1997, 24 months of financial assistance while attending educational or training activities, good cause for additional months must be shown and approved; or

(d) was without fault and a delay in the delivery of services provided by the Department occurred. The delay must have had an adverse effect on the parent causing a hardship and preventing the parent from obtaining employment. An extension under this section cannot be granted for more than the length of the delay; or

(e) moved to Utah after exhausting 36 months of assistance in another state or states and the parent did not receive supportive services in that state or states as required under the provisions of PRWORA. To be eligible for an extension under this section, the failure to receive supportive services must have occurred through no fault of the parent and must contribute to the parent's inability to work. An extension under this section can never be for longer than the delay in services; or

(f) completed an educational or training program at the 36th month and needs additional time to obtain employment; or

(g) is unable to work because the parent is required in the home to meet the medical needs of a dependent. Proof, consisting of a medical statement from a medical doctor, doctor of osteopathy, licensed clinical social worker or licensed psychologist, is required unless the dependent is on the Travis C medicaid waiver program. The medical statement must include all of the following:

(i) the diagnosis of the dependent's condition,

(ii) the recommended treatment needed or being received for the condition,

(iii) the length of time the client will be required in the home to care for the dependent, and

(iv) whether the client is required to be in the home full-time or part-time.

(2) Additional months of financial assistance may be provided if the family includes an individual who has been battered or subjected to extreme cruelty which is a barrier to employment and the implementation of the time limit would make it more difficult to escape the situation. Battered or subjected to extreme cruelty means:

(a) physical acts which resulted in, or threatened to result in, physical injury to the individual;

(b) sexual abuse;

(c) sexual activity involving a dependent child;

(d) being forced as the specified relative of a dependent child to engage in nonconsensual sexual acts or activities;

(e) threats of, or attempts at, physical or sexual abuse;

(f) mental abuse which includes stalking and harassment; or

(g) neglect or deprivation of medical care.

(3) An exception to the time limit can be granted for a maximum of an additional 24 months if:

(a) during the previous month, the parent client was employed for no less than 80 hours; and

(b) during at least six of the previous 24 months, the parent client was employed for no less than 80 hours a month.

(c) If, at the end of the 24-month extension, the parent client qualifies for an extension under Sections (1) or (2) of this rule, an additional extension can be granted under the provisions of those sections.

(4) All clients receiving an extension must continue to participate, to the maximum extent possible, in an employment plan. This includes cooperating with ORS in the collection of establishment and enforcement of child support and the establishment of paternity, if necessary.

(5) If a household filing unit contains more than one parent, and one parent has received at least 36 months of assistance as a parent, then the entire filing unit is ineligible unless both parents meet one of the exceptions listed above. Both parents need not meet the same exception.

(6) A family in which the only parent or both parents are ineligible aliens cannot be granted an extension under Section (3) above or for any of the reasons in Subsections (1)(c),(d),(e) or (f). This is because ineligible aliens are not legally able to work and supportive services for work, education and training purposes are inappropriate.

(7) A client who is no longer eligible for financial assistance may be eligible for other kinds of public assistance including Food Stamps, Child Care Assistance and medical coverage. The client must follow the appropriate application process to determine eligibility for assistance from those other programs.

R986-200-235. Unearned Income.

(1) Unearned income is income received by an individual for which the individual performs no service.

(2) Countable unearned income includes:

(a) pensions and annuities such as Railroad Retirement, Social Security, VA, Civil Service;

(b) disability benefits such as sick pay and workers' compensation payments unless considered as earned income;

(c) unemployment Insurance;

(d) strike or union benefits;

(e) VA allotment;

(f) income from the GI Bill;

(g) assigned support retained in violation of statute is counted when a request to do so has been generated by ORS;

(h) payments received from trusts made for basic living expenses;

(i) payments of interest from stocks, bonds, savings, loans, insurance, a sales contract, or mortgage. This applies even if the payments are from the sale of an exempt home. Payments made for the down payment or principal are counted as assets;

(j) inheritances;

(k) life insurance benefits;

(l) payments from an insurance company or other source for personal injury, interest, or destroyed, lost or stolen property unless the money is used to replace that property;

(m) cash contributions or gifts over $30 per quarter from any source including family, a church or other charitable organization;

(n) rental income if the rental property is managed by another individual or company for the owner. Income from rental property managed by someone in the household assistance unit is considered earned income; [~~or~~]

(o) financial assistance payments received from another state or the Department from another type of financial assistance program including a diversion payment[~~.~~]; and

(p) payments from Job Corps and Americorps living allowances.

(3) Unearned income which is not counted (exempt):

(a) cash gifts for special occasions which do not exceed $30 per quarter for each person in the household assistance unit. The gift can be divided equally among all members of the household assistance unit;

(b) bona fide loans, including reverse equity loans on an exempt property. A bona fide loan means a loan which has been contracted in good faith without fraud or deceit and genuinely endorsed in writing for repayment;

(c) the value of food stamps, food donated from any source, and the value of vouchers issued under the Women Infants and Children program;

(d) any per capita payments made to individual tribal members by either the secretary of interior or the tribe are excluded. Income to tribal members derived from privately owned land is not exempt;

(e) any payments made to household members that are declared exempt under federal law;

(f) the value of governmental rent and housing subsidies, federal relocation assistance, or EA issued by the Department;

(g) money from a trust fund to provide for or reimburse the household for a specific item NOT related to basic living expenses. This includes medical expenses and educational expenses. Money from a trust fund to provide for or reimburse a household member for basic living expenses is counted;

(h) travel and training allowances and reimbursements if they are directly related to training, education, work, or volunteer activities;

(i) all unearned income in-kind. In-kind means something, such as goods or commodities, other than money;

(j) thirty dollars of the income received from rental income unless greater expenses can be proven. Expenses in excess of $30 can be allowed for:

(i) taxes;

(ii) attorney fees expended to make the rental income available;

(iii) upkeep and repair costs necessary to maintain the current value of the property; and

(iv) interest paid on a loan or mortgage made for upkeep or repair. Payment on the principal of the loan or mortgage cannot be excluded;

(k) if meals are provided to a roomer/boarder, the value of a one-person food stamp allotment for each roomer/boarder;

(l) payments for energy assistance including H.E.A.T payments, assistance given by a supplier of home energy, and in-kind assistance given by a private non-profit agency;

(m) federal and state income tax refunds and earned income tax credit payments;

(n) payments made by the Department to reimburse the client for education or work expenses, or a CC subsidy;

(o) income of an SSI recipient. Neither the payment from SSI nor any other income, including earned income, of an SSI recipient is included;

(p) payments from a person living in the household who is not included in the household assistance unit, as defined in R986-200-205, when the payment is intended and used for that person's share of the living expenses;

(q) educational assistance and college work study except Veterans Education Assistance intended for family members of the student; and

(r) for a refugee, as defined in R986-300-303(1), any grant or assistance, whether cash or in-kind, received directly or indirectly under the Reception and Placement Programs of Department of State or Department of Justice.

R986-200-236. Earned Income.

(1) All earned income is counted when it is received even if it is an advance on wages, salaries or commissions.

(2) Countable earned income includes:

(a) wages, [~~including payments from Job Corps and Americorps living allowances,~~]except Americorps[~~/~~]*Vista living allowances are not counted;

(b) salaries;

(c) commissions;

(d) tips;

(e) sick pay which is paid by the employer;

(f) temporary disability insurance or temporary workers' compensation payments which are employer funded and made to an individual who remains employed during recuperation from a temporary illness or injury pending the employee's return to the job;

(g) severance pay, including the cash out of vacation, holiday, and sick pay;

(h) rental income only if managerial duties are performed by the owner to receive the income. The number of hours spent performing those duties is not a factor. If the property is managed by someone other than the individual, the income is counted as unearned income;

(i) net income from self-employment less allowable expenses, including income over a period of time for which settlement is made at one given time. The periodic payment is annualized prospectively. Examples include the sale of farm crops, livestock, and poultry;

(j) training incentive payments and work allowances; and

(k) earned income of dependent children.

(3) Income that is not counted as earned income:

(a) income for an SSI recipient;

(b) reimbursements from an employer for any bona fide work expense;

(c) allowances from an employer for travel and training if the allowance is directly related to the travel or training and identifiable and separate from other countable income; or

(d) Earned Income Tax Credit (EITC) payments.

KEY: family employment program
[~~July 1, 2002~~|2003
35A-3-301 et seq.

Workforce Services, Employment Development
R986-400
General Assistance and Working Toward Employment

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26216
FILED: 05/01/2003, 14:06

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendments are to allow documentation from a wider range of health care professionals and to clarify and limit the type of training which can be supported.

SUMMARY OF THE RULE OR CHANGE: A General Assistance (GA) client must provide medical proof of unemployability. The Department currently accepts medical proof from a medical doctor, a doctor of osteopathy, or a licensed psychologist only. Our clients do not have the resources to pay for medical care and the clinics they can use are staffed by Physician Assistant's and Advanced Practice Registered Nurses to provide services to this population. The same is true in rural areas. The Department needs to accept medical verification from these additional licensed professionals to better serve

our clients. The current rule allows a GA customer to receive a maximum of 12 months of short-term skills training. A customer must be unemployable to be eligible for GA. A person who is able to attend school could work instead and it is not appropriate to support schooling or training with the very limited funds available for GA customers. Because the Department does not support schooling for GA customers, the 12 months of short-term skills training was confusing and difficult to administer. There are, however, some individuals who are presently unemployable but could become employable with some assistance. This proposed amendment does not support training for GA customers but will support short-term work readiness or occupational skills enhancement opportunities for GA customers for a maximum of 3 months instead of the 12 months currently allowed.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 35A-3-401 and 35A-3-402

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: Any costs which may be associated with this change will be made within current funding levels. If this results in more individuals being eligible for GA, the Department will take other measures to limit enrollment in order to stay within budget.
❖LOCAL GOVERNMENTS: This is a state program so there are no costs or savings to local government.
❖OTHER PERSONS: There will be no costs or savings to any persons. The rule merely clarifies the maximum amount of time a GA recipient can receive short-term skills training.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons. The rule merely clarifies the maximum amount of time a GA recipient can receive short-term skills training.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This change will have no fiscal impact on business as no business is affected in any way by these changes.

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

WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2003

AUTHORIZED BY: Raylene G. Ireland, Executive Director

R986. Workforce Services, Employment Development.
R986-400. General Assistance and Working Toward Employment.
R986-400-402. General Provisions.

(1) GA provides temporary financial assistance to single persons without dependent children and married couples without dependent children who are unemployable due to a physical or mental health condition.

(2) Unemployable is defined to mean the individual is not capable of earning $500 per month. The incapacity must be expected to last 30 days or more.

(3) Drug addiction and/or alcoholism alone is insufficient to prove the unemployable requirement for GA as defined in Public Law 104-121.

(4) For a married couple living together only one must meet the unemployable criteria. The spouse who is employable will be required to meet the work requirements of WTE unless the spouse can provide medical proof that he or she is needed at home to care for the unemployable spouse. Medical proof, consisting of a medical statement from a medical doctor, a doctor of osteopathy, a licensed Advanced Practice Registered Nurse, a licensed Physician's Assistant, or a licensed psychologist, is required. The medical statement must include all of the following:

(a) the diagnosis of the spouse's condition;

(b) the recommended treatment needed or being received for the condition;

(c) the length of time the client will be required in the home to care for the spouse; and

(d) whether the client is required to be in the home full time or part time.

(5) GA is only available to a client who is at least 18 years old or legally or factually emancipated. Factual emancipation means the client has lived independently from his or her parents or guardians and has been economically self-supporting for at least six consecutive months, and the client's parents have refused financial support.

(6) A client claiming factual emancipation must cooperate with the Department in locating his or her parents. The parents, once located, will be contacted by the Department. If the parents continue to refuse to support the client, a referral will be made to ORS to enforce the parents' child support obligations.

(7) A person eligible for Bureau of Indian Affairs assistance is not eligible for GA financial assistance.

(8) In addition to the residency requirements in R986-100-106, residents in a group home that is administered under a contract with a governmental unit or administered by a governmental unit are not eligible for financial assistance.

R986-400-403. Proof of Unemployability.

(1) An applicant must provide current medical evidence that he or she is not capable of working and earning $500 per month due to a physical or mental health condition and that the condition is expected to last at least 30 days from onset. Evidence consists of a statement from a medical doctor, a doctor of osteopathy, a licensed Advanced Practice Registered Nurse, a licensed Physician's Assistant, a licensed psychologist, or an agency involved in

disability determination, such as VA or the State Office of Rehabilitation.

(2) An applicant must cooperate in the obtaining of a second opinion if requested by the Department. Only the costs associated with a second opinion requested by the Department will be paid for by the Department. The Department will not pay the costs associated with obtaining a second opinion if the client requests the second opinion.

(3) If the illness or incapacity is expected to last longer than 12 months, the client must apply for SSDI/SSI benefits.

(4) Full-time or part-time participation in post-high school education or training is considered evidence of employability rendering the client ineligible for GA financial assistance.[~~unless the Department directs the client to participate in short term skills training as part of a client's employment plan. Short term skills training is defined as a course of study which an otherwise unemployable client can complete within 12 months and which is expected to lead to employability. If the client is not directed to participate in short term skills training in the employment plan, the client must report any voluntary participation in an education or training program to his or her employment counselor.~~] If the Department believes work readiness or occupational skills enhancement opportunities will lead to employability, those services can be offered for a maximum of three months.

KEY: general assistance, working toward employment
[~~July 1, 2002~~]2003
35A-3-402
35A-3-403

Workforce Services, Employment Development
R986-700
Child Care Assistance

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26226
FILED: 05/01/2003, 14:33

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is being changed to comply with state and federal law and to insure prompt handling of lost or stolen checks.

SUMMARY OF THE RULE OR CHANGE: To be eligible for Employment Support Child Care (ES CC) a client must be working and making at least minimum wage or the prevailing community standard. The Department did not recognize the stipend as meeting the work requirement for ES CC. Federal law provides that payments made to Americorps*Vista volunteers "shall not in any way reduce or eliminate the level of or eligibility for assistance." This rule change to Section R986-700-709 recognizes the stipend as meeting the prevailing community standard test, brings the Department into compliance with federal law and makes Americorps*Vista volunteers eligible for ES CC. The proposed amendment to Section R986-700-714 is to insure that child care payments are made promptly. A child care check which is lost or stolen must be reported within 60 days under this amendment. This also helps insure that the Department is able to determine whether to issue a new check. If a check is reported lost or stolen long after it happens the Department is often unable to determine if it should be replaced because the evidence is no longer available. Child care payments which are issued on the Horizon card "age off" after 60 days so this makes the policy for checks more like the policy for the Horizon card. House Bill 31 passed in the 2003 General Session and transferred the responsibility for the collection of overpayments from the Office of Recovery Services to the Department. All other changes in these sections are being made to reflect that statutory directive from the legislature. (DAR NOTE: H.B. 31 is found at UT L 2003 Ch 90, and is effective July 1, 2003.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 36A-3-310

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: There will be no costs or savings to the state budget because child care is a federally funded program.
❖LOCAL GOVERNMENTS: Child care is a federally funded state wide program thus there will be no costs or savings to local government.
❖OTHER PERSONS: There will be no costs or savings to any individuals as a result of these changes. Americorps*Vista volunteers will now be eligible for Employment Support Child Care (ES CC). It is not believed that any individual was denied ES CC prior to this rule change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no costs or savings to any individuals as a result of these changes. Americorps*Vista volunteers will now be eligible for Employment Support Child Care (ES CC). It is not believed that any individual was denied ES CC prior to this rule change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: If a child care provider fails to report a lost or stolen check within 60 days of the date of issuance, the provider will not be eligible for reimbursement absent extenuating circumstances. There have been only two cases in the last three years where a provider did not report a lost or stolen check within the 60 days. With this rule change those providers would not be issued a new check. This very minimal impact is out weighted by the Department's need to effectively investigate lost or stolen checks in a timely fashion to prevent fraud.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2003

AUTHORIZED BY: Raylene G. Ireland, Executive Director

R986. Workforce Services, Employment Development.
R986-700. Child Care Assistance.
R986-700-705. Eligible Providers and Provider Settings.

(1) The Department will only pay CC to clients who select eligible providers. The only eligible providers are:

(a) licensed and accredited providers:

(i) licensed homes;

(ii) licensed family group homes; and

(iii) licensed child care centers.

(b) license exempt providers who are not required by law to be licensed and are either;

(i) license exempt centers; or

(ii) related to the client and/or the child. Related in this paragraph is as defined in R986-700-706(3).

(c) homes with a Residential Certificate obtained from the Bureau of Licensing.

(2) All clients who were receiving child care prior to January 1, 2001, will be granted a grace period in which to find an eligible provider. The length of the grace period will be determined by the Department but in no event will it extend later than June 30, 2001.

(3) If a new client has a provider who is providing child care at the time the client applies for child care assistance or has provided child care in the past and has an established relationship with the child(ren), but the provider is not currently eligible, the client may receive child care assistance for a period not to exceed three months if the provider is willing to become an eligible provider and actively pursues eligibility.

(4) The Department may, on a case by case basis, grant an exception and pay for CC when an eligible provider is not available:

(a) within a reasonable distance from the client's home. A reasonable distance, for the purpose of this exception only, will be determined by the transportation situation of the parent and child care availability in the community where the parent resides; or

(b) because a child in the home has special needs which cannot be otherwise accommodated; or

(c) which will accommodate the hours when the client needs child care; or

(d) if the provider lives in an area where the Department of Health lacks jurisdiction, which includes tribal lands, to provide licensing or certification; or

(5) If an eligible provider is available, an exception may be granted in the event of unusual or extraordinary circumstances but only with the approval of a Department supervisor.

(6) If an exception is granted under paragraph (4) or (5) above, the exception will be reviewed at each of the client's review dates to determine if an exception is still appropriate.

(7) License exempt providers must register with the Department and agree to maintain minimal health and safety criteria by signing a certification before payment to the client can be approved. The minimum criteria are that:

(a) the provider be at least 18 years of age and physically and mentally capable of providing care to children;

(b) the provider's home is equipped with hot and cold running water, toilet facilities, and is clean and safe from hazardous items which could cause injury to a child. This applies to outdoor areas as well;

(c) there are working smoke detectors and fire extinguishers on all floors of the house where children are provided care;

(d) there are no individuals residing in the home who have felony criminal convictions, or misdemeanor convictions which are offenses against a person, or have been subject to a substantiated finding of child abuse or neglect by the Utah Department of Human Services, Division of Child and Family Services or a court;

(e) there is a telephone in operating condition with a list of emergency numbers located next to the phone which includes the phone numbers for poison control and for the parents of each child in care;

(f) food will be provided to the child in care of sufficient amount and nutritional value to provide the average daily nutrient intake required. Food supplies will be maintained to prevent spoilage or contamination. Any allergies will be noted and care given to ensure that the child in care is protected from exposure to those items; and

(g) the child in care will be immunized as required by the Utah Immunization Act and;

(h) good hand washing practices will be maintained to discourage infection and contamination.

(8) The following providers are not eligible for receipt of a CC payment:

(a) a member of household assistance unit who is receiving one or more of the following assistance payments: FEP, FEPTP, diversion assistance or food stamps for any child in that household assistance unit. The person may, however, be paid as a provider for a child in a different household assistance unit;

(b) a sibling of the child living in the home;

(c) household members whose income must be counted in determining eligibility for CC;

(d) a parent, foster care parent, stepparent or former stepparent, even if living in another residence;

(e) illegal aliens;

(f) persons under age 18;

(g) a provider providing care for the child in another state; and

(h) a provider who has committed fraud as a provider, as determined by [~~ORS~~]the Department or by a court.

R986-700-709. Employment Support (E[~~C~~|S) CC.

(1) Parents who are not eligible for FEP CC or Diversion CC may be eligible for Employment Support (ES) CC. To be eligible, a parent must be employed or be employed while participating in educational or training activities. Work Study is not considered employment. A parent who attends school but is not employed at least 15 hours per week, is not eligible for ES CC. ES CC will only be provided to cover the hours a client needs child care for work or work and approved educational or training activities.

(a) If the household has only one parent, the parent must be employed a minimum of 15 hours per week.

(b) If the family has two parents, CC can be provided if:

(i) one parent is employed a minimum of 35 hours per week and the other parent is employed a minimum of 15 hours per week and their work schedules cannot be changed to provide care for the child(ren). CC will only be provided during the time both parents are in approved activities and neither is available to care for the children; or

(ii) one parent is employed and the other parent cannot work or provide child care because of a physical, emotional or mental incapacity. Any employment or educational or training activities invalidate a claim of incapacity. The individual claiming incapacity must provide proof, by way of a report signed by a medical doctor, doctor of osteopath or licensed/certified psychologist, which states that:

(A) the parent cannot work; and

(B) the incapacity prevents the parent from caring for a child; and

(C) the incapacity is expected to last at least 30 days.

(2) Employed or self-employed parent client(s) must make, either through wages or profit from self-employment, a rate of pay equal to or greater than minimum wage multiplied by the number of hours the parent is working. If the prevailing community standard is below minimum wage, the employed parent client must make at least the prevailing community standard. The stipend received by Americorps*Vista volunteers meets the prevailing community standard test for this section even though the stipend is not counted as income. The activities of Americorps*Vista volunteers are considered to be work and not training. Job Corps activities are considered to be training and a client in the Job Corps would also have to meet the work requirements to be eligible for ES CC.

(3) If a parent was receiving FEP or FEPTP, and their financial assistance was terminated due to increased income, and the parent is otherwise eligible for ES CC, the subsidy deduction will not be taken for the two months immediately following the termination of FEP or FEPTP, provided the client works a minimum of 15 hours per week. The third month following termination of FEP or FEPTP CC is subject to the subsidy deduction.

R986-700-714. CC Payment Method.

(1) CC payments to parents will be generated monthly by a two-party check issued in the parent's name and the chosen provider's name, except as noted in paragraph (2) below. The check is mailed to the client. In the event of an emergency, a payment up to a maximum of $125 can be made on the Horizon card. Emergency payments can only be made where a parent is in danger of not being able to obtain necessary child care if the parent is required to wait until the two party check can be issued.

(2) CC payments will be made by electronic benefit transfer (EBT) either through a point of sale (POS) machine or interactive voice recording (IVR) system to authorized provider types as determined by the Department. The provider may elect which option of EBT to use. The provider must sign an agreement with the Department's contractor in order to be eligible to receive CC payments. If the provider elects to use the POS method of payment, the provider must lease a POS machine at the provider's own expense.

(3) In the event that a check is reported as lost or stolen, both the parent and the provider are required to sign a statement that they have not received funds from the original check before a replacement check can be issued. The check must be reported as lost or stolen within 60 days of the date the check was mailed. The statement must be signed on an approved Department form and the signing witnessed, and in some cases notarized, at a local office of the Department. If the provider is unable to come into a Department office to sign the form, the form may be accepted if the signature is notarized. If the original check has been redeemed, a copy of the check will be reviewed and both the parent and provider must provide a sworn, notarized statement that the signature on the endorsed check is a forgery. The Department may require a waiting period prior to issuing a replacement check.

(4) The Department is authorized to stop payment on a CC check without prior notice to the client if:

(a) the Department has determined that the client was not eligible for the CC payment, the Department has confirmed with the child care provider that no services were provided for the month in question or the provider cannot be located, and the Department has made an attempt to contact the parent: or

(b) when the check has been outstanding for at least 90 days; or

(c) the check is lost or stolen.

(5) No stop payment will be issued by the Department without prior notice to the provider unless the provider is not providing services or cannot be contacted.

R986-700-715. Overpayments.

(1) An overpayment occurs when a client or provider received CC for which they were not eligible. If the Department fails to establish one or more of the eligibility criteria and through no fault of the client, payments are made, it will not be considered to have been an overpayment if the client would have been eligible and the amount of the subsidy would not have been affected. If the eligibility criteria is cooperation with ORS and the client is not in compliance, through no fault of her own, even if the client refuses to cooperate at the time the mistake is discovered, payments made prior to the discovery of the mistake are not considered to have been an overpayment.[~~(2) If the Department has reason to believe that a CC overpayment has occurred, a referral for collection will be made to ORS.~~]

([~~3~~]2) If [~~ORS determines that~~]the overpayment was because the client committed fraud, including forging a provider's name on a two party CC check, the client will be disqualified from further receipt of CC:

(a) for a period of one year for the first occurrence of fraud;

(b) for a period of two years for the second occurrence of fraud; and

(c) for life for the third occurrence of fraud.

([~~4~~]3) If a client receives an overpayment but was not at fault in creating the overpayment, the client will be responsible for repayment but there is no disqualification or ineligibility period even if the client is considered by ORS to be not cooperating in repayment.

([~~5~~]4) If [~~ORS determines that~~]the client was at fault in the creation of an overpayment for any reason other than fraud in paragraph ([~~3~~]2) above, the client will be given an opportunity to repay the overpayment without a disqualification or ineligibility period for the first occurrence. If there is a second fault overpayment for reasons other than fraud in (3) above and the first overpayment has not been paid off, the client will be ineligible for CC until both overpayments have been satisfied. If the second overpayment occurred after the first overpayment was repaid in full, the second overpayment will not result in disqualification or ineligibility.

([~~6~~]5) [~~If the client does not cooperate with ORS in its investigation or collection efforts, the Department will terminate CC upon notification from ORS that the client is not cooperating.~~]CC will be terminated if a client fails to cooperate with the Department's efforts to investigate and collect alleged overpayments.

(7) These disqualification and ineligibility periods are in lieu of, and not in addition to, the disqualification periods found in R986-100-117.

(8) If the Department has reason to believe an overpayment has occurred[~~, a referral to ORS has been made,~~] and it is likely that the client will be determined to be disqualified or ineligible as a result of the overpayment, payment of future CC may be withheld, at the discretion of the Department, to offset any overpayment which may be determined[~~ by ORS~~].

KEY: child care
[~~January 1,~~]2003
35A-3-310

Workforce Services, Employment Development
R986-900-902
Options and Waivers

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26230
FILED: 05/01/2003, 14:38

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The change is to incorporate into the rule a waiver granted by the federal government for the food stamp program.

SUMMARY OF THE RULE OR CHANGE: Subsection R986-900-902(2)(l) allows recertification interviews to be conducted by telephone. This will be a great advantage to our customers who are unable to come to the office for an in person interview.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-3-103

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: There will be no costs or savings to the state budget as this is a federally funded program.
❖LOCAL GOVERNMENTS: This is a state program and federally funded so there are no costs or savings to local governments.
❖OTHER PERSONS: There are no costs or savings to any person because of this change. This waiver merely allows people to conduct a recertification interview by telephone. The client will still be allowed to come into an office if the client prefers.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for any affected persons. This waiver merely allows people to conduct a recertification interview by telephone. The client will still be allowed to come into an office if the client prefers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This waiver will have no fiscal impact on any business.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2003

AUTHORIZED BY: Raylene G. Ireland, Executive Director

R986. Workforce Services, Employment Development.
R986-900. Food Stamps.
R986-900-901. Authority for Food Stamps and Applicable Rules.

(1) Food stamps provide assistance to eligible individuals in accordance with the requirements found in: The Food Stamp Act of 1977 as amended (7 USC 2011 et seq); 7 CFR 271 through 7 CFR 283; and PRWORA and its amendments. The complete text of all applicable federal laws and regulations can be found at the United States Department of Agriculture web site at: http://www.fns.usda.gov/fsp/. Federal regulations are also available at most public libraries, on the Internet at: http://access.gpo.gov/nara/cfr/waisidx_00/7cfrv4_00.html, at the Department of Workforce Services, Division of Employment Development, Appeals Division 2nd Floor, 140 E 300 S, Salt Lake City UT, 84145; or at the Division of Administrative Rules, 4120 State Office Building, Salt Lake City UT, 84114. The state maintains a policy manual describing the benefits and eligibility requirements for receipt of food stamps. The policy manual is available at all Department offices. The provisions of 7 CFR 271 through 7 CFR 283 (2000) are incorporated herein by reference.

(2) The provisions of R986-100 apply to food stamps except where specifically noted in that rule.

R986-900-902. Options and Waivers.

The Department administers the food stamp program in compliance with federal law with the following exceptions or clarifications:

(1) The following options not otherwise found in R986-100 have been adopted by the Department where allowed by the applicable federal law or regulation:

(a) The Department has opted to hold hearings at the state level and not at the local level.

(b) The Department does not offer a workfare program for ABAWDs (Able Bodied Adults Without Dependents).

(c) An applicant is required to apply at the local office which serves the area in which they reside.

(d) The Department has opted to use the Simplified Standard Utility Allowance found in Section 4104 of the Farm Bill. The Department has a mandatory standard utility allowance. This means the customer is eligible for an appropriate utility allowance at the time of application and eligibility for the appropriate allowance is re-determined at recertification and if the household moves to a different place of residence. The customer does not have the choice of using "actual" utility expenses. The Department has three utility standards that are updated annually and are available upon request. This Farm Bill option allows households in subsidized housing and households in shared living arrangements to receive the full appropriate utility allowance.

(e) The Department does not use photo ID cards. ID cards are available upon request to homeless, disabled, and elderly clients so that the client is able to use food stamp benefits at a participating restaurant.

(f) The state has opted to provide food stamp benefits through the use of an electronic benefit transfer system known as the Horizon Card.

(g) The Department counts diversion payments in the food stamp allotment calculation.

(h) The Department has opted to exempt individuals from mandatory participation in Food Stamp Employment and Training activities in counties that have been designated as Labor Surplus Areas by the Department of Labor. These counties change each year based on Department of Labor statistics and a list of counties is available from the Department. They are the same counties as referenced in subsection (2)(a) below.

(i) The Department has opted to use Utah's TANF vehicle allowance rules in conjunction with the Food Stamp Program vehicle allowance regulations at 7 CFR 273.8, as authorized by Pub. L. No. 106-387 of the Agriculture Appropriations Act 2001, Food Stamp Act of 1977, 7 USC 2014.

(j) The Department has opted to count all of an ineligible alien's resources and all but a pro rata share of the ineligible alien's income and deductible expenses as provided in 7 CFR 273.11(c)(3)(ii)(A).

(k) A client may waive his or her right to an administrative disqualification hearing.

(2) The Department has been granted the following applicable waivers from the Food and Nutrition Service:

(a) Certain Utah counties have been granted a waiver which exempts ABAWDs from the work requirements of Section 824 of PRWORA. The counties granted this waiver change each year based on Department of Labor statistics. A list of counties granted this waiver is available from the Department.

(b) If a client does not provide initial verification as requested within ten days of the interview, the Department can deny the household's application at the expiration of the ten days and is not required to wait until the 30th day following the date of application.

(c) The Department requires that a household need only report changes in earned income if there is a change in source, the hourly rate or salary, or if there is a change in full-time or part-time status. A client is required to report any change in unearned income over $25 or a change in the source of unearned income.

(d) The Department uses a combined Notice of Expiration and Shortened Recertification Form. Notice of Expiration is required in 7 CFR 273.14(b)(1)(i). The Recertification Form is found under 7 CFR 273.14(b)(2)(i).

(e) The Department conducts the Family Nutrition Education Program for individuals even if they are otherwise ineligible for food stamps.

(f) FEP and FEPTP clients may opt to have their food stamp benefits paid as cash. This waiver will expire on December 31, 2000.

(g) The Department may deduct overpayments that resulted from an IPV from a household's monthly entitlement.

(h) If the application was received before the 15th of the month and the client has earned income, the certification period can be no longer than six months. The initial certification period may be as long as seven months if the application was received after the 15th of the month.

(i) A household which had its food stamps terminated can be reinstated during the calendar month following the month assistance was terminated without completing a new application if the reason for termination is fully resolved. The reason for the termination does not matter. Assistance will be prorated to the date on which the client reported that the disqualifying condition was resolved if verification is received within 10 days of the report. Assistance is reinstated for the remaining months of the certification period and the certification period must not be changed.

(j) If the Department is unable to obtain proper documentary evidence from an employer, the Department may use Utah wage date from the State Income Eligibility Verification System (IEVS) as the primary verification of income when collecting overpayments.

(k) The Department will hold disqualification hearings by telephone.

(l) All households certified for 12 months or less would have their recertification interviews conducted by telephone, rather than in person, unless the household requests an in person interview or the Department determines that an in person interview is necessary to resolve issues that would be better facilitated face-to-face.

KEY: food stamps, public assistance
[~~July 1, 2002~~|2003
35A-3-103

Workforce Services, Employment Development

R986-900-902

Options and Waivers

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 26211
FILED: 05/01/2003, 14:04

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The changes are to reflect waivers granted by the federal government for the food stamp program and options taken by the state for that program.

SUMMARY OF THE RULE OR CHANGE: Subsection R986-900-902(1)(d) changes the utility allowance by adopting the Simplified Standard Utility Allowance in accordance with Section 4104 of the Farm Bill. Under this option, households in shared living arrangements and in subsidized housing can receive the full appropriate utility allowance which was not available to those customers previously. It is believed that this change will benefit more customers overall. Subsection R986-900-902(1)(k) allows a customer to waive his or her right to an administrative disqualification hearing. This in no way requires a customer to waive this right. This change is being made pursuant to H.B. 31 which was passed in the 2003 General Session and moves the responsibility for overpayment collection from the Office of Recovery Services in the Department of Human Services to the Department of Workforce Services. It is believed that this option will be of benefit to the client who wants to enter into a voluntary repayment agreement with the Department without the necessity of a hearing which is required under food stamp regulations. Subsection R986-900-902(2)(j) is adding a waiver to allow the Department to use the State Income Eligibility Verification System (IEVS) to verify income when the Department is otherwise unable to verify the income of a customer. This waiver will benefit customers who are unable to get income verification from their employers. (DAR NOTE: H.B. 31 is found at UT L 2003 Ch 90 and will be effective July 1, 2003.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-3-103

ANTICIPATED COST OR SAVINGS TO:

❖THE STATE BUDGET: There will be no costs or savings to the state budget because food stamps is entirely funded by the federal government.

❖LOCAL GOVERNMENTS: There will be no costs or savings to local government as this is a state program and federally funded.

❖OTHER PERSONS: None--By adopting the simplified standard utility allowance some customers who used actual utility costs might not have as large a deduction under this change. This is not a compliance cost however and is offset by the larger number of people who will benefit from this option because they previously were unable to deduct utility costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--By adopting the simplified standard utility allowance some customers who used actual utility costs might not have as large a deduction under this change. This is not a compliance cost however and is offset by the larger number of people who will benefit from this option because they previously were unable to deduct utility costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact by these changes on business as this is a federally funded program which in not way affects business monetarily.

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

WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2003

AUTHORIZED BY: Raylene G. Ireland, Executive Director

R986. Workforce Services, Employment Development.
R986-900. Food Stamps.
R986-900-902. Options and Waivers.

The Department administers the food stamp program in compliance with federal law with the following exceptions or clarifications:

(1) The following options not otherwise found in R986-100 have been adopted by the Department where allowed by the applicable federal law or regulation:

(a) The Department has opted to hold hearings at the state level and not at the local level.

(b) The Department does not offer a workfare program for ABAWDs (Able Bodied Adults Without Dependents).

(c) An applicant is required to apply at the local office which serves the area in which they reside.

(d) The Department has opted to use the Simplified Standard Utility Allowance found in Section 4104 of the Farm Bill. The Department has a mandatory standard utility allowance. This means the customer is eligible for an appropriate utility allowance at the time of application and eligibility for the appropriate allowance is re-determined at recertification and if the household moves to a different place of residence. The customer does not have the choice of using "actual" utility expenses. The Department has three utility standards that are updated annually and are available upon request. This Farm Bill option allows households in subsidized housing and households in shared living arrangements to receive the full appropriate utility allowance.[~~The Department has opted to adopt a standard utility allowance (SUA) for utilities. The standard utility allowance is updated annually and is available upon request from the Department. The Department allows clients to choose between using the SUA or actual utility expenses as a deduction from income when determining the food stamp benefit amount. The household must choose between using the SUA or actual expense at the time of application. The household may change from one to the other only at the time of recertification or if the household moves to a different place of residence.~~]

(e) The Department does not use photo ID cards. ID cards are available upon request to homeless, disabled, and elderly clients so that the client is able to use food stamp benefits at a participating restaurant.

(f) The state has opted to provide food stamp benefits through the use of an electronic benefit transfer system known as the Horizon Card.

(g) The Department counts diversion payments in the food stamp allotment calculation.

(h) The Department has opted to exempt individuals from mandatory participation in Food Stamp Employment and Training activities in counties that have been designated as Labor Surplus Areas by the Department of Labor. These counties change each year based on Department of Labor statistics and a list of counties is available from the Department. They are the same counties as referenced in subsection (2)(a) below.

(i) The Department has opted to use Utah's TANF vehicle allowance rules in conjunction with the Food Stamp Program vehicle allowance regulations at 7 CFR 273.8, as authorized by Pub. L. No. 106-387 of the Agriculture Appropriations Act 2001, Food Stamp Act of 1977, 7 USC 2014.

(j) The Department has opted to count all of an ineligible alien's resources and all but a pro rata share of the ineligible alien's income and deductible expenses as provided in 7 CFR 273.11(c)(3)(ii)(A).

(k) A client may waive his or her right to an administrative disqualification hearing.

(2) The Department has been granted the following applicable waivers from the Food and Nutrition Service:

(a) Certain Utah counties have been granted a waiver which exempts ABAWDs from the work requirements of Section 824 of PRWORA. The counties granted this waiver change each year based on Department of Labor statistics. A list of counties granted this waiver is available from the Department.

(b) If a client does not provide initial verification as requested within ten days of the interview, the Department can deny the household's application at the expiration of the ten days and is not required to wait until the 30th day following the date of application.

(c) The Department requires that a household need only report changes in earned income if there is a change in source, the hourly rate or salary, or if there is a change in full-time or part-time status. A client is required to report any change in unearned income over $25 or a change in the source of unearned income.

(d) The Department uses a combined Notice of Expiration and Shortened Recertification Form. Notice of Expiration is required in 7 CFR 273.14(b)(1)(i). The Recertification Form is found under 7 CFR 273.14(b)(2)(i).

(e) The Department conducts the Family Nutrition Education Program for individuals even if they are otherwise ineligible for food stamps.

(f) FEP and FEPTP clients may opt to have their food stamp benefits paid as cash. This waiver will expire on December 31, 2000.

(g) The Department may deduct overpayments that resulted from an IPV from a household's monthly entitlement.

(h) If the application was received before the 15th of the month and the client has earned income, the certification period can be no longer than six months. The initial certification period may be as long as seven months if the application was received after the 15th of the month.

(i) A household which had its food stamps terminated can be reinstated during the calendar month following the month assistance was terminated without completing a new application if the reason for the termination is fully resolved. The reason for the termination does not matter. Assistance will be prorated to the date on which the client reported that the disqualifying condition was resolved if verification is received within 10 days of the report. Assistance is reinstated for the remaining months of the certification period and the certification period must not be changed.

(j) If the Department is unable to obtain proper documentary evidence from an employer, the Department may use Utah wage date from the State Income Eligibility Verification System (IEVS) as the primary verification of income when collecting overpayments.

(k) The Department will hold disqualification hearings by telephone.

KEY: food stamps, public assistance
[~~January 1,~~]2003
35A-3-103

End of the Notices of Proposed Rules Section

NOTICES OF
CHANGES IN PROPOSED RULES

After an agency has published a PROPOSED RULE in the *Utah State Bulletin*, it may receive public comment that requires the PROPOSED RULE to be altered before it goes into effect. A CHANGE IN PROPOSED RULE allows an agency to respond to comments it receives.

As with a PROPOSED RULE, a CHANGE IN PROPOSED RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the CHANGE IN PROPOSED RULE including the name of a contact person, anticipated cost impact of the rule, and legal cross-references.

Following the RULE ANALYSIS, the text of the CHANGE IN PROPOSED RULE is usually printed. The text shows only those changes made since the PROPOSED RULE was published in an earlier edition of the *Utah State Bulletin*. Additions made to the rule appear underlined (e.g., example). Deletions made to the rule appear struck out with brackets surrounding them (e.g., [~~example~~]). A row of dots in the text (· · · · · ·) indicates that unaffected text was removed to conserve space. If a CHANGE IN PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of rules that are too long to print is available from the agency or from the Division of Administrative Rules.

While a CHANGE IN PROPOSED RULE does not have a formal comment period, there is a 30-day waiting period during which interested parties may submit comments. The 30-day waiting period for CHANGES IN PROPOSED RULES published in this issue of the *Utah State Bulletin* ends June 16, 2003. At its option, the agency may hold public hearings.

From the end of the waiting period through September 12, 2003, the agency may notify the Division of Administrative Rules that it wants to make the CHANGE IN PROPOSED RULE effective. When an agency submits a NOTICE OF EFFECTIVE DATE for a CHANGE IN PROPOSED RULE, the PROPOSED RULE as amended by the CHANGE IN PROPOSED RULE becomes the effective rule. The agency sets the effective date. The date may be no fewer than 30 days nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file another CHANGE IN PROPOSED RULE in response to additional comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE or another CHANGE IN PROPOSED RULE, the CHANGE IN PROPOSED RULE filing, along with its associated PROPOSED RULE, lapses and the agency must start the process over.

CHANGES IN PROPOSED RULES are governed by *Utah Code* Section 63-46a-6 (2001); and *Utah Administrative Code* Rule R15-2, and Sections R15-4-3, R15-4-5, R15-4-7, and R15-4-9.

The Changes in Proposed Rules Begin on the Following Page.

Environmental Quality, Air Quality
R307-214-2
Part 63 Sources

NOTICE OF CHANGE IN PROPOSED RULE
DAR File No.: 25825
Filed: 04/28/2003, 10:37

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To clarify where the public can find the text of certain material being incorporated by reference.

SUMMARY OF THE RULE OR CHANGE: When the original amendment was proposed, five additions were included that were published in the Federal Register after July 1, 2002, and thus were not included in the July 1 edition of 40 CFR. The only comment received during the public comment period supported the proposal. These amendments add the Federal Register citations so that the text of the federal rule is easily available to users. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the January 1, 2003, issue of the Utah State Bulletin, on page 16. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 19-2-104(1)(a)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 67 FR 45885 (July 10, 2002)

ANTICIPATED COST OR SAVINGS TO:
- THE STATE BUDGET: The changes clarify the original proposal and thus do not change its costs, which are paid by sources via fees under 40 CFR Part 70.
- LOCAL GOVERNMENTS: No local governments are affected by these regulations.
- OTHER PERSONS: The changes clarify the original proposal and thus do not change its costs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The changes clarify the original proposal and thus do not change its costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes clarify the original proposal and thus do not change its costs

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

ENVIRONMENTAL QUALITY
AIR QUALITY
150 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jan Miller at the above address, by phone at 801-536-4042, by FAX at 801-536-4099, or by Internet E-mail at janmiller@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 06/16/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 06/17/2003

AUTHORIZED BY: M. Cheryl Heying, Planning Branch Manager

R307. Environmental Quality, Air Quality.
R307-214. National Emission Standards for Hazardous Air Pollutants.
R307-214-2. Part 63 Sources.

The provisions listed below of 40 CFR Part 63, National Emission Standards for Hazardous Air Pollutants for Source Categories, effective as of July 1, 2002, or later for those whose subsequent publication citation is included below, are incorporated into these rules by reference. References in 40 CFR Part 63 to "the Administrator" shall refer to the executive secretary, unless by federal law the authority is specific to the Administrator and cannot be delegated.

(1) 40 CFR Part 63, Subpart A, General Provisions.

(2) 40 CFR Part 63, Subpart B, Requirements for Control Technology Determinations for Major Sources in Accordance with 42 U.S.C. 7412(g) and (j).

(3) 40 CFR Part 63, Subpart F, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.

(4) 40 CFR Part 63, Subpart G, National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.

(5) 40 CFR Part 63, Subpart H, National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.

(6) 40 CFR Part 63, Subpart I, National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.

(7) 40 CFR Part 63, Subpart J, National Emission Standards for Polyvinyl Chloride and Copolymers Production, published on July 10, 2002 at 67 FR 45885.

(8) 40 CFR Part 63, Subpart L, National Emission Standards for Coke Oven Batteries.

(9) 40 CFR Part 63, Subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.

(10) 40 CFR Part 63, Subpart N, National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.

(11) 40 CFR Part 63, Subpart O, National Emission Standards for Hazardous Air Pollutants for Ethylene Oxide Commercial Sterilization and Fumigation Operations.

(12) 40 CFR Part 63, Subpart Q, National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers.

(13) 40 CFR Part 63, Subpart R, National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).

(14) 40 CFR Part 63, Subpart T, National Emission Standards for Halogenated Solvent Cleaning.

(15) 40 CFR Part 63, Subpart U, National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins.

(16) 40 CFR Part 63, Subpart AA, National Emission Standards for Hazardous Air Pollutants for Phosphoric Acid Manufacturing.

(17) 40 CFR Part 63, Subpart BB, National Emission Standards for Hazardous Air Pollutants for Phosphate Fertilizer Production.

(18) 40 CFR Part 63, Subpart CC, National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries.

(19) 40 CFR Part 63, Subpart DD, National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.

(20) 40 CFR Part 63, Subpart EE, National Emission Standards for Magnetic Tape Manufacturing Operations.

(21) 40 CFR Part 63, Subpart GG, National Emission Standards for Aerospace Manufacturing and Rework Facilities.

(22) 40 CFR Part 63, Subpart HH, National Emission Standards for Hazardous Air Pollutants for Oil and Natural Gas Production.

([~~1~~]23) 40 CFR Part 63, Subpart JJ, National Emission Standards for Wood Furniture Manufacturing Operations.

(24) 40 CFR Part 63, Subpart KK, National Emission Standards for the Printing and Publishing Industry.

(25) 40 CFR Part 63, Subpart MM, National Emission Standards for Hazardous Air Pollutants for Chemical Recovery Combustion Sources at Kraft, Soda, Sulfite, and Stand-Alone Semichemical Pulp Mills.

(26) 40 CFR Part 63, Subpart OO, National Emission Standards for Tanks - Level 1.

(27) 40 CFR Part 63, Subpart PP, National Emission Standards for Containers.

(28) 40 CFR Part 63, Subpart QQ, National Emission Standards for Surface Impoundments.

(29) 40 CFR Part 63, Subpart RR, National Emission Standards for Individual Drain Systems.

(30) 40 CFR Part 63, Subpart SS, National Emission Standards for Closed Vent Systems, Control Devices, Recovery Devices and Routing to a Fuel Gas System or a Process (Generic MACT)

(31) 40 CFR Part 63, Subpart TT, National Emission Standards for Equipment Leaks- Control Level 1 (Generic MACT).

(32) 40 CFR Part 63, Subpart UU, National Emission Standards for Equipment Leaks-Control Level 2 Standards (Generic MACT).

(33) 40 CFR Part 63, Subpart VV, National Emission Standards for Oil-Water Separators and Organic-Water Separators.

(34) 40 CFR Part 63, Subpart WW, National Emission Standards for Storage Vessels (Tanks)-Control Level 2 (Generic MACT).

(35) 40 CFR Part 63, Subpart XX, National Emission Standards for Ethylene Manufacturing Process Units: Heat Exchange Systems and Waste Operations, published on July 12, 2002, at 67 FR 46257.

(36) 40 CFR Part 63, Subpart YY, National Emission Standards for Hazardous Air Pollutants for Source Categories: Generic MACT.

(37) 40 CFR Part 63, Subpart CCC, National Emission Standards for Hazardous Air Pollutants for Steel Pickling-HCl Process Facilities and Hydrochloric Acid Regeneration Plants.

(38) 40 CFR Part 63, Subpart DDD, National Emission Standards for Hazardous Air Pollutants for Mineral Wool Production.

(39) 40 CFR Part 63, Subpart EEE, National Emission Standards for Hazardous Air Pollutants from Hazardous Waste Combustors.

(40) 40 CFR Part 63, Subpart GGG, National Emission Standards for Hazardous Air Pollutants for Pharmaceuticals Production.

(41) 40 CFR Part 63, Subpart HHH, National Emission Standards for Hazardous Air Pollutants for Natural Gas Transmission and Storage.

(42) 40 CFR Part 63, Subpart III, National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production.

(43) 40 CFR Part 63, Subpart JJJ, National Emission Standards for Hazardous Air Pollutants for Group IV Polymers and Resins.

([4]44) 40 CFR Part 63, Subpart LLL, National Emission Standards for Hazardous Air Pollutants for Portland Cement Manufacturing Industry.

(45) 40 CFR Part 63, Subpart MMM, National Emission Standards for Hazardous Air Pollutants for Pesticide Active Ingredient Production.

(4[~~2~~]6) 40 CFR Part 63, Subpart NNN, National Emission Standards for Hazardous Air Pollutants for Wool Fiberglass Manufacturing.

(47) 40 CFR Part 63, Subpart OOO, National Emission Standards for Hazardous Air Pollutants for Amino/Phenolic Resins Production (Resin III).

(48) 40 CFR Part 63, Subpart PPP, National Emission Standards for Hazardous Air Pollutants for Polyether Polyols Production.

(49) 40 CFR Part 63, Subpart QQQ, National Emission Standards for Hazardous Air Pollutants for Primary Copper Smelters.

(50) 40 CFR Part 63, Subpart RRR, National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production.

(51) 40 CFR Part 63, Subpart TTT, National Emission Standards for Hazardous Air Pollutants for Primary Lead Smelting.

(52) 40 CFR Part 63, Subpart UUU, National Emission Standards for Hazardous Air Pollutants for Petroleum Refineries: Catalytic Cracking Units, Catalytic Reforming Units, and Sulfur Recovery Units.

(53) 40 CFR Part 63, Subpart VVV, National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works.

(54) 40 CFR Part 63, Subpart CCCC, National Emission Standards for Manufacturing of Nutritional Yeast.

(55) 40 CFR Part 63, Subpart GGGG, National Emission Standards for Vegetable Oil Production; Solvent Extraction.

(56) 40 CFR Part 63, Subpart HHHH - National Emission Standards for Wet-Formed Fiberglass Mat Production.

(57) 40 CFR Part 63, Subpart NNNN - National Emission Standards for Large Appliances Surface Coating Operations, published on July 23, 2002, at 67 FR 48253.

(58) 40 CFR Part 63, Subpart SSSS - National Emission Standards for Metal Coil Surface Coating Operations.

(59) 40 CFR Part 63, Subpart TTTT - National Emission Standards for Leather Tanning and Finishing Operations.

(60) 40 CFR Part 63, Subpart UUUU - National Emission Standards for Cellulose Product Manufacturing.

(61) 40 CFR Part 63, Subpart VVVV - National Emission Standards for Boat Manufacturing.

(62) 40 CFR Part 63, Subpart XXXX - National Emission Standards for Tire Manufacturing, published on July 9, 2002, at 67 FR 45598.

(63) 40 CFR Part 63, Subpart QQQQQ - National Emission Standards for Hazardous Air Pollutants for Friction Materials Manufacturing Facilities, published on October 18, 2002, at 67 FR 64497.

KEY: air pollution, hazardous air pollutant, MACT 2003
Notice of Continuation February 3, 1999
19-2-104(1)(a)

Human Services, Aging and Adult Services

R510-106

Minimum Percentages of Older Americans Act, Title III: Grants for State and Community Programs on Aging Part B: Supportive Services and Senior Centers Funds That an Area Agency on Aging Must Spend on Access, In-home and Legal Assistance

NOTICE OF CHANGE IN PROPOSED RULE
DAR File No.: 26046
Filed: 04/16/2003, 14:57

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change is made in response to comments received during the comment period for the original amendment.

SUMMARY OF THE RULE OR CHANGE: This change restores the distribution of minimum percentages for Title III and State dollars back to levels that they were prior to the amendment. This change also shortens the catchline so it will sufficiently qualify under the provisions of the Rulewriting Manual for Utah. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the March 1, 2003, issue of the Utah State Bulletin, on page 6. Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 62A-3-101

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: No cost is anticipated. The budget stays at the status quo level as discussed in the Five-Year Review filed November 1, 2002. (DAR NOTE: The five-year review is found under DAR No. 25595 in the November 15, 2002, issue of the Bulletin.)
❖LOCAL GOVERNMENTS: No cost is anticipated. The budget stays at the status quo level as discussed in the Five-Year Review filed November 1, 2002.
❖OTHER PERSONS: No cost is anticipated. The budget stays at the status quo level as discussed in the Five-Year Review filed November 1, 2002.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No cost is anticipated. The budget stays at the status quo level as discussed in the Five-Year Review filed November 1, 2002.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This will have no effect on local businesses but is simply a way of realigning the percentage of certain services within the Older Americans Act.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
AGING AND ADULT SERVICES
Room 325
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Lee Ann Whitaker or Sally Anne Brown at the above address, by phone at 801-538-3915 or 801-538-8250, by FAX at 801-538-4395 or 801-538-4395, or by Internet E-mail at lwhitaker@utah.gov or sabrown@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 06/16/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 06/17/2003

AUTHORIZED BY: Helen Goddard, Director

R510. Human Services, Aging and Adult Services.
R510-106. Minimum Percentages of Older Americans Act, Title III[~~: Grants for State and Community Programs on Aging~~] Part B: State and Supportive Services [~~and Senior Centers~~] Funds[~~ That an Area Agency on Aging Must Spend on Access, In-home and Legal Assistance~~].
R510-106-1. General Principles.

(1) In accordance with the (OAA), as amended in 2000, the following general principles apply to setting minimum percentages which must be spent for Access, In-Home, and Legal Assistance:

(a) In-Home, Access, and Legal Assistance are priority services.

(b) "The minimum percentage is intended to be a floor, not a ceiling. AAAs are encouraged to devote additional funds to each of these service areas to meet local needs." (Source: House of Representatives Conference Report regarding the 1987 Amendment to the Older Americans Act.)

(c) AAAs should be given flexibility to administer their programs at the local level.

(d) The minimum percentage should be applied to both Title IIIB and State Service Dollars.

(2) The minimum percentages shall be established at: [~~10%~~]8% for Access Services, [~~10%~~]8% for In-Home Services, and [~~5%~~]2% for Legal Assistance.

(3) The minimum percentages will be based upon Title III B dollars and State Service dollars that are distributed by formula to the AAAs.

(4) The minimum percentages will be reviewed on an annual basis.

R510-106-2. Criteria for Approval of Title IIIB Priority Services Waiver.

(1) AAAs which do not plan to fund a Title IIIB priority category of service at the required minimum percentage must request a waiver. In order to be approved, the waiver request must demonstrate to the State that the need for the service is adequately met through other means.

(a) The waiver request must include:

(i) Categories of service to be waived, i.e. access, in-home, or legal.

(ii) Extent of waiver requested, i.e. request to provide zero funding or request to provide some funding, but not at the minimum percentage required.

(iii) Justification that services provided in the planning and service area for the waiver category are sufficient to meet the need. Justification should include: types of services in the category available in the planning and service area, funding sources and amounts available, history of service usage, needs assessment data, sources of information, efforts to publicize services, comments from providers of services, waiting lists, etc.

(iv) Documentation of notice to conduct a timely public hearing, upon request of an individual or service provider from the area to be affected by decision, including:

(A) Copies of publicity to conduct a hearing.

(B) Lists of individuals and agencies notified.

(C) Lists of individuals or service providers who requested a hearing.

(v) If a hearing is requested, documentation of notice to conduct a timely public hearing, upon request of an individual or service provider from the area to be affected by decision, will be needed, including:

(A) copies of publicity for to conduct a hearing;

(B) lists of individuals and agencies notified; and

(C) lists of individuals or service providers who requested a hearing.

(vi) Record of public hearing.

(2) In order for the Area Agency on Aging (AAA) to demonstrate public knowledge about ability to request a hearing, it is recommended that the AAA:

(a) Publicize the hearing in advance so that interested parties can arrange to attend.

(b) Use publicity means that will enable potentially interested parties to be aware of the ability to request a hearing, to have sufficient background to understand the purpose of the hearing, and to be able to testify at the hearing if desired. In addition to a legal notice in the classified section of a newspaper, letters, flyers, larger newspaper articles or other similar announcements are recommended for the purpose of granting a waiver.

(c) Notify interested parties of the ability to request a hearing, such as those individuals or groups specified below:

(i) All Categories of Service: Clients, potential clients, senior advocates, local advisory council members, designated state advisory council member for the area, representatives or relatives of clients, local elected officials, Department of Human Services, agency staff, and State Division of Aging and Adult Services staff, etc.

(ii) Access Services: Information and referral providers, public or private transportation providers, outreach staff.

(iii) In-Home Services: Chore provider agencies, home health agencies, local health departments, homemaker provider agencies, friendly visitor and telephone reassurance agencies or volunteers, homemakers, personal care aides, and home health aides.

(iv) Legal Assistance: Legal Services Developer, Utah Legal Services Corporation, representatives of the Utah Bar Association.

KEY: elderly
2003
Notice of Continuation November 1, 2002
62A-3-101 et seq.

Natural Resources; Oil, Gas and Mining; Oil and Gas
R649-3-1
Bonding

NOTICE OF CHANGE IN PROPOSED RULE
DAR File No.: 25788
Filed: 04/30/2003, 12:34

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This change in proposed rule is based on comments received from the public.

SUMMARY OF THE RULE OR CHANGE: The change included herewith proposes to adopt the rule changes as originally presented by the Division except for the proposed provisions to automatically escalate surety amounts. (DAR NOTE: This change in proposed rule has been filed to make additional changes to a proposed amendment that was published in the January 1, 2003, issue of the Utah State Bulletin, on page 35.

Underlining in the rule below indicates text that has been added since the publication of the proposed rule mentioned above; strike-out indicates text that has been deleted. You must view the change in proposed rule and the proposed amendment together to understand all of the changes that will be enforceable should the agency make this rule effective.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 40-6-1 et seq.

ANTICIPATED COST OR SAVINGS TO:
❖THE STATE BUDGET: There is no immediate anticipated cost or savings to the State budget as a result of making this change. In the future, the State could be obligated to pay plugging or site restoration costs in the event that an operator's bond is inadequate. The amount of these costs cannot be determined at this time.
❖LOCAL GOVERNMENTS: Because local government currently does not engage in the drilling of oil or gas wells at this time, there will not be an affect on local government from this rule change.
❖OTHER PERSONS: Other persons will be affected by this rulemaking in that companies who drill or produce oil or gas wells may not be required to supplement their bond at some future time for site restoration or well plugging.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Companies tendering performance bond guarantees for oil and gas drilling and production operations may not have an automatic escalation apply to their bond amounts as a result of this change. The amount of any escalation avoided cannot be determined at this time due to the uncertainties of future inflation rates.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Any impact experienced as a result of this rule change may moderate the fiscal impact as originally anticipated, however, this moderation of costs will need to be balanced with the amount of bond protection which is not provided to the State as a result of inadequate bond amounts.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
NATURAL RESOURCES
OIL, GAS AND MINING; OIL AND GAS
Room 1210
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ron Daniels at the above address, by phone at 801-538-5316, by FAX at 801-359-3940, or by Internet E-mail at rondaniels@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 06/16/2003.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2003

AUTHORIZED BY: Ron Daniels, Coordinator of Minerals Research

R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.
R649-3. Drilling and Operating Practices.
R649-3-1. Bonding.

1. An owner or operator shall furnish a bond to the division prior to approval of a permit to drill a new well, reenter an abandoned well or assume responsibility as operator of existing wells.

1.1. An owner or operator shall furnish a bond to the division on Form 4, for wells located on lands with fee or privately owned minerals.

1.2. An owner or operator shall furnish evidence to the division that a bond has been filed in accordance with state, federal or Indian lease requirements and approved by the appropriate agency for all wells located on state, federal or Indian leases.

2. A bond furnished to the division shall be payable to the division and conditioned upon the faithful performance by the operator of the duty to plug each dry or abandoned well, repair each well causing waste or pollution, and maintain and restore the well site.

3. Bond liability shall be for the duration of the drilling, operating and plugging of the well and restoration of the well site.

3.1. [~~Except for inflationary adjustment as described in subsections 4.1. and 4.2., t~~]The bond for drilling or operating wells shall remain in full force and effect until liability thereunder is released by the division.

3.2. Release of liability shall be conditioned upon compliance with the rules and orders of the Board.

4. For all drilling or operating wells, the bond amounts for individual wells and blanket bonds required in subsections 5. and 6. represent base amounts adjusted to year 2002 average costs for well plugging and site restoration. The base amounts are effective immediately upon adoption of this bonding rule, subject to division notification as described in subsection 4.1.[~~4.3.~~

~~4.1. After adoption of this bonding rule, new bonds posted with the division for new operators or newly proposed drilling or operating wells shall be in amounts equal to the base amounts of subsection 5. and 6. including inflationary adjustment. The inflationary adjustment for such new bonds shall be in an amount escalated from January 1, 2003 to the date of posting of the bonds using the Producer Price Index for the Oil and Gas Field Services industry sector as published by the U.S. Bureau of Labor Statistics for the applicable time period.~~

~~4.2. Every five years from the date of revision or establishment of bonds in accordance with this bonding rule, the division will review such bonds for inflationary adjustment. The bond amounts for those reviewed bonds shall be escalated from the date of revision or establishment of the bond to the review date using the Producer Price Index for the Oil and Gas Field Services industry sector as published by the U.S. Bureau of Labor Statistics for the applicable time period, subject to division notification as described in subsection 4.3.~~]

4.1.[~~4.3.~~] The division shall provide written notification to each operator of the need to revise or establish bonds in amounts required by this bonding rule. Within 120 days of such notification by the division, the operator shall post a bond with the division in compliance with this bonding rule.

4.2.[~~4.4.~~] If the division finds that a well subject to this bonding rule is in violation of Rule R649-3-36., Shut-in and Temporarily Abandoned Wells, the division shall require a bond amount for the applicable well in the amount of actual plugging and site restoration costs. [~~Such shut-in well bonds shall be subject to inflationary adjustment described in subsection 4.2.~~]

4.3.[~~4.5.~~] The division shall provide written notification to an operator found in violation of Rule R649-3-36., and identify the need to establish increased bonding for shut-in wells. Within 30 days of notification by the division, the operator shall submit to the division an estimate of plugging and site restoration costs for division review and approval. Upon review and approval of the cost estimate, the division will provide a notice of approval back to the operator specifying the approved bond amount for shut-in wells. Within 120 days of receiving such notice of approval, the operator shall post a bond with the division in compliance with this bonding rule.

5. [~~Except for inflationary adjustment as described in subsections 4.1. and 4.2., t~~]The bond amount for drilling or operating wells located on lands with fee or privately owned minerals shall be one of the following:

5.1. For wells of less than 1,000 feet in depth, an individual well bond in the amount of at least $1,500, for each such well.

5.2. For wells of more that 1,000 feet in depth but less than 3,000 feet in depth, an individual well bond in the amount of at least $15,000 for each such well.

5.3. For wells of more that 3,000 feet in depth but less than 10,000 feet in depth, an individual well bond in the amount of at least $30,000 for each such well.

5.4. For wells of more than 10,000 feet in depth, an individual well bond in the amount of at least $60,000 for each such well.

6. If, prior to the January 1, 2003 revision of this bonding rule, an operator is drilling or operating more than one well on lands with fee or privately owned minerals, and a blanket bond was furnished and accepted by the division in lieu of individual well bonds, that operator shall remain qualified for a blanket bond with the division subject to the amounts described by this bonding rule[~~ and the procedures for inflationary adjustment as described in subsections 4.1. and 4.2~~].

6.1. A blanket bond shall be conditioned in a manner similar to individual well bonds and shall cover all wells that the operator may drill or operate on lands with fee or privately owned minerals within the state.

6.2. For wells of less than 1,000 feet in depth, a blanket bond in the amount of at least $15,000 shall be required.

6.3. For wells of more than 1,000 feet in depth, a blanket bond in the amount of at least $120,000 shall be required.

6.4. Subsequent to the January 1, 2003 revision of this rule, operators who desire to establish a new blanket bond that consists either fully or partially of a collateral bond as described in subsection 10.2. shall be qualified by the division for such blanket bond. Operators who elect to establish a surety bond as a blanket bond shall not require qualification by the division. In those cases where operator qualification for blanket bond is required, the division will review the following criteria and make a written finding of the operator's adequacy to meet the criteria before accepting a new blanket bond:

6.4.1. The ratio of current assets to current liabilities shall be 1.20 or greater, as evidenced by audited financial statements for the previous two years and the most current quarterly financial report.

6.4.2. The ratio of total liabilities to stockholder's equity shall be 2.50 or less, as evidenced by audited financial statements for the previous two years and the most current quarterly financial report.

7. If an operator desires bond coverage in a lesser amount than required by these rules, the operator may file a Request for Agency Action with the Board for a variance from the requirements of these rules.

7.1. Upon proper notice and hearing and for good cause shown, the Board may allow bond coverage in a lesser amount for specific wells.

8. If after reviewing an application to drill or reenter a well or when reviewing a change of operator for a well, the division determines that bond coverage in accordance with these rules will be insufficient to cover the costs of plugging the well and restoring the well site, the division may require a change in the form or the amount of bond coverage. In such cases, the division will support its case for a change of bond coverage in the form of written findings to the operator of record of the well and provide a schedule for completion of the requisite changes.

8.1 Appeals of mandated bond amount changes will follow procedures established by Rule R649-10., Administrative Procedures.

9. The bond shall provide a mechanism for the surety or other guarantor of the bond, to provide prompt notice to the division and the operator of any action alleging the insolvency or bankruptcy of the surety or guarantor, or alleging any violations which would result in suspension or revocation of the surety's or guarantor's charter or license to do business.

9.1. Upon the incapacity of the surety or guarantor to guarantee payment of the bond by reason of bankruptcy, insolvency, or suspension or revocation of a charter or license, the operator shall be deemed to be without bond coverage.

9.2. Upon notification of insolvency or bankruptcy, the division shall notify the operator in writing and shall specify a reasonable period, not to exceed 90 days, to provide bond coverage.

9.3. If an adequate bond is not furnished within the allowed period, the operator shall be required to cease operations immediately, and shall not resume operations until the division has received an acceptable bond.

10. The division shall accept a bond in the form of a surety bond, a collateral bond or a combination of these bonding methods.

10.1. A surety bond is an indemnity agreement in a sum certain payable to the division, executed by the operator as principal and which is supported by the performance guarantee of a corporation authorized to do business as a surety in Utah.

10.1.1. A surety bond shall be executed by the operator and a corporate surety authorized to do business in Utah that is listed in "A.M. Best's Key Rating Guide" at a rating of A- or better or a Financial Performance Rating (FPR) of 8 or better, according to the "A.M. Best's Guide". All surety companies also will be continuously listed in the current issue of the U.S. Department of the Treasury Circular 570. Operators who do not have a surety bond with a company that meets the standards of subsection 10.1.1. will have 120 days from the date of [~~D~~]division notification after enactment of the changes to subsection 10.1.1., or face enforcement action. When the [~~D~~]division in the course of examining surety bonds notifies an operator that a surety company guaranteeing its performance does not meet the standards of subsection 10.1.1., the operator has 120 days after notice from the [~~D~~]division by mail to correct the deficiency, or face enforcement action.

10.1.2. Surety bonds shall be noncancellable during their terms, except that surety bond coverage for wells not drilled may be canceled with the prior consent of the division.

10.1.3. The division shall advise the surety, within 30 days after receipt of a notice to cancel a bond, whether the bond may be canceled on an undrilled well.

10.2. A collateral bond is an indemnity agreement in a sum certain payable to the division, executed by the operator which is supported by one or more of the following:

10.2.1. A cash account.

10.2.1.1. The operator may deposit cash in one or more accounts at a federally insured bank authorized to do business in Utah, made payable upon demand only to the division.

10.2.1.2. The operator may deposit the required amount directly with the division.

10.2.1.3. Any interest paid on a cash account shall be retained in the account and applied to the bond value of the account unless the division has approved the payment of interest to the operator.

10.2.1.4. The division shall not accept an individual cash account in an amount in excess of $100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation.

10.2.2. Negotiable bonds of the United States, a state, or a municipality.

10.2.2.1. The negotiable bond shall be endorsed only to the order of and placed in the possession of the division.

10.2.2.2. The division shall value the negotiable bond at its current market value, not at face value.

10.2.3. Negotiable certificates of deposit.

10.2.3.1. The certificates shall be issued by a federally insured bank authorized to do business in Utah.

10.2.3.2. The certificates shall be made payable or assigned only to the division both in writing and upon the records of the bank issuing the certificate.

10.2.3.3. The certificates shall be placed in the possession of the division or held by a federally insured bank authorized to do business in Utah.

10.2.3.4. If assigned, the division shall require the banks issuing the certificates to waive all rights of setoff or liens against those certificates.

10.2.3.5. The division shall not accept an individual certificate of deposit in an amount in excess of $100,000 or the maximum insurable amount as determined by the Federal Deposit Insurance Corporation.

10.2.4. An irrevocable letter of credit.

10.2.4.1. Letters of credit shall be placed in the possession of and payable upon demand only to the division.

10.2.4.2. Letters of credit shall be issued by a federally insured bank authorized to do business in Utah.

10.2.4.3. Letters of credit shall be irrevocable during their terms.

10.2.4.4. Letters of credit shall be automatically renewable or the operator shall ensure continuous bond coverage by replacing letters of credit, if necessary, at least 30 days before their expiration date with other acceptable bond types or letters of credit.

11. The required bond amount specified in subsections 5. and 6. of all collateral posted as assurance under this section shall be subject to a margin determined by the division which is the ratio of the face value of the collateral to market value, as determined by the division.

11.1. The margin shall reflect legal and liquidation fees, as well as value depreciation, marketability and fluctuations which might affect the net cash available to the division to complete plugging and restoration.

12. The market value of collateral may be evaluated at any time, and in no case shall the market value of collateral be less than the required bond amount specified in subsections 5. and 6.

12.1. Upon evaluation of the market value of collateral by the division, the division will notify the operator of any required changes in the amount of the bond and shall allow a reasonable period, not to exceed 90 days, for the operator to establish acceptable bond coverage.

12.2. If an adequate bond is not furnished within the allowed period the operator shall be required to cease operations immediately and shall not resume operations until the division has received an acceptable bond.

13. Persons with an interest in collateral posted as a bond, and who desire notification of actions pursuant to the bond, shall request the notification in writing from the division at the time collateral is offered.

14. The division may allow the operator to replace existing bonds with other bonds that provide sufficient coverage.

14.1. Replacement of a bond pursuant to this section shall not constitute a release of bond under subsection 15.

14.2. The division shall not allow liability to cease under an existing bond until the operator has furnished, and the division has approved, an acceptable replacement bond.

14.3. When the operator of wells covered by a blanket bond changes, the division will review the financial eligibility of a new operator for blanket bonding as described in subsection 6.4., and the division will make a written finding concerning the applicability of blanket bonding to the prospective new operator.

14.4. Transfer of the ownership of property does not cancel liability under an existing bond until the division reviews and approves a change of operator for any wells affected by the transfer of ownership.

14.5. If a transfer of the ownership of property is made and an operator wishes to request a change to a new operator of record for the affected wells, then the following requirements shall be met:

14.5.1. The operator shall notify the division in writing when ownership of any well associated with the property has been transferred to a named transferee, and the operator shall request a change of operator for the affected wells.

14.5.2. The request shall describe each well by reference to its well name and number, API number, and its location, as described by the section, township, range, and county,and shall also include a proposed effective date for the operator change.

14.5.3. The request shall contain the endorsement of the new operator accepting such change of operator.

14.5.4. The request shall contain evidence of the new operator's bond coverage.

14.5.5. The request may include a request to cancel liability for the well(s) included in the operator change that are listed under the existing operator's bond upon approval by the division of an adequate replacement bond in the name of the new operator.

14.6. Upon receipt of a request for change of operator, the division will review the proposed new operator's bond coverage, and if bond coverage is acceptable, the division will issue a notice of approval of the change of operator.

14.6.1. If the division determines that the new operator's bond coverage will be insufficient to cover the costs of plugging and site restoration for the applicable well(s), the division may deny the change of operator, or the division may require a change in the form and amount of the new operator's bond coverage in order to approve the change of operator. In such cases, the division will support its case for a change of the new operator's bond coverage in the form of written findings, and the division will provide a schedule for completion of the requisite changes in order to approve the operator change. The written findings and schedule for changes in bond coverage will be sent to both the operator of record of the applicable well(s) and the proposed new operator.

14.7. If the request for operator change included a request to cancel liability under the existing operator's bond in accordance with subsection 14.5.5., and the division approves the operator change, then the division will issue a notice of approval of termination of liability under the existing bond for the wells included in the operator change. When the division has approved the termination of liability under a bond, the original operator is relieved from the responsibility of plugging or repairing any wells and restoring any well site affected by the operator change.

14.8. If all of the wells covered by a bond are affected by an operator change, the bond may be released by the division in accordance with subsection15.

15. Bond release procedures are as follows:

15.1. Requests for release of a bond held by the division may be submitted by the operator at any time after a subsequent notice of plugging of a well has been submitted to the division or the division has issued a notice of approval of termination of liability for all wells covered by an existing bond.

15.1.1. Within 30 days after a request for bond release has been filed with the division, the operator shall submit signed affidavits from the surface landowner of any previously plugged well site certifying that restoration has been performed as required by the mineral lease and surface agreements.

15.1.2. If such affidavits are not submitted, the division shall conduct an inspection of the well site in preparation for bond release as explained in subsection 15.2.

15.1.3. Within 30 days after a request for bond release has been filed with the division, the division shall publish notice of the request in a daily newspaper of general circulation in the city and county of Salt Lake and in a newspaper of general circulation in the county in which the proposed well is located.

15.1.4. If a written objection to the request for bond release is not received by the division within 15 days after publication of the notice of request, the division may release liability under the bond as an administrative action.

15.1.5. If a written objection to the request for bond release is received by the division within 15 days after publication of the notice of request, the request shall be set for hearing and notice thereof given in accordance with the procedural rules of the Board.

15.2. If affidavits supporting the bond release application are not received by the division in accordance with subsection 15.1.1., the division shall within 30 days or as soon thereafter as weather conditions permit, conduct an inspection and evaluation of the well site to determine if restoration has been adequately performed.

15.2.1. The operator shall be given notice by the division of the date and time of the inspection, and if the operator is unable to attend the inspection at the scheduled date and time, the division may reschedule the inspection to allow the operator to participate.

15.2.2. The surface landowner, agent or lessee shall be given notice by the operator of such inspection and may participate in the inspection; however, if the surface landowner is unable to attend the inspection, the division shall not be required to reschedule the inspection in order to allow the surface landowner to participate.

15.2.3. The evaluation shall consider the adequacy of well site restoration, the degree of difficulty to complete any remaining restoration, whether pollution of surface and subsurface water is occurring, the probability of future occurrence of such pollution, and the estimated cost of abating such pollution.

15.2.4. Upon request of any person with an interest in bond release, the division may arrange with the operator to allow access to the well site or sites for the purpose of gathering information relevant to the bond release.

15.2.5. The division shall retain a record of the inspection and the evaluation, and if necessary and upon written request by an interested party, the division shall provide a copy of the results.

15.3. Within 60 days from the filing of the bond release request, if a public hearing is not held pursuant to subsection 15.1.5., or within 30 days after such public hearing has been held, the division shall provide written notification of the decision to release or not release the bond to the following parties:

15.3.1. The operator.

15.3.2. The surety or other guarantor of the bond.

15.3.3. Other persons with an interest in bond collateral who have requested notification under R649-3-1.13.

15.3.4. The persons who filed objections to the notice of application for bond release.

15.4. If the decision is made to release the bond, the notification specified in subsection 15.3. shall also state the effective date of the bond release.

15.5. If the division disapproves the application for release of the bond or portion thereof, the notification specified in subsection 15.3. shall also state the reasons for disapproval, recommending corrective actions necessary to secure the release, and allowing an opportunity for a public hearing.

15.6. The division shall notify the municipality in which the well is located by certified mail at least 30 days prior to the release of the bond.

16. The following guidelines will govern the Forfeiture of Bonds.

16.1. The division shall take action to forfeit the bond if any of the following occur:

16.1.1. The operator refuses or is unable to conduct plugging and site restoration.

16.1.2. Noncompliance as to the conditions of a permit issued by the division.

16.1.3. The operator defaults on the conditions under which the bond was accepted.

16.2. In the event forfeiture of the bond is necessary, the matter will be considered by the Board.

16.3. For matters of bond forfeiture, the division shall send written notification to the parties identified in subsection 15.3., in addition to the notice requirements of the Board procedural rules.

16.4. After proper notice and hearing, the Board may order the division to do any of the following:

16.4.1. Proceed to collect the forfeited amount as provided by applicable laws for the collection of defaulted bonds or other debts.

16.4.2. Use funds collected from bond forfeiture to complete the plugging and restoration of the well or wells to which bond coverage applies.

16.4.3. Enter into a written agreement with the operator or another party to perform plugging and restoration operations in accordance with a compliance schedule established by the division as long as such party has the ability to perform the necessary work.

16.4.4. Allow a surety to complete the plugging and restoration, if the surety can demonstrate an ability to complete the plugging and restoration.

16.4.5. Any other action the Board deems reasonable and appropriate.

16.5. In the event the amount forfeited is insufficient to pay for the full cost of the plugging and restoration, the division may complete or authorize completion of plugging and restoration and may recover from the operator all costs of plugging and restoration in excess of the amount forfeited.

16.6. In the event the amount of bond forfeited was more than the amount necessary to complete plugging and restoration, the unused funds shall be returned by the division to the party from whom they were collected.

16.7. In the event the bond is forfeited and there exists any unplugged well or wells previously covered under the forfeited bond, then the operator must establish new bond coverage in accordance with these rules.

16.8. If the operator requires new bond coverage under the provisions of subsection 16.7., then the division will notify the operator and specify a reasonable period, not to exceed 90 days, to establish new bond coverage.

KEY: oil and gas law
2003
Notice of Continuation March 26, 2002
40-6-1 et seq.

End of the Notices of Changes in Proposed Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the 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, Finance
R25-6
Relocation Reimbursement

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 26206

FILED: 05/01/2003, 07:49

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 Subsection 63A-3-103(1) which authorizes the Director of Finance to define fiscal procedures relating to approval and allocation of funds. This rule details under what conditions funds may be allocated for relocation reimbursement.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: We have not received any written comments from interested persons concerning this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: A division review determined that this rule should be continued because it sets the requirements for reimbursing relocation expenses to state employees. No opposing comments have been received.

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@utah.gov

AUTHORIZED BY: Kim Thorne, Director

EFFECTIVE: 05/01/2003

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

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 26203

FILED: 05/01/2003, 07:43

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 Section 63A-3-107, which authorizes the Division of Finance to adopt rules governing in-state and out-of-state travel. In addition, S.B. 1, Line Item 60 of the 2000 legislative session (2000 UT L Ch 344), as continued by H.B. 1, Item 57 of the 2001 legislative session (2001 UT L Ch 334); S.B. 1, Item 49 of the 2002 legislative session (2002 UT L Ch 277); and H.B. 1, Item 52 of the 2003 legislative session contains intent language directing that the mileage reimbursement rate authorized in Section R25-7-10 also be applied to legislative staff, the judicial branch and to the Utah System of Higher Education.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: Comments were received on this rule only before the separation the mileage

reimbursement rate for employees who have a fleet car available to them from the mileage reimbursement rate for employees who do not have a fleet vehicle available to them. Some employees who do not have a fleet vehicle available to them were unhappy with the mileage reimbursement. No comments have been received on this rule since the two reimbursement rates were separated in 2000.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: A division review determined that this rule should be continued because it is required by statute.

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@utah.gov

AUTHORIZED BY: Kim Thorne, Director

EFFECTIVE: 05/01/2003

Education, Administration
R277-508
Employment of Substitute Teachers

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 26188
FILED: 04/25/2003, 17:15

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 53A-1-402(1)(a) allows the State Board of Education to make rules regarding the qualifications of personnel providing direct student services.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is necessary for the State Board of Education to have a rule in place that provides standards and procedures for school districts to follow when employing substitute teachers so this rule should be continued.

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

EDUCATION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111-3272, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Carol Lear at the above address, by phone at 801-538-7835, by FAX at 801-538-7768, or by Internet E-mail at clear@usoe.k12.ut.us

AUTHORIZED BY: Carol Lear, Coordinator School Law and Legislation

EFFECTIVE: 04/25/2003

Environmental Quality, Water Quality
R317-101
Utah Wastewater Project Assistance Program

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 26183
FILED: 04/22/2003, 10:22

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 19-5-104(1)(f) authorizes the Utah Water Quality Board to adopt rules to implement awarding construction loans to political subdivisions and municipal authorities under Section 11-8-2. Title 73, Chapter 10c, authorizes the Board to issue wastewater loans, credit enhancement agreements, interest buy-down agreements, and hardship grants.

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 rule was enacted, it has been amended several times. The limited comments which have been received on the rule have generally been of a technical and noncontroversial nature. Comments received during hearings and public comment periods for rule changes have been addressed through preparation of responsiveness summaries by Division of Water Quality Staff and have been presented to the Water Quality Board for their consideration during the rulemaking process.

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 policies and procedures for implementing the Utah Wastewater Project Assistance Program. The rule contains definitions, eligibility requirements, application procedures, and prioritization procedures central to the Water Quality Board's implementation of their statutory charge and should be continued.

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

ENVIRONMENTAL QUALITY
WATER QUALITY
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:
Dave Wham at the above address, by phone at 801-538-6052, by FAX at 801-538-6016, or by Internet E-mail at dwham@utah.gov

AUTHORIZED BY: Don Ostler, Director

EFFECTIVE: 04/22/2003

Health, Community and Family Health Services, Immunization

R396-100

Immunization Rule for Students

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 26187
FILED: 04/24/2003, 13:43

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 required by Section 53A-11-303 and authorized by Section 53A-11-306. The Department of Health is required to adopt rules to establish when immunizations are required and how frequently they should be administered to students.

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 should be continued because it is important to establish immunization guidelines. The Centers for Disease Control and Prevention encourages all states to maintain their school immunization laws to conform with national recommendations of the Public Health Service's Advisory Committee on Immunization Practices (ACIP). The American Academy of Pediatrics and the American Academy of Family Physicians recommends following ACIP guidelines. The majority of Utah's health care providers follow ACIP recommendations. The Utah Vaccine Scientific Advisory Committee also recommends that providers follow ACIP recommendations. Utah currently ranks 26th in the U.S. for vaccine coverage.

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

HEALTH
COMMUNITY AND FAMILY HEALTH SERVICES,
IMMUNIZATION
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:
Linda Abel at the above address, by phone at 801-538-9450, by FAX at 801-538-9440, or by Internet E-mail at label@utah.gov

AUTHORIZED BY: Rod L. Betit, Executive Director

EFFECTIVE: 04/24/2003

Insurance, Administration

R590-94

Rule Permitting Smoker/Nonsmoker Mortality Tables for Use in Determining Minimum Reserve Liabilities and Nonforfeiture Benefits

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 26182
FILED: 04/17/2003, 12:46

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 31A-2-201 authorizes the commissioner to make rules to implement Title 31A. Section 31A-22-408 gives the commissioner the authority to make rules interpreting, describing, and clarifying the application of the nonforfeiture law.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department has not

received any written comments regarding this rule in the past five years.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The rule permits the use of smoker/nonsmoker mortality tables as a reserve standard allowing for a fairer pricing of life insurance products. The rule also helps insurers offer lower rates to nonsmokers and should be continued.

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@utah.gov

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 04/17/2003

Insurance, Administration
R590-154
Unfair Marketing Practices Rule

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 26181
FILED: 04/17/2003, 12:44

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 R590-2-201 gives the commissioner the authority to make rules to implement Title 31A. Subsection 31A-23-302(8) gives the commissioner the authority to define by rule, after a finding, marketing practices that are misleading, deceptive, unfairly discriminatory, provide an unfair inducement, or unreasonably restrain competition. This rule does this. In 12 sections it describes unfair marketing practices that are prohibited by this rule.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: This rule was amended August 7, 2002. At that time, a comment period and hearing were provided. Two written comments were received and one verbal. Two of the comments dealt with grammar and a code citation which needed correcting. Those corrections were made. The other comment was that agencies felt they should be able to use any name they wanted to. We disagreed and did not change this part of the rule. These are the only written comments we have received in the past five years.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule gives guidelines to producers as to what is considered to be unacceptable market conduct and should be continued.

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@utah.gov

AUTHORIZED BY: Jilene Whitby, Information Specialist

EFFECTIVE: 04/17/2003

Natural Resources, Water Rights
R655-5
Maps Submitted to the Division of Water Rights

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 26195
FILED: 04/29/2003, 18:09

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 promulgated pursuant to Subsection 73-2-1(3)(b)(i) and Sections 73-3-2, 73-3-3, and 73-3-16. The purpose of this rule is to establish when maps must be submitted and the minimum standards that must be met for the maps to be accepted by the State Engineer.

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 supporting or opposing the rule have been 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 is necessary to continue to give direction to staff and the public for proper methods of preparing and completing maps submitted to the Division of Water Rights. These maps are required as a supplement to applications, proofs, and claims filed with the Division. The rule sets forth standards for the preparation of these maps and should be continued.

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

NATURAL RESOURCES
WATER RIGHTS
Room 220
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

Gail Nelson at the above address, by phone at 801-538-7370, by FAX at 801-538-7442, or by Internet E-mail at gailnelson@utah.gov

AUTHORIZED BY: Jerry Olds, Director

EFFECTIVE: 04/29/2003

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF RULE EFFECTIVE DATES

These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. These effective dates are at least 31 days and not more than 120 days after the date the following rules were published.

Abbreviations
AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal and Reenact
REP = Repeal

Commerce
Real Estate
No. 26024 (AMD): R162-105. Scope of Authority.
Published: March 1, 2003
Effective: April 23, 2003

No. 26060 (AMD): R162-106. Professional Conduct.
Published: March 15, 2003
Effective: April 23, 2003

Human Services
Recovery Services
No. 26061 (AMD): R527-39. Applicant/Recipient Cooperation.
Published: March 15, 2003
Effective: April 21, 2003

Tax Commission
Auditing
No. 25924 (AMD): R865-19S-61. Meals Furnished Pursuant to Utah Code Ann. Section 59-12-104.
Published: February 1, 2003
Effective: April 23, 2003

Property Tax
No. 26044 (AMD): R884-24P-60. Age-Based Uniform Fee on Tangible Personal Property Required to be Registered with the State Pursuant to Utah Code Ann. Section 59-2-405.1.
Published: March 1, 2003
Effective: April 23, 2003

Transportation
Administration
No. 26035 (AMD): R907-1. Administrative Procedure.
Published: March 1, 2003
Effective: April 23, 2003

End of the Notices of Rule Effective Dates Section

RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)

The *Rules Index* is a cumulative index that reflects all effective changes to Utah's administrative rules. The current *Index* lists changes made effective from January 2, 2003, including notices of effective date received through May 1, 2003, the effective dates of which are no later than May 15, 2003. 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: The index may contain inaccurate page number references. Also the index is incomplete in the sense that index entries for Changes in Proposed Rules (CPRs) are not preceded by entries for their parent Proposed Rules. These difficulties with the index are related to a new software package used by the Division to create the Bulletin and related publications; we hope to have them resolved as soon as possible. Bulletin issue information and effective date information presented in the index are, to the best of our knowledge, complete and accurate. If you have any questions regarding the index and the information it contains, please contact Nancy Lancaster (801 538-3218), Mike Broschinsky (801 538-3003), or Kenneth A. Hansen (801 538-3777).

A copy of the *Rules Index* is available for public inspection at the Division of Administrative Rules (4120 State Office Building, Salt Lake City, UT), or may be viewed online at the Division's web site (http://www.rules.utah.gov/).

RULES INDEX - BY AGENCY (CODE NUMBER)

ABBREVIATIONS

AMD = Amendment
CPR = Change in proposed rule
EMR = Emergency rule (120 day)
NEW = New rule
5YR = Five-Year Review
EXD = Expired
NSC = Nonsubstantive rule change
REP = Repeal
R&R = Repeal and reenact
* = Text too long to print in *Bulletin*, or repealed text not printed in *Bulletin*

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Administrative Services					
Facilities Construction and Management					
R23-3	Authorization of Programs for Capital Development Projects	25639	R&R	01/02/2003	2002-23/3
R23-3	Planning and Programming for Capital Projects	25989	AMD	03/24/2003	2003-4/4
R23-4	Contract Performance Review Committee and Suspension/Debarment From Consideration for Award of State Contracts	25964	5YR	01/15/2003	2003-3/62
R23-4	Contract Performance Review Committee and Suspension/Debarment From Consideration for Award of State Contracts	25783	AMD	02/04/2003	2003-1/3
R23-5	Contingency Funds	25955	5YR	01/15/2003	2003-3/62
R23-6	Value Engineering and Life Cycle Costing of State-Owned Facilities Rules and Regulations	25956	5YR	01/15/2003	2003-3/63
R23-7	Utah State Building Board Policy Statement Master Planning (5YR EXTENSION)	25984	NSC	02/04/2003	Not Printed

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R23-7	Utah State Building Board Policy Statement Master Planning	25770	REP	02/04/2003	2003-1/5
R23-8	Planning Fund Use	25640	REP	01/02/2003	2002-23/5
R23-9	Building Board State/Local Cooperation Policy	25957	5YR	01/15/2003	2003-3/63
R23-9	Building Board State/Local Cooperation Policy	25988	R&R	03/24/2003	2003-4/5
R23-10	Naming of State Buildings	25962	5YR	01/15/2003	2003-3/64
R23-10	Naming of State Buildings	25784	AMD	02/04/2003	2003-1/5
R23-11	Facilities Allocation and Sale Procedures	25771	REP	02/04/2003	2003-1/7
R23-11	Facilities Allocation and Sales Procedures (5YR EXTENSION)	25986	NSC	02/04/2003	Not Printed
R23-13	State of Utah Parking Rules for Facilities Managed by the Division of Facilities Construction and Management	26117	5YR	03/25/2003	2003-8/43
R23-21	Division of Facilities Construction and Management Lease Procedures	25959	5YR	01/15/2003	2003-3/64
R23-24	Capital Projects Utilizing Non-appropriated Funds	25960	5YR	01/15/2003	2003-3/65
Finance					
R25-6	Relocation Reimbursement	26206	5YR	05/01/2003	2003-10/150
R25-7	Travel-Related Reimbursements for State Employees	26203	5YR	05/01/2003	2003-10/150
Alcoholic Beverage Control					
Administration					
R81-1-17	Advertising	25886	AMD	02/26/2003	2003-2/5
R81-5-5	Advertising	25887	AMD	02/26/2003	2003-2/8
R81-7-3	Guidelines for Issuing Permits for Outdoor or Large-Scale Public Events	25650	AMD	01/24/2003	2002-24/6
Commerce					
Administration					
R151-14	New Automobile Franchise Act Rules	25624	AMD	01/02/2003	2002-23/6
R151-33	Pete Suazo Utah Athletic Commission Act Rule	25649	AMD	01/15/2003	2002-24/7
R151-35	Powersport Vehicle Franchise Act Rule	25724	NEW	01/15/2003	2002-24/9
R151-46b	Department of Commerce Administrative Procedures Act Rules	25822	AMD	02/18/2003	2003-1/8
Corporations and Commercial Code					
R154-2	Utah Uniform Commercial Code, Revised Article 9 Rules	25549	AMD	03/14/2003	2002-22/7
R154-10	Utah Digital Signatures Rules	25553	AMD	03/14/2003	2002-22/9
Occupational and Professional Licensing					
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rules	25922	5YR	01/13/2003	2003-3/65
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rules	25763	AMD	04/03/2003	2003-1/10
R156-22	Professional Engineers and Professional Land Surveyors Licensing Act Rules	25763	CPR	04/03/2003	2003-5/27
R156-46a	Hearing Instrument Specialist Licensing Act Rules	25987	AMD	03/18/2003	2003-4/7
R156-47b-302a	Qualifications for Licensure as a Massage Therapist - Massage School Curriculum Standards - Equivalent Education and Training	25651	AMD	01/16/2003	2002-24/10
R156-59	Professional Employer Organization Act Rules	25920	5YR	01/09/2003	2003-3/66
R156-60a	Social Worker Licensing Act Rules	25629	AMD	01/02/2003	2002-23/8
Real Estate					
R162-8-9	Disclosure Requirements	25663	AMD	01/16/2003	2002-24/11

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R162-105	Scope of Authority	26024	AMD	04/23/2003	2003-5/4
R162-106	Professional Conduct	26060	AMD	04/23/2003	2003-6/3
R162-107	Unprofessional Conduct	25981	5YR	01/21/2003	2003-4/52
Community and Economic Development					
Community Development, History					
R212-1	Adjudicative Proceedings	25630	AMD	01/06/2003	2002-23/10
R212-1	Adjudicative Proceedings	25570	AMD	01/06/2003	2002-22/10
R212-4	Archaeological Permits	25787	AMD	03/11/2003	2003-1/13
Corrections					
Administration					
R251-110	Sex Offender Notification	25991	AMD	03/21/2003	2003-4/9
R251-304	Contract Procedures	25885	AMD	02/19/2003	2003-2/9
R251-304	Contract Procedures	26053	5YR	02/21/2003	2003-6/17
Education					
Administration					
R277-469	Instructional Materials Commission Operating Procedures	26157	5YR	04/04/2003	2003-9/135
R277-470	Charter Schools	25726	AMD	01/15/2003	2002-24/12
R277-483	Persistently Dangerous Schools	25965	NEW	03/07/2003	2003-3/5
R277-485	Loss of Enrollment	25966	NEW	03/07/2003	2003-3/7
R277-508	Employment of Substitute Teachers	26188	5YR	04/25/2003	2003-10/151
R277-516	Library Media Certificates and Programs	25925	5YR	01/14/2003	2003-3/67
R277-518	Vocational-Technical Certificates	25926	5YR	01/14/2003	2003-3/67
R277-600	Student Transportation Standards and Procedures	25928	5YR	01/14/2003	2003-3/68
R277-605	Coaching Standards and Athletic Clinics	25931	5YR	01/14/2003	2003-3/68
R277-610	Released-Time Classes for Religious Instruction	25932	5YR	01/14/2003	2003-3/68
R277-611	Medical Recommendations by School Personnel to Parents	25647	NEW	01/03/2003	2002-23/12
R277-615	Foreign Exchange Students	25933	5YR	01/14/2003	2003-3/69
R277-700	The Elementary and Secondary School Core Curriculum	25935	5YR	01/14/2003	2003-3/69
R277-702	Procedures for the Utah General Educational Development Certificate	25936	5YR	01/14/2003	2003-3/70
R277-705	Secondary School Completion and Diplomas	25648	AMD	01/03/2003	2002-23/13
R277-709	Education Programs Serving Youth in Custody	25937	5YR	01/14/2003	2003-3/70
R277-718	Utah Career Teaching Scholarship Program	25938	5YR	01/14/2003	2003-3/71
R277-721	Deadline for CACFP Sponsor Participation in Food Distribution Program	25929	5YR	01/14/2003	2003-3/71
R277-722	Withholding Payments and Commodities in the CACFP	25930	5YR	01/14/2003	2003-3/72
R277-730	Alternative High School Curriculum	25939	5YR	01/14/2003	2003-3/72
R277-746	Driver Education Programs for Utah Schools	26089	5YR	03/12/2003	2003-7/73
R277-747	Private School Student Driver Education	26090	5YR	03/12/2003	2003-7/73
R277-751	Special Education Extended School Year	26091	5YR	03/12/2003	2003-7/74
Applied Technology Education (Board for), Rehabilitation					
R280-200	Rehabilitation	26088	5YR	03/12/2003	2003-7/74
R280-203	Certification Requirements for Interpreters for the Hearing Impaired	25646	AMD	01/03/2003	2002-23/16

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Environmental Quality					
Air Quality					
R307-121	General Requirements: Eligibility of Vehicles That Use Cleaner Burning Fuels or Conversion of Vehicles and Special Fuel Mobile Equipment To Use Cleaner Burning Fuels for Corporate and Individual Income Tax Credits.	25495	AMD	01/09/2003	2002-21/6
Drinking Water					
R309-710	Drinking Water Source Protection Funding	25863	REP	03/05/2003	2003-2/10
Environmental Response and Remediation					
R311-207	Accessing the Petroleum Storage Tank Trust Fund for Leaking Petroleum Storage Tanks	25161	CPR	02/04/2003	2003-1/46
Radiation Control					
R313-12-3	Definitions	25785	AMD	03/14/2003	2003-1/22
R313-15	Standards for Protection Against Radiation	25943	5YR	01/14/2003	2003-3/73
R313-28	Use of X-Rays in the Healing Arts	25786	AMD	03/14/2003	2003-1/27
Solid and Hazardous Waste					
R315-15	Standards for the Management of Used Oil	26064	5YR	03/03/2003	2003-7/75
R315-301	Solid Waste Authority, Definitions, and General Requirements	26092	5YR	03/14/2003	2003-7/75
R315-302	Solid Waste Facility Location Standards, General Facility Requirements, and Closure Requirements	26093	5YR	03/14/2003	2003-7/76
R315-303	Landfilling Standards	26094	5YR	03/14/2003	2003-7/77
R315-305	Class IV and VI Landfill Requirements	26095	5YR	03/14/2003	2003-7/78
R315-306	Energy Recovery and Incinerator Standards	26096	5YR	03/14/2003	2003-7/79
R315-307	Landtreatment Disposal Standards	26097	5YR	03/14/2003	2003-7/79
R315-308	Ground Water Monitoring Requirements	26098	5YR	03/14/2003	2003-7/80
R315-309	Financial Assurance	26100	5YR	03/14/2003	2003-7/81
R315-310	Permit Requirements for Solid Waste Facilities	26099	5YR	03/14/2003	2003-7/82
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ABBREVIATIONS

AMD = Amendment
CPR = Change in proposed rule
EMR = Emergency rule (120 day)
NEW = New rule
5YR = Five-Year Review
EXD = Expired
NSC = Nonsubstantive rule change
REP = Repeal
R&R = Repeal and reenact
* = Text too long to print in *Bulletin*, or repealed text not printed in *Bulletin*

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Public Safety, Peace Officer Standards and Training	26072	R728-409	EMR	03/07/2003	2003-7/62
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	26008	R414-10	AMD	04/07/2003	2003-4/11
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	25898	R414-63	AMD	04/07/2003	2003-2/12
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	26028	R651-410	NEW	04/01/2003	2003-5/8
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Environmental Quality, Water Quality	25203	R317-4-3	AMD	01/10/2003	2002-18/43
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	26028	R651-410	NEW	04/01/2003	2003-5/8
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	25398	R671-311	AMD	02/12/2003	2002-20/112
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Tax Commission, Property Tax	25917	R884-24P-60	EMR	01/06/2003	2003-3/60
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Environmental Quality, Environmental Response and Remediation	25161	R311-207	CPR	02/04/2003	2003-1/46
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	25984	R23-7	NSC	02/04/2003	Not Printed
	25988	R23-9	R&R	03/24/2003	2003-4/5
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Administrative Services, Facilities Construction and Management	25984	R23-7	NSC	02/04/2003	Not Printed
	25770	R23-7	REP	02/04/2003	2003-1/5
	25640	R23-8	REP	01/02/2003	2002-23/5
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Public Safety, Peace Officer Standards and Training	26067	R728-411	5YR	03/04/2003	2003-7/91
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Health, Administration	26161	R380-250	EMR	04/14/2003	2003-9/131
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Education, Administration	26090	R277-747	5YR	03/12/2003	2003-7/73
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Public Safety, Peace Officer Standards and Training	26067	R728-411	5YR	03/04/2003	2003-7/91
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Education, Administration	25926	R277-518	5YR	01/14/2003	2003-3/67
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Commerce, Occupational and Professional Licensing	25920	R156-59	5YR	01/09/2003	2003-3/66
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Commerce, Occupational and Professional Licensing	25922	R156-22	5YR	01/13/2003	2003-3/65
	25763	R156-22	CPR	04/03/2003	2003-5/27
	25763	R156-22	AMD	04/03/2003	2003-1/10

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	25763	R156-22	AMD	04/03/2003	2003-1/10
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Health, Health Care Financing, Coverage and Reimbursement Policy	26019	R414-306	5YR	01/31/2003	2003-4/56
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Tax Commission, Property Tax	25917	R884-24P-60	EMR	01/06/2003	2003-3/60
	26044	R884-24P-60	AMD	04/23/2003	2003-5/15
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	25989	R23-3	AMD	03/24/2003	2003-4/4
	25955	R23-5	5YR	01/15/2003	2003-3/62
	25956	R23-6	5YR	01/15/2003	2003-3/63
	25770	R23-7	REP	02/04/2003	2003-1/5
	25984	R23-7	NSC	02/04/2003	Not Printed
	25640	R23-8	REP	01/02/2003	2002-23/5
	25957	R23-9	5YR	01/15/2003	2003-3/63
	25962	R23-10	5YR	01/15/2003	2003-3/64
	25959	R23-21	5YR	01/15/2003	2003-3/64
	25960	R23-24	5YR	01/15/2003	2003-3/65
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	26145	R746-342	5YR	04/02/2003	2003-9/138
	25578	R746-347	NEW	03/10/2003	2002-22/44
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Commerce, Real Estate	25663	R162-8-9	AMD	01/16/2003	2002-24/11
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Health, Health Care Financing, Coverage and Reimbursement Policy	26021	R414-308	5YR	01/31/2003	2003-4/57
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recreation					
Natural Resources, Parks and Recreation	26040	R651-301	5YR	02/13/2003	2003-5/40
Natural Resources, Wildlife Resources	25722	R657-38	AMD	01/15/2003	2002-24/48
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Commerce, Administration	25624	R151-14	AMD	01/02/2003	2002-23/6
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	25704	R765-171	REP	03/31/2003	2002-24/55
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Education, Applied Technology Education (Board for), Rehabilitation	26088	R280-200	5YR	03/12/2003	2003-7/74
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Administrative Services, Finance	26206	R25-6	5YR	05/01/2003	2003-10/150
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Tax Commission, Auditing	25924	R865-19S-61	AMD	04/23/2003	2003-3/44
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Public Safety, Peace Officer Standards and Training	26072	R728-409	EMR	03/07/2003	2003-7/62
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Tax Commission, Auditing	25924	R865-19S-61	AMD	04/23/2003	2003-3/44
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Education, Administration	25928	R277-600	5YR	01/14/2003	2003-3/68
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Education, Administration	25965	R277-483	NEW	03/07/2003	2003-3/5
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Education, Administration	26188	R277-508	5YR	04/25/2003	2003-10/151
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Education, Administration	25928	R277-600	5YR	01/14/2003	2003-3/68
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Education, Administration	26091	R277-751	5YR	03/12/2003	2003-7/74
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Human Services, Aging and Adult Services	25552	R510-105	NEW	03/14/2003	2002-22/14
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Environmental Quality, Water Quality	25203	R317-4-3	AMD	01/10/2003	2002-18/43
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Natural Resources, Water Rights	25550	R655-7	NEW	02/10/2003	2002-22/39
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Corrections, Administration	25991	R251-110	AMD	03/21/2003	2003-4/9
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Commerce, Occupational and Professional Licensing	25629	R156-60a	AMD	01/02/2003	2002-23/8
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Environmental Quality, Solid and Hazardous Waste	26092	R315-301	5YR	03/14/2003	2003-7/75
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	26094	R315-303	5YR	03/14/2003	2003-7/77
	26095	R315-305	5YR	03/14/2003	2003-7/78
	26096	R315-306	5YR	03/14/2003	2003-7/79
	26097	R315-307	5YR	03/14/2003	2003-7/79
	26098	R315-308	5YR	03/14/2003	2003-7/80
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	26103	R315-313	5YR	03/14/2003	2003-7/84
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	26107	R315-317	5YR	03/14/2003	2003-7/87
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Administrative Services, Facilities Construction and Management	25771	R23-11	REP	02/04/2003	2003-1/7
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Administrative Services, Finance	26203	R25-7	5YR	05/01/2003	2003-10/150
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	25770	R23-7	REP	02/04/2003	2003-1/5
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Administrative Services, Facilities Construction and Management	25770	R23-7	REP	02/04/2003	2003-1/5
student competency					
Education, Administration	25936	R277-702	5YR	01/14/2003	2003-3/70
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Education, Administration	25938	R277-718	5YR	01/14/2003	2003-3/71
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Education, Administration	25966	R277-485	NEW	03/07/2003	2003-3/7
	25647	R277-611	NEW	01/03/2003	2002-23/12
	25937	R277-709	5YR	01/14/2003	2003-3/70
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Human Services, Administration, Administrative Services, Licensing	25660	R501-11	AMD	01/30/2003	2002-24/25
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Commerce, Occupational and Professional Licensing	25922	R156-22	5YR	01/13/2003	2003-3/65
	25763	R156-22	CPR	04/03/2003	2003-5/27
	25763	R156-22	AMD	04/03/2003	2003-1/10
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Public Safety, Fire Marshal	25961	R710-7	AMD	03/06/2003	2003-3/36
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Public Safety, Fire Marshal	26001	R710-7	AMD	03/18/2003	2003-4/32
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Tax Commission, Auditing	25829	R865-9I-26	AMD	03/11/2003	2003-1/40
	25828	R865-9I-27	AMD	03/11/2003	2003-1/41
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taxation					
Tax Commission, Administration	25823	R861-1A-20	AMD	03/11/2003	2003-1/39
Tax Commission, Auditing	25826	R865-9I-28	AMD	03/11/2003	2003-1/42
Tax Commission, Property Tax	25917	R884-24P-60	EMR	01/06/2003	2003-3/60
	26044	R884-24P-60	AMD	04/23/2003	2003-5/15
teacher certification					
Education, Administration	25926	R277-518	5YR	01/14/2003	2003-3/67
	26032	R686-100	5YR	02/07/2003	2003-5/41
teachers					
Education, Administration	26188	R277-508	5YR	04/25/2003	2003-10/151
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Public Service Commission, Administration	26145	R746-342	5YR	04/02/2003	2003-9/138
	25578	R746-347	NEW	03/10/2003	2002-22/44
transportation					
Administrative Services, Finance	26203	R25-7	5YR	05/01/2003	2003-10/150
Human Services, Aging and Adult Services	25552	R510-105	NEW	03/14/2003	2002-22/14
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Administrative Services, Facilities Construction and Management	26117	R23-13	5YR	03/25/2003	2003-8/43
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Tax Commission, Auditing	25826	R865-9I-28	AMD	03/11/2003	2003-1/42
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Public Safety, Criminal Investigations and Technical Services, Criminal Identification	25998	R722-320	5YR	01/28/2003	2003-4/60
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Environmental Quality, Water Quality	25631	R317-7-13	AMD	01/30/2003	2002-23/32
underground storage tanks					
Environmental Quality, Environmental Response and Remediation	25161	R311-207	CPR	02/04/2003	2003-1/46
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Workforce Services, Workforce Information and Payment Services	25946	R994-406-311	AMD	03/04/2003	2003-3/46
	25947	R994-406-315	AMD	03/04/2003	2003-3/48
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Education, Administration	25926	R277-518	5YR	01/14/2003	2003-3/67
Education, Applied Technology Education (Board for), Rehabilitation	26088	R280-200	5YR	03/12/2003	2003-7/74
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Environmental Quality, Radiation Control	25943	R313-15	5YR	01/14/2003	2003-3/73
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	26094	R315-303	5YR	03/14/2003	2003-7/77
	26095	R315-305	5YR	03/14/2003	2003-7/78
	26096	R315-306	5YR	03/14/2003	2003-7/79
	26097	R315-307	5YR	03/14/2003	2003-7/79
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	26101	R315-311	5YR	03/14/2003	2003-7/82
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	26104	R315-314	5YR	03/14/2003	2003-7/84
	26105	R315-315	5YR	03/14/2003	2003-7/85
	26106	R315-316	5YR	03/14/2003	2003-7/86
	26107	R315-317	5YR	03/14/2003	2003-7/87
	26108	R315-318	5YR	03/14/2003	2003-7/87
Environmental Quality, Water Quality	25636	R317-1	AMD	01/30/2003	2002-23/17
waste management					
Environmental Quality, Solid and Hazardous Waste	26093	R315-302	5YR	03/14/2003	2003-7/76
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Environmental Quality, Water Quality	25203	R317-4-3	AMD	01/10/2003	2002-18/43
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	25637	R317-11	AMD	01/30/2003	2002-23/80
wastewater					
Environmental Quality, Water Quality	26183	R317-101	5YR	04/22/2003	2003-10/151
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Environmental Quality, Water Quality	25638	R317-10	AMD	01/30/2003	2002-23/78
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Public Service Commission, Administration	26081	R746-330	5YR	03/10/2003	2003-7/92
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	25633	R317-9	NEW	02/05/2003	2002-23/74
	25638	R317-10	AMD	01/30/2003	2002-23/78
water quality					
Environmental Quality, Water Quality	25632	R317-6-6	AMD	01/30/2003	2002-23/25
	25631	R317-7-13	AMD	01/30/2003	2002-23/32
	26183	R317-101	5YR	04/22/2003	2003-10/151
Public Service Commission, Administration	26081	R746-330	5YR	03/10/2003	2003-7/92
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Natural Resources, Water Rights	26195	R655-5	5YR	04/29/2003	2003-10/154
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Human Services, Recovery Services	25977	R527-3	AMD	03/19/2003	2003-4/26
wildlife					
Natural Resources, Wildlife Resources	26167	R657-3	5YR	04/15/2003	2003-9/136
	25720	R657-5	AMD	01/15/2003	2002-24/29
	25721	R657-17	AMD	01/15/2003	2002-24/46
	25890	R657-23	AMD	02/16/2003	2003-2/41
	25892	R657-33	AMD	02/16/2003	2003-2/43
	26056	R657-33-6	AMD	04/15/2003	2003-6/15
	25722	R657-38	AMD	01/15/2003	2002-24/48
	25723	R657-42	AMD	01/15/2003	2002-24/52
	25894	R657-44	R&R	02/16/2003	2003-2/46
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Natural Resources, Wildlife Resources	25722	R657-38	AMD	01/15/2003	2002-24/48
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Workforce Services, Employment Development	25827	R986-400-404	AMD	02/06/2003	2003-1/43
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Environmental Quality, Radiation Control	25786	R313-28	AMD	03/14/2003	2003-1/27
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Human Services, Administration, Administrative Services, Licensing	25707	R501-8	AMD	01/17/2003	2002-24/19
	26055	R501-16	5YR	02/26/2003	2003-6/17
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zoning					
Administrative Services, Facilities Construction and Management	25957	R23-9	5YR	01/15/2003	2003-3/63
	25988	R23-9	R&R	03/24/2003	2003-4/5
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Natural Resources, Wildlife Resources	26167	R657-3	5YR	04/15/2003	2003-9/136