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.

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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 Executive Order 2004-0004: Wildland Fire Management

EXECUTIVE ORDER

Wildland Fire Management

WHEREAS, the danger from wildland fires is high throughout the state of Utah;

WHEREAS, numerous wildland fires are anticipated statewide that will present a serious threat to public safety, property, natural resources and the environment;

WHEREAS, some of the areas where fires are anticipated are extremely remote and inaccessible and the situation has the potential to worsen greatly if left unattended;

WHEREAS, immediate action is required to suppress these fires as they occur and mitigate post-burn flash floods to protect public safety, property, natural resources and the environment; and

WHEREAS, these conditions, as they arise, do create a disaster emergency within the intent of the Disaster Response and Recovery Act of 1981;

NOW, THEREFORE, I, Olene S. Walker, Governor of the state of Utah by virtue of the power vested in me by the constitution and the laws of the state of Utah, do hereby order that:

It is found, determined and declared that a "State of Emergency" exists statewide due to the threat to public safety, property, natural resources and the environment for thirty days, effective as of May 10, 2004, requiring aid, assistance and relief available pursuant to the provisions of state statutes, and the State Emergency Operations Plan, which is hereby activated.

IN WITNESS, WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the state of Utah. Done in Salt Lake City, Utah, this 10th day of May, 2004.

(State Seal)

OLENE S. WALKER
Governor

ATTEST:

GAYLE F. MCKEACHNIE
Lieutenant Governor

2004-0004

Governor's Executive Order 2004-0002: Regarding Principles of Quality Growth

EXECUTIVE ORDER

Regarding Principles of Quality Growth

WHEREAS, the Quality Growth Act of 1999 created the Quality Growth Commission to advise the Legislature and local entities on growth management issues and on identifying principles of growth that help achieve the highest possible quality of growth;

WHEREAS, the Quality Growth Commission has identified Principles of Quality Growth in response to that charge;

WHEREAS, the state supports the Principles of Quality Growth and encourages implementation of such principles at the state and local levels;

NOW, THEREFORE, I, Olene S. Walker, Governor of the state of Utah, by virtue of the authority vested in me by the laws and constitution of the state of Utah, do hereby order as follows:

1. Each state agency shall review the Principles of Quality Growth.

2. Within existing law, funding sources and resources, each state agency shall integrate, to the degree applicable and practicable, Principles of Quality Growth in state strategies and programs.

3. This Executive Order supercedes and replaces year 2004 Executive Order No. 0001.

IN WITNESS, WHEREOF, I have hereunto set my hand and caused to be affixed the Great Seal of the state of Utah. Done at the State Capitol in Salt Lake City, Utah, this 17th day of May, 2004.

(State Seal)

OLENE S. WALKER
Governor

ATTEST:

GAYLE F. MCKEACHNIE
Lieutenant Governor

2004-0002

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 May 1, 2004, 12:00 a.m., and May 14, 2004, 11:59 p.m. are included in this, the June 1, 2004, issue of the *Utah State Bulletin*.

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

Following the RULE ANALYSIS, the text of the PROPOSED RULE is usually printed. New rules or additions made to existing rules are underlined (e.g., example). Deletions made to existing rules are struck out with brackets surrounding them (e.g., [~~example~~]). Rules being repealed are completely struck out. A row of dots in the text (· · · · · ·) indicates that unaffected text was removed to conserve space. If a PROPOSED RULE is too long to print, the Division of Administrative Rules will include only the RULE ANALYSIS. A copy of each rule that is too long to print is available from the filing agency or from the Division of Administrative Rules.

The law requires that an agency accept public comment on PROPOSED RULES published in this issue of the *Utah State Bulletin* until at least July 1, 2004. The agency may accept comment beyond this date and will list the last day the agency will accept comment in the RULE ANALYSIS. The agency may also hold public hearings. Additionally, citizens or organizations may request the agency to hold a hearing on a specific PROPOSED RULE. Section 63-46a-5 (1987) requires that a hearing request be received "in writing not more than 15 days after the publication date of the PROPOSED RULE."

From the end of the public comment period through September 29, 2004, 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
R25-7-6
Reimbursements for Meals

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27164
FILED: 05/14/2004, 15:03

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is being revised as a result of a division review of the meal per diem for premium cities. The review showed that when employees travel to premium cities and receive complimentary meals, they are not being sufficiently compensated for the remaining meals for that day.

SUMMARY OF THE RULE OR CHANGE: The rule is amended to: 1) specify under what conditions travelers qualify for premium rates on the day travel begins and/or the day travel ends; and 2) specify a premium allowance for remaining meals on a day when travelers receive complimentary meals in premium cities.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 63A-3-107 and 63A-3-106; and UT L 2000 Ch 344, UT L 2001 Ch 334, UT L 2002 Ch 277, UT L 2003 Ch 342, and SB 1 Item 50, 2004 General Session (DAR NOTE: S.B. 1 is found at UT L 2004 Ch 256, and will be effective 07/01/2004.)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Amending this rule could result in a cost to the state budget. State agencies (including legislative staff, the Judicial Branch, and the Utah System of Higher Education) could spend more to reimburse travelers for meals in premium cities. They could spend up to $9 more for each day a traveler receives a complimentary breakfast in a premium city; up to $8 more for each day a traveler receives a complimentary lunch in a premium city; and up to $7 more for each day a traveler receives a complimentary dinner in a premium city. Finance cannot anticipate the aggregate cost to the state budget for the following reasons: 1) the Division does not know how many meals in premium cities agencies will reimburse; 2) the Division does not know how many employees traveling to premium cities will receive complimentary meals; 3) the Division does not know whether the complimentary meals premium city travelers receive will be breakfast, lunch, or dinner; and 4) because agencies will reimburse employees only for actual expenses (up to a specified maximum dollar amount), there is no way to know exactly how much agencies will reimburse each employee for each premium city meal.

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

❖ OTHER PERSONS: The amendments to this rule may result in savings to employees of the state, legislative staff, the Judicial Branch, and the Utah System of Higher Education who travel on business. Employees who travel to premium cities may receive up to $9 more for each day they receive a complimentary breakfast in a premium city; up to $8 more for each day they receive a complimentary lunch in a premium city; and up to $7 more for each day they receive a complimentary dinner in a premium city. The Division cannot anticipate the aggregate savings impact on employees for the following reasons: 1) the Division does not know how many employees will be reimbursed for meals in premium cities; 2) the Division does not know whether the employees traveling to premium cities will receive complimentary meals; 3) the Division does not know whether the complimentary meals employees traveling to premium cities receive will be breakfast, lunch, or dinner; and 4) because employees will be reimbursed only for actual expenses (up to a specified maximum dollar amount), there is no way to know exactly how much each employee will be reimbursed for each premium city meal.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with the revisions to Section R25-7-6.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Amendments to Section R25-7-6 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 07/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2004

AUTHORIZED BY: Kim Thorne, Director

R25. Administrative Services, Finance.
R25-7. Travel-Related Reimbursements for State Employees.
R25-7-6. Reimbursement for Meals.

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

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

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

(a) The daily travel meal allowance for in-state travel is $30.00 and is computed according to the rates listed in the following table.

TABLE 1

In-State Travel Meal Allowances

Meals	Rate
Breakfast	$6.00
Lunch	$9.00
Dinner	$15.00
Total	$30.00

(b) The daily travel meal allowance for out-of-state travel is $38.00 and is computed according to the rates listed in the following table.

TABLE 2

Out-of-State Travel Meal Allowances

Meals	Rate
Breakfast	$9.00
Lunch	$11.00
Dinner	$18.00
Total	$38.00

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

(a) [~~The traveler must be entitled to be reimbursed for all meals for the day in order to qualify for premium rates for a given day~~]The traveler will qualify for premium rates on the day the travel begins and/or the day the travel ends only if the trip is of sufficient duration to qualify for all meals on that day.

(b) Complimentary meals of a hotel, motel and/or association and meals included in registration costs are deducted from the $50 premium allowance as follows:

(i) If breakfast is provided deduct $12, leaving a premium allowance for lunch and dinner of actual up to $38.

(ii) If lunch is provided deduct $15, leaving a premium allowance for breakfast and dinner of actual up to $35.

(iii) If dinner is provided deduct $23, leaving a premium allowance for breakfast and dinner of actual up to $27.

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

[~~(c)~~](d) Actual meal cost includes tips.

[~~(d)~~](e) Alcoholic beverages are not reimbursable.

(5) When traveling in foreign countries, the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the reasonable, actual meal cost, with original receipts.

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

(b) Actual meal cost includes tips.

(c) Alcoholic beverages are not reimbursable.

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

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

TABLE 3

The Day Travel Begins

1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
a.m.	a.m.	p.m.	p.m.
12:01-6:00	6:01-noon	12:01-6:00	6:01-midnight
*B, L, D	*L, D	*D	*no meals
In-State			
$30.00	$24.00	$15.00	$0
Out-of-State			
$38.00	$29.00	$18.00	$0

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

(b) The days at the location.

(i) Complimentary meals of a hotel, motel, and/or association and meals included in the registration cost are deducted from the total daily meal allowance.

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

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

TABLE 4

The Day Travel Ends

1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
a.m.	a.m.	p.m.	p.m.
12:01-6:00	6:01-noon	12:01-7:00	7:01-midnight
*no meals	*B	*B, L	*B, L, D
In-State			
$0	$6.00	$15.00	$30.00
Out-of-State			
$0	$9.00	$20.00	$38.00

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

(7) An employee may be authorized by his Department Director or designee to receive a meal allowance when his destination is at least 100 miles from his home base and he does not stay overnight.

(a) Breakfast is paid when the employee leaves his home base before 6:01 a.m.

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

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

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

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

(c) Dinner is paid when the employee leaves his home base and returns after 7 p.m.

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

KEY: air travel, per diem allowances, state employees, transportation
July [~~1~~]2, 2004

Notice of Continuation May 1, 2003
63A-3-107
63A-3-106
2000 Utah Laws 344
2001 Utah Laws 334
2002 Utah Laws 277
2003 Utah Laws 342
S.B. 1 Item 50, 2004 General Session

Agriculture and Food, Regulatory Services

R70-310

Grade A Pasteurized Milk

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27149
FILED: 05/12/2004, 13:47

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed amendment adopts the latest version of the Grade A Pasteurized Milk Ordinance.

SUMMARY OF THE RULE OR CHANGE: This amendment adopts the 2003 version of the Grade A Pasteurized Milk Ordinance. There are no significant changes in this version.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 4-2-2(1)(j)

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: U.S. Department of Health and Human Services Public Health Service Grade A Pasteurized Milk Ordinance, 2003 version

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: No impact to state budget. Dairy owners will be affected if they violate any portion of the Grade A Pasteurized Milk Ordinance.
❖ LOCAL GOVERNMENTS: No impact to local government. Dairy owners will be affected if they violate any portion of the Grade A Pasteurized Milk Ordinance.
❖ OTHER PERSONS: Dairy owners will be affected if they violate any portion of the Grade A Pasteurized Milk Ordinance. We have no idea how many dairy owners will violate this ordinance this year. We had one violation last year.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Violation of any portion of the Grade A Pasteurized Milk Ordinance may result in civil or criminal action. A penalty not to exceed $5,000 per violation in a civil proceeding, and in a criminal proceeding is guilty of a Class B Misdemeanor.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There will be no fiscal impact on businesses with the exception of dairy owners. There may be a penalty to dairy owners if any portion of the Grade A Pasteurized Milk Ordinance is violated.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
AGRICULTURE AND FOOD
REGULATORY SERVICES
350 N REDWOOD RD
SALT LAKE CITY UT 84116-3087, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Marolyn Leetham or Don McClellan at the above address, by phone at 801-538-7114 or 801-538-7145, by FAX at 801-538-7126 or 801-538-7126, or by Internet E-mail at mleetham@utah.gov or dmcclellan@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 07/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2004

AUTHORIZED BY: Cary G. Peterson, Commissioner

R70. Agriculture and Food, Regulatory Services.
R70-310. Grade A Pasteurized Milk.
R70-310-1. Authority.

A. Promulgated Under the Authority of Subsection 4-2-2(1)(j).

B. Scope - this rule shall apply to all Grade A pasteurized milk products sold, bought, processed, manufactured or distributed within the State of Utah.

R70-310-2. Adoption of USPHS Ordinance.

The Grade A Pasteurized Milk Ordinance, [~~2001~~]2003 Recommendations of the United States Public Health Service/Food and Drug Administration, is hereby adopted and incorporated by reference within this rule. This document is available for public inspection, during normal working hours, and may be reviewed at the main office of the Utah Department of Agriculture and Food, 350 No. Redwood Road, SLC, UT 84116.

R70-310-3. Regulatory Agency Defined.

The definition of "regulatory agency" as given in section 1(x) of the Grade A Pasteurized Milk Ordinance shall mean the Commissioner of Agriculture and Food of the State of Utah or his authorized representative(s).

R70-310-4. Penalty.

Violation of any portion of the Grade A Pasteurized Milk Ordinance [~~2001~~]2003 recommendation may result in civil or criminal action, pursuant to Section 4-2-15.

KEY: food inspection
[~~December 2, 2003~~]2004
Notice of Continuation February 10, 2000
4-2-2

Crime Victim Reparations, Administration
R270-1
Award and Reparations Standards

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27157
FILED: 05/14/2004, 14:23

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed changes were authorized by the Crime Victims Reparation (CVR) Board to increase the maximum amount allowed for mental health counseling, extend transportation of deceased victims beyond the United States, and consider parents, children, and siblings of homicide victims as primary victims for inpatient and outpatient counseling.

SUMMARY OF THE RULE OR CHANGE: The changes: 1) increase the maximum award for outpatient mental health counseling for primary victims to $3,500 and secondary victims to $2,000; 2) increase current provider of mental health services rates; 3) allow transportation of deceased victims beyond United States; and 4) allow for parents, children, and siblings of homicide victims to receive inpatient and outpatient mental health counseling at the same rate as primary victims.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 63-25a-406(c)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: CVR derives its funding from surcharges. No state general fund monies are appropriated. The proposed rule changes would provide an increased cost of approximately $300,000.
❖ LOCAL GOVERNMENTS: CVR rules do not affect local government; therefore, there is no costs or savings to local governments.
❖ OTHER PERSONS: There would be an increase in services to mental health and deceased victims which would mean a savings to them because of the award payments made on their behalf.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The CVR office does not have any compliance costs because the program does not impose fees on victims of crime for services provided.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There would not be a fiscal impact on businesses since funding comes from the existing CVR Trust Fund.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
CRIME VICTIM REPARATIONS
ADMINISTRATION
Room 200
350 E 500 S
SALT LAKE CITY UT 84111-3347, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Connie Wettlaufer at the above address, by phone at 801-238-2371, by FAX at 801-533-4127, or by Internet E-mail at cwettlaufer@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 07/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2004

AUTHORIZED BY: Dan Davis, Director

R270. Crime Victim Reparations, Administration.
R270-1. Award and Reparation Standards.
R270-1-2. Funeral and Burial Award.

A. Pursuant to Subsection 63-25a-411(4)(f), total award for funeral and burial expenses is $7,000 for any reasonable and necessary charges incurred directly relating to the funeral and burial of a victim. This amount includes transportation of the deceased[~~within the United States~~]. Allowable expenses in this category may include the emergency acquisition of a burial plot for victims who did not previously possess or have available to them a plot for burial.

B. Transportation of secondary victims to attend a funeral and burial service shall be considered as an allowable expense in addition to the $7,000.

C. Loss of earnings for secondary victims to attend a funeral and burial service shall be allowed as follows:

1. Three days in-state
2. Five days out-of-state

D. When a victim dies leaving no identifying information, claims made by a provider cannot be considered.

R270-1-4. Counseling Awards.

A. Pursuant to Subsections 63-25a-402(20) and 63-25a-411(4)(c), out-patient mental health counseling awards are subject to limitations as follows:

1. The reparation officer shall approve a standardized treatment plan.

2. The cost of initial evaluation and testing may not exceed $300 and shall be part of the maximum allowed for counseling. For purposes herein, an evaluation shall be defined as diagnostic interview examination including history, mental status, or disposition, in order to determine a plan of mental health treatment.

3. Primary victims of a crime shall be eligible for a $[~~2500~~]3500 maximum mental health counseling award.

(a) Parents, children and siblings of homicide victims shall be considered at the same rate as primary victims for inpatient and outpatient counseling.

4. Secondary victims of a crime shall be eligible for a $[~~1000~~]2000 maximum mental health counseling award.

5. Extenuating circumstances warranting consideration of counseling beyond the maximum may be submitted by the mental health provider after the maximum award has been reached.

6. Counseling costs will not be paid in advance but will be paid on an ongoing basis as victim is being billed.

7. In-patient hospitalization shall only be considered when the treatment has been recommended by a licensed therapist in life-threatening situations. In these cases the Crime Victim Reparations Board shall consider reimbursement of in-patient treatment or contract with a managed mental health care provider to make recommendations to the Reparations Officer regarding treatment. A direct relationship to the crime needs to be established. Acute in-patient hospitalization shall not exceed $600 per day, which includes all ancillary expenses, and will be considered payment in full to the provider. Inpatient psychiatric visits will be limited to one visit per day with payment for the visit made to the institution at the highest rate of the individuals providing therapy as set by rule. Reimbursement for testing costs may also be allowed. Secondary victims shall not be considered for in-patient hospitalization.

8. Residential and day treatment shall only be considered when the treatment has been recommended by a licensed therapist to stabilize the victim's behavior and symptoms. Only facilities with 24 hour nursing care or 24 hour on call nursing care will be compensated for residential and day treatment. Residential and day treatment shall not be used for extended care of dysfunctional families and containment placements. A direct relationship to the crime needs to be established. Residential treatment shall not exceed $300 per day and will be considered payment in full to the provider. Residential treatment shall be limited to 30 days, unless there are extenuating circumstances requiring extended care. All residential clients shall receive routine assessments from a psychiatrist and/or APRN at least once a week for medication management. Day treatment shall not exceed $200 per day and will be considered payment in full to the provider. Secondary victims shall not be considered for residential or day treatment.

9. Child sexual abuse victims under the age of 13 who become perpetrators shall only be considered for mental health treatment awards directly related to the victimization. Perpetrators age 13 and over who have been child sexual abuse victims shall not be eligible for compensation. The CVR Board or contracting agency for managed mental health care shall help establish a reasonable percentage regarding victimization treatment for inpatient, residential and day treatment. Out-patient claims shall be determined by the Reparation Officer on a case by case basis upon review of the mental health treatment plan.

10. Payment for mental health counseling shall only be made to licensed therapists; or to individuals working towards a license that provide certified verification of satisfactory completion of an education and earned degree as required by the State of Utah Department of Commerce, Division of Professional and Occupational Licensing, working under the supervision of a supervisor approved by the Division. Student interns otherwise eligible under 58-1-307(1)(b) Exceptions from licensure, and/or the institution/facility/agency responsible for the supervision of the student, shall not be eligible for payment under this rule for counseling services provided by the student.

11. Payment of hypnotherapy shall only be considered when treatment is performed by a licensed mental health therapist based upon an approved Treatment Plan.

12. The following maximum amounts shall be payable for mental health counseling:

(a) up to $[~~125~~]130 per hour for individual and family therapy performed by licensed psychiatrists, and up to $[~~62.50~~]65 per hour for group therapy;

(b) up to $[~~85~~]90 per hour for individual and family therapy performed by licensed psychologists and up to $[~~42.50~~]45 per hour for group therapy;

(c) up to $[~~65~~]70 per hour for individual and family therapy performed by [~~an L.C.S.W., M.S.W. or marriage and family~~]a licensed master's level therapist or an Advanced Practice Registered Nurse, and up to $[~~32.50~~]35 per hour for group therapy. These rates shall also apply to therapists working towards a license and supervised by a licensed therapist;

(d) The above-mentioned rates shall apply to individuals performing treatment, and not those supervising treatment.

13. Chemical dependency specific treatment will not be compensated unless the Reparation Officer determines that it is directly related to the crime. The CVR Board may review extenuating circumstance cases.

KEY: victim compensation, victims of crimes
[~~August 1, 2003~~]2004
Notice of Continuation December 10, 2001
63-25a-401 et seq.

Environmental Quality, Water Quality
R317-6
Ground Water Quality Protection

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27177
FILED: 05/14/2004, 17:22

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is being updated to reflect current references and additions to EPA Drinking Water standards. EPA Drinking Water standards are incorporated into the ground water quality standards. The rule is also being modified to allow for a more reasonable allowance for natural variations in background water quality in an effort to reduce false positives.

SUMMARY OF THE RULE OR CHANGE: The rule changes include three primary changes: 1) updating Ground Water Quality Standards Table (Table 1), to reflect changes and additions to Federal Maximum Contamination Levels and Maximum Residual Disinfection Levels under EPA Drinking Water regulations; 2) updated definitions and references throughout the ground water rules; and 3) adjustments to protection levels to reflect a more reasonable representation of natural background variation in groundwater and reduce the occurrence of false positives.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-4-104

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: No additional costs or savings are anticipated. The changes in protection levels will allow State staff to minimize time spent on erroneous out of compliance issues.

❖ LOCAL GOVERNMENTS: The proposed changes do not directly affect local governments. No additional costs or savings are anticipated.
❖ OTHER PERSONS: The proposed changes in protection levels will reduce unnecessary accelerated monitoring and analysis costs for some permittees.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No additional compliance costs are anticipated as a result of the proposed amendments. The proposed changes in protection levels will reduce unnecessary accelerated monitoring and analysis costs for some permittees, unwarranted expenditure of Division resources, and undue public concern.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed changes in protection levels will reduce unnecessary accelerated monitoring and analysis costs for some permittees.

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 07/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 07/16/2004

AUTHORIZED BY: Don Ostler, Director

R317. Environmental Quality, Water Quality.
R317-6. Ground Water Quality Protection.
R317-6-2. Ground Water Quality Standards.

2.1 The following Ground Water Quality Standards as listed in Table I are adopted for protection of ground water quality.

TABLE 1
GROUND WATER QUALITY STANDARDS

Parameter	Milligrams per liter (mg/l) unless noted otherwise and based on analysis of filtered sample except for Mercury and organic compounds
PHYSICAL CHARACTERISTICS	
Color (units)	15.0
Corrosivity (characteristic)	noncorrosive
Odor (threshold number)	3.0
pH (units)	6.5-8.5
INORGANIC CHEMICALS	
Bromate	0.01
Chloramine (as Cl_2)	4
Chlorine (as Cl_2)	4
Chlorine Dioxide	0.8
Chlorite	1.0
Cyanide (free)	0.2
Fluoride	4.0
Nitrate (as N)	10.0
Nitrite (as N)	1.0
Total Nitrate/Nitrite (as N)	10.0
METALS	
Antimony	0.006
Asbestos (fibers/l and > 10 microns in length)	$7.0x10^6$
Arsenic	0.05
Barium	2.0
Beryllium	0.004
Cadmium	0.005
Chromium	0.1
Copper	1.3
Lead	0.015
Mercury	0.002
Selenium	0.05
Silver	0.1
Thallium	0.002
Zinc	5.0
ORGANIC CHEMICALS	
Pesticides and PCBs	
Alachlor	0.002
Aldicarb	0.003
Aldicarb sulfone	0.002
Aldicarb sulfoxide	0.004
Atrazine	0.003
Carbofuran	0.04
Chlordane	0.002
Dalapon (sodium salt)	0.2
Dibromochloropropane (DBCP)	0.0002
2, 4-D	0.07
Dichlorophenoxyacetic acid (2, 4-) (2,4D)	0.07
Dinoseb	0.007
Diquat	0.02
Endothall	0.1
Endrin	0.002
Ethylene Dibromide (EDB)	0.00005
Glyphosate	0.7
Heptachlor	0.0004
Heptachlor epoxide	0.0002
Lindane	0.0002
Methoxychlor	0.04
Oxamyl (Vydate)	0.2
Pentachlorophenol	0.001
Picloram	0.5
Polychlorinated Biphenyls	0.0005
Simazine	0.004
Toxaphene	0.003
2, 4, 5-TP (Silvex)	0.05
VOLATILE ORGANIC CHEMICALS	
Benzene	0.005
Benzo (a) pyrene (PAH)	0.0002
Carbon tetrachloride	0.005
1, 2 - Dichloroethane	0.005
1, 1 - Dichloroethylene	0.007
1, 1, 1-Trichloroethane	0.200
Dichloromethane	0.005
Di (2-ethylhexyl) adipate	0.4
Di (2-ethylhexyl) phthalate	0.006
Dioxin (2,3,7,8-TCDD)	0.00000003
para - Dichlorobenzene	0.075
o-Dichlorobenzene	0.6
cis-1,2 dichloroethylene	0.07
trans-1,2 dichloroethylene	0.1
1,2 Dichloropropane	0.005
Ethylbenzene	0.7

Hexachlorobenzene	0.001
Hexachlorocyclopentadiene	0.05
Monochlorobenzene	0.1
Styrene	0.1
Tetrachloroethylene	0.005
Toluene	1
Trichlorobenzene (1,2,4-)	0.07
Trichloroethane (1,1,1-)	0.2
Trichloroethane (1,1,2-)	0.005
Trichloroethylene	0.005
Vinyl chloride	0.002
Xylenes (Total)	10

OTHER ORGANIC CHEMICALS

[~~Trihalomethanes~~	~~0.1~~]
Five Haloacetic Acids (HAA5)	0.06
(Monochloroacetic acid)	
(Dichloroacetic acid)	
(Trichloroacetic acid)	
(Bromoacetic acid)	
(Dibromoacetic acid)	
Total Trihalomethanes (TTHM)	0.08

RADIONUCLIDES

The following are the maximum contaminant levels for Radium-226 and Radium-228, and gross alpha particle radioactivity, beta particle radioactivity, [~~and~~]photon radioactivity, and uranium concentration:

Combined Radium-226 and Radium-228	5pCi/l
Gross alpha particle activity, including Radium-226 but excluding Radon and Uranium	15pCi/l
Uranium	0.030 mg/l

Beta particle and photon radioactivity

The average annual concentration from man-made radionuclides of beta particle and photon radioactivity from man-made radionuclides shall not produce an annual dose equivalent to the total body or any internal organ greater than four millirem/year.

Except for the radionuclides listed below, the concentration of man-made radionuclides causing four millirem total body or organ dose equivalents shall be calculated on the basis of a two liter per day drinking water intake using the 168 hour data listed in "Maximum Permissible Body Burden and Maximum Permissible Concentration Exposure", NBS Handbook 69 as amended August 1962, U.S. Department of Commerce. If two or more radionuclides are present, the sum of their annual dose equivalent to the total body or to any organ shall not exceed four millirem/year.

Average annual concentrations assumed to produce a total body or organ dose of four millirem/year:

Radionuclide	Critical Organ	pCi per liter
Tritium	Total Body	20,000
Strontium-90	Bone Marrow	8

2.2 A permit specific ground water quality standard for any pollutant not specified in Table 1 may be established by the Executive Secretary at a level that will protect public health and the environment. This permit limit may be based on U.S. Environmental Protection Agency maximum contaminant level goals, health advisories, risk based contaminant levels, standards established by other regulatory agencies and other relevant information.

R317-6-4. Ground Water Class Protection Levels.

4.1 GENERAL

A. Protection levels are ground water pollutant concentration limits, set by ground water class, for the operation of facilities that discharge or would probably discharge to ground water.

B. For the physical characteristics (color, corrosivity, odor, and pH) and radionuclides listed in Table 1, the values listed are the protection levels for all ground water classes.

4.2 CLASS IA PROTECTION LEVELS

A. Class IA ground water will be protected to the maximum extent feasible from degradation due to facilities that discharge or would probably discharge to ground water.

B. The following protection levels will apply:

1. Total dissolved solids may not exceed the [~~lesser~~]greater of [~~1.1~~]1.25 times the background or background plus two standard deviations.[~~value or 500 mg/l.~~]

2. When a contaminant is not present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 0.1 times the ground water quality standard value, or the limit of detection.

3. When a contaminant is present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of [~~1.1~~]1.25 times the background concentration, [~~or~~][~~0.1~~]0.25 times the ground water quality standard, or background plus two standard deviations; however, in no case will the concentration of a pollutant be allowed to exceed the ground water quality standard.

4.3 CLASS IB PROTECTION LEVELS

A. Class IB ground water will be protected as an irreplaceable source of drinking water.

B. The following protection levels will apply:

1. Total dissolved solids may not exceed the lesser of 1.1 times the background value or 2000mg/l.

2. When a contaminant is not present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 0.1 times the ground water quality standard, or the limit of detection.

3. When a contaminant is present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 1.1 times the background concentration or 0.1 times the ground water quality standard; however, in no case will the concentration of a pollutant be allowed to exceed the ground water quality standard.

4.4 CLASS IC PROTECTION LEVELS

Class IC ground water will be protected as a source of water for potentially affected wildlife habitat. Limits on increases of total dissolved solids and organic and inorganic chemical compounds will be determined in order to meet applicable surface water standards.

4.5 CLASS II PROTECTION LEVELS

A. Class II ground water will be protected for use as drinking water or other similar beneficial use with conventional treatment prior to use.

B. The following protection levels will apply:

1. Total dissolved solids may not exceed the greater of 1.25 times the background value or background plus two standard deviations.

2. When a contaminant is not present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 0.25 times the ground water quality standard, or the limit of detection.

3. When a contaminant is present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 1.25 times the background concentration[~~or~~], 0.25 times the ground water quality standard, or background plus two standard deviations; however, in no case will the concentration of a pollutant be allowed to exceed the ground water quality standard.

4.6 CLASS III PROTECTION LEVELS

A. Class III ground water will be protected as a potential source of drinking water, after substantial treatment, and as a source of water for industry and agriculture.

B. The following protection levels will apply:

1. Total dissolved solids may not exceed the greater of 1.25 times the background concentration level or background plus two standard deviations.

2. When a contaminant is not present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 0.5 times the ground water quality standard, or the limit of detection.

3. When a contaminant is present in a detectable amount as a background concentration, the concentration of the pollutant may not exceed the greater of 1.5 times the background concentration or 0.5 times the ground water quality standard or background plus two standard deviations; however, in no case will the concentration of a pollutant be allowed to exceed the ground water quality standard. If the background concentration exceeds the ground water quality standard no increase will be allowed.

4.7 CLASS IV PROTECTION LEVELS

Protection levels for Class IV ground water will be established to protect human health and the environment.

R317-6-6. Implementation.

6.1 DUTY TO APPLY FOR A GROUND WATER DISCHARGE PERMIT

A. No person may construct, install, or operate any new facility or modify an existing or new facility, not permitted by rule under R317-6-6.2, which discharges or would probably result in a discharge of pollutants that may move directly or indirectly into ground water, including, but not limited to land application of wastes; waste storage pits; waste storage piles; landfills and dumps; large feedlots; mining, milling and metallurgical operations, including heap leach facilities; and pits, ponds, and lagoons whether lined or not, without a ground water discharge permit from the Executive Secretary. A ground water discharge permit application should be submitted at least 180 days before the permit is needed.

B. All persons who constructed, modified, installed, or operated any existing facility, not permitted by rule under R317-6-6.2, which discharges or would probably result in a discharge of pollutants that may move directly or indirectly into ground water, including, but not limited to: land application of wastes; waste storage pits; waste storage piles; landfills and dumps; large feedlots; mining, milling and metallurgical operations, including heap leach facilities; and pits, ponds, and lagoons whether lined or not, must have submitted a notification of the nature and location of the discharge to the Executive Secretary before February 10, 1990 and must submit an application for a ground water discharge permit within one year after receipt of written notice from the Executive Secretary that a ground water discharge permit is required.

6.2 GROUND WATER DISCHARGE PERMIT BY RULE

A. Except as provided in R317-6-6.2.C, the following facilities are considered to be permitted by rule and are not required to obtain a discharge permit under R317-6-6.1 or comply with R317-6-6.3 through R317-6-6.7, R317-6-6.9 through R317-6-6.11, R317-6-6.13, R317-6-6.16, R317-6-6.17 and R317-6-6.18:

1. facilities with effluent or leachate which has been demonstrated to the satisfaction of the Executive Secretary to conform and will not deviate from the applicable class TDS limits, ground water quality standards, protection levels or other permit limits and which does not contain any contaminant that may present a threat to human health, the environment or its potential beneficial uses of the ground water. The Executive Secretary may require samples to be analyzed for the presence of contaminants before the effluent or leachate discharges directly or indirectly into ground water. If the discharge is by seepage through natural or altered natural materials, the Executive Secretary may require samples of the solution be analyzed for the presence of pollutants before or after seepage;

2. water used for watering of lawns, gardens, or shrubs or for irrigation for the revegetation of a disturbed land area except for the direct land application of wastewater;

3. application of agricultural chemicals including fertilizers, herbicides and pesticides including but not limited to, insecticides fungicides, rodenticides and fumigants when used in accordance with current scientifically based manufacturer's recommendations for the crop, soil, and climate and in accordance with state and federal statutes, regulations, permits, and orders adopted to avoid ground water pollution;

4. water used for irrigated agriculture except for the direct land application of wastewater from municipal, industrial or mining facilities;

5. flood control systems including detention basins, catch basins and wetland treatment facilities used for collecting or conveying storm water runoff;

6. natural ground water seeping or flowing into conventional mine workings which re-enters the ground by natural gravity flow prior to pumping or transporting out of the mine and without being used in any mining or metallurgical process;

7. leachate which results entirely from the direct natural infiltration of precipitation through undisturbed materials;

8. wells and facilities regulated under the underground injection control (UIC) program;

9. land application of livestock wastes, within expected crop nitrogen uptake;

10. individual subsurface wastewater disposal systems approved by local health departments or large subsurface wastewater disposal systems approved by the Board;

11. produced water pits, and other oil field waste treatment, storage, and disposal facilities regulated by the Division of Oil, Gas, and Mining in accordance with Section 40-6-5(3)(d) and R649-9, Disposal of Produced Water;

12. reserve pits regulated by the Division of Oil, Gas and Mining in accordance with Section 40-6-5(3)(a) and R649-3-7, Drilling and Operating Practices;

13. storage tanks installed or operated under regulations adopted by the Utah Solid and Hazardous Waste Control Board;

14. coal mining operations or facilities regulated under the Coal Mining and Reclamation Act by the Utah Division of Oil, Gas, and Mining (DOGM). The submission of an application for ground water discharge permit under R317-6-6.2.C may be required only if the Executive Secretary, after consideration of recommendations, if any, by DOGM, determines that the discharge violates applicable ground water quality standards, applicable Class TDS limits, or is interfering with a reasonable foreseeable beneficial use of the ground water. DOGM is not required to establish any administrative or regulatory requirements which are in addition to the rules of DOGM for coal mining operations or facilities to implement these ground water regulations;

15. hazardous waste or solid waste management units managed or undergoing corrective action under R315-1 through R315-14;

16. solid waste landfills permitted under the requirements of R315-303;

17. animal feeding operations, as defined in UAC R317-8-3.5(2) that use liquid waste handling systems, which are not located within Zone 1 (100 feet) for wells in a confined aquifer or Zone 2 (250 day time of travel) for wells and springs in unconfined aquifers, in accordance with the Public Drinking Water Regulations UAC R309-[~~113~~]600, and which meet either of the following criteria:

a) operations constructed prior to the effective date of this rule which incorporated liquid waste handling systems and which are either less than 4 million gallons capacity or serve fewer than 1000 animal units, or

b. operations with fewer than the following numbers of confined animals:

i. 1,500 slaughter and feeder cattle,

ii. 1,050 mature dairy cattle, whether milked or dry cows,

iii. 3,750 swine each weighing over 25 kilograms (approximately 55 pounds),

iv. 18,750 swine each weighing 25 kilograms or less (approximately 55 pounds),

v. 750 horses,

vi. 15,000 sheep or lambs,

vii. 82,500 turkeys,

viii. 150,000 laying hens or broilers that use continuous overflow watering but dry handle wastes,

ix. 45,000 hens or broilers,

x. 7,500 ducks, or

xi. 1,500 animal units

18. animal feeding operations, as defined in UAC R317-8-3.5(2), which do not utilize liquid waste handling systems;

19. mining, processing or milling facilities handling less than 10 tons per day of metallic and/or nonmetallic ore and waste rock, not to exceed 2500 tons/year in aggregate unless the processing or milling uses chemical leaching;

20. pipelines and above-ground storage tanks;

21. drilling operations for metallic minerals, nonmetallic minerals, water, hydrocarbons, or geothermal energy sources when done in conformance with applicable regulations of the Utah Division of Oil, Gas, and Mining or the Utah Division of Water Rights;

22. land application of municipal sewage sludge for beneficial use, at or below the agronomic rate and in compliance with the requirements of 40 CFR 503, July 1, [~~1993~~]2000 edition;

23. land application of municipal sewage sludge for mine-reclamation at a rate higher than the agronomic rate and in compliance with 40 CFR 503, July 1, [~~1993~~]2000 edition;

24. municipal wastewater treatment lagoons receiving no wastewater from a significant industrial discharger as defined in R317-8-8.2(12); and

25. facilities and modifications thereto which the Executive Secretary determines after a review of the application will have a de minimis actual or potential effect on ground water quality.

B. No facility permitted by rule under R317-6-6.2.A may cause ground water to exceed ground water quality standards or the applicable class TDS limits in R317-6-3.1 to R317-6-3.7. If the background concentration for affected ground water exceeds the ground water quality standard, the facility may not cause an increase over background. This section, R317-6-6.2B. does not apply to facilities undergoing corrective action under R317-6-6.15A.3.

C. The submission of an application for a ground water discharge permit may be required by the Executive Secretary for any discharge permitted by rule under R317-6-6.2 if it is determined that the discharge may be causing or is likely to cause increases above the ground water quality standards or applicable class TDS limits under R317-6-3 or otherwise is interfering or may interfere with probable future beneficial use of the ground water.

6.3 APPLICATION REQUIREMENTS FOR A GROUND WATER DISCHARGE PERMIT

Unless otherwise determined by the Executive Secretary, the application for a permit to discharge wastes or pollutants to ground water shall include the following complete information:

A. The name and address of the applicant and the name and address of the owner of the facility if different than the applicant. A corporate application must be signed by an officer of the corporation. The name and address of the contact, if different than above, and telephone numbers for all listed names shall be included.

B. The legal location of the facility by county, quarter-quarter section, township, and range.

C. The name of the facility and the type of facility, including the expected facility life.

D. A plat map showing all water wells, including the status and use of each well, Drinking Water source protection zones, topography, springs, water bodies, drainages, and man-made structures within a one-mile radius of the discharge. The plat map must also show the location and depth of existing or proposed wells to be used for monitoring ground water quality. Identify any applicable Drinking Water source protection ordinances and their impacts on the proposed permit.

E. Geologic, hydrologic, and agricultural description of the geographic area within a one-mile radius of the point of discharge, including soil types, aquifers, ground water flow direction, ground water quality, aquifer material, and well logs.

F. The type, source, and chemical, physical, radiological, and toxic characteristics of the effluent or leachate to be discharged; the average and maximum daily amount of effluent or leachate discharged (gpd), the discharge rate (gpm), and the expected concentrations of any pollutant (mg/l) in each discharge or combination of discharges. If more than one discharge point is used, information for each point must be given separately.

G. Information which shows that the discharge can be controlled and will not migrate into or adversely affect the quality of any other waters of the state, including the applicable surface water quality standards, that the discharge is compatible with the receiving ground water, and that the discharge will comply with the applicable class TDS limits, ground water quality standards, class protection levels or an alternate concentration limit proposed by the facility.

H. For areas where the ground water has not been classified by the Board, information on the quality of the receiving ground water sufficient to determine the applicable protection levels.

I. [~~The~~]A proposed sampling and analysis monitoring plan[~~,~~] which conforms to EPA Guidance for Quality Assurance Project Plans, EPA QA/G-5 (EPA/600/R-98/018, February 1998) and includes a description, where appropriate, of the following:

1. ground water monitoring to determine ground water flow direction and gradient, background quality at the site, and the quality of ground water at the compliance monitoring point;

2. installation, use and maintenance of monitoring devices;

3. description of the compliance monitoring area defined by the compliance monitoring points including the dimensions and hydrologic and geologic data used to determine the dimensions;

4. monitoring of the vadose zone;

5. measures to prevent ground water contamination after the cessation of operation, including post-operational monitoring;

6. monitoring well construction and ground water sampling which conform [~~to A Guide to the Selection of Materials for~~]where applicable to the Handbook of Suggested Practices for Design and Installation of Ground-Water Monitoring [~~Well Construction and~~]Wells (EPA/600/4-89/034, March 1991), ASTM Standards on Ground Water and Vadose Investigations (1996), Practical Guide for Ground Water Sampling EPA/600/2-85/104, (November 198[~~3~~]5) and RCRA Ground Water Monitoring Technical Enforcement Guidance [~~Manual~~]Document (1986), unless otherwise specified by the Executive Secretary;

7. description and justification of parameters to be monitored[~~-~~];

8. quality assurance and control provisions for monitoring data.

J. The plans and specifications relating to construction, modification, and operation of discharge systems.

K. The description of the ground water most likely to be affected by the discharge, including water quality information of the receiving ground water prior to discharge, a description of the aquifer in which the ground water occurs, the depth to the ground water, the saturated thickness, flow direction, porosity, hydraulic conductivity, and flow systems characteristics.

L. The compliance sampling plan which in addition to the information specified in the above item I includes, where appropriate, provisions for sampling of effluent and for flow monitoring in order to determine the volume and chemistry of the discharge onto or below the surface of the ground and a plan for sampling compliance monitoring points and appropriate nearby water wells. Sampling and analytical methods proposed in the application must conform with the most appropriate methods specified in the following references unless otherwise specified by the Executive Secretary:

1. Standard Methods for the Examination of Water and Wastewater, [~~eighteenth~~]twentieth edition, 199[~~2~~]8; Library of Congress catalogue number: ISBN: [~~0-87553-207-1~~]0-87553-235-7.

2. E.P.A. Methods, Methods for Chemical Analysis of Water and Wastes, 1983; Stock Number EPA-600/4-79-020.

3. Techniques of Water Resource Investigations of the U.S. Geological Survey, ([~~1982~~]1998); Book [~~5, Chapter A3~~]9.

4. Monitoring requirements in 40 CFR parts 141 and 142, [~~1991~~]2000 ed., Primary Drinking Water Regulations and 40 CFR parts 264 and 270, [~~1991~~]2000 ed.

5. National Handbook of Recommended Methods for Water-Data Acquisition, GSA-GS edition; Book 85 AD-2777, U.S. Government Printing Office Stock Number 024-001-03489-1.[

~~6. Manual of Analytical Methods for the Analysis of Pesticide Residues in Humans and Environmental Samples, 1980; Stock Number EPA-600/8-80-038, U.S. Environmental Protection Agency.~~]

M. A description of the flooding potential of the discharge site, including the 100-year flood plain, and any applicable flood protection measures.

N. Contingency plan for regaining and maintaining compliance with the permit limits and for reestablishing best available technology as defined in the permit.

O. Methods and procedures for inspections of the facility operations and for detecting failure of the system.

P. For any existing facility, a corrective action plan or identification of other response measures to be taken to remedy any violation of applicable ground water quality standards, class TDS limits or permit limit established under R317-6-6.4E. which has resulted from discharges occurring prior to issuance of a ground water discharge permit.

Q. Other information required by the Executive Secretary.

R. All applications for a groundwater discharge permit must be performed under the direction, and bear the seal, of a professional engineer or professional geologist.

S. A closure and post closure management plan demonstrating measures to prevent ground water contamination during the closure and post closure phases of an operation.

6.4 ISSUANCE OF DISCHARGE PERMIT

A. The Executive Secretary may issue a ground water discharge permit for a new facility if the Executive Secretary determines, after reviewing the information provided under R317-6-6.3, that:

1. the applicant demonstrates that the applicable class TDS limits, ground water quality standards protection levels, and permit limits established under R317-6-6.4E will be met;

2. the monitoring plan, sampling and reporting requirements are adequate to determine compliance with applicable requirements;

3. the applicant is using best available technology to minimize the discharge of any pollutant; and

4. there is no impairment of present and future beneficial uses of the ground water.

B. The Board may approve an alternate concentration limit for a new facility if:

1. The applicant submits a petition for an alternate concentration limit showing the extent to which the discharge will exceed the applicable class TDS limits, ground water standards or applicable protection levels and demonstrates that:

a. the facility is to be located in an area of Class III ground water;

b. the discharge plan incorporates the use of best available technology;

c. the alternate concentration limit is justified based on substantial overriding social and economic benefits; and,

d. the discharge would pose no threat to human health and the environment.

2. One or more public hearings have been held by the Board in nearby communities to solicit comment.

C. The Executive Secretary may issue a ground water discharge permit for an existing facility provided:

1. the applicant demonstrates that the applicable class TDS limits, ground water quality standards and protection levels will be met;

2. the monitoring plan, sampling and reporting requirements are adequate to determine compliance with applicable requirements;

3. the applicant utilizes treatment and discharge minimization technology commensurate with plant process design capability and similar or equivalent to that utilized by facilities that produce similar products or services with similar production process technology; and,

4. there is no current or anticipated impairment of present and future beneficial uses of the ground water.

D. The Board may approve an alternate concentration limit for a pollutant in ground water at an existing facility or facility permitted by rule under R317-6-6.2 if the applicant for a ground water discharge permit shows the extent the discharge exceeds the applicable class TDS limits, ground water quality standards and applicable protection levels that correspond to the otherwise applicable ground water quality standards and demonstrates that:

1. steps are being taken to correct the source of contamination, including a program and timetable for completion;

2. the pollution poses no threat to human health and the environment; and

3. the alternate concentration limit is justified based on overriding social and economic benefits.

E. An alternate concentration limit, once adopted by the Board under R317-6-6.4B or R317-6-6.4D, shall be the pertinent permit limit.

F. A facility permitted under this provision shall meet applicable class TDS limits, ground water quality standards, protection levels and permit limits.

G. The Board may modify a permit for a new facility to reflect standards adopted as part of corrective action.

. . . . . .

6.16 OUT-OF-COMPLIANCE STATUS

A. Accelerated Monitoring for Probable Out-of-Compliance Status

If the [~~concentration~~]value of a single analysis of a pollutant concentration in any compliance monitoring sample exceeds an applicable permit limit, the facility shall:

1. Notify the Executive Secretary in writing within 30 days of receipt of data;

2. [~~Initiate~~]Immediately initiate monthly sampling if the value exceeds both the background concentration of the pollutant by two standard deviations and an applicable permit limit, unless the Executive Secretary determines that other periodic sampling is appropriate, for a period of two months or until the compliance status of the facility can be determined.

B. Violation of Permit Limits

Out-of-compliance status exists when:

1. The value for two consecutive samples from a compliance monitoring point exceeds:

a. one or more permit limits; and

b. the [~~mean ground water pollutant~~]background concentration for that pollutant by two standard deviations (the standard deviation and background (mean)[~~mean~~] being calculated using values for the ground water pollutant at that compliance monitoring point) unless the existing permit limit was derived from the background pollutant concentration plus two standard deviations; or

2. the concentration value of any pollutant in two or more consecutive samples is statistically significantly higher than the applicable permit limit. The statistical significance shall be determined using the statistical methods described in Statistical Methods for Evaluating Ground Water Monitoring Data from Hazardous Waste Facilities, Vol. 53, No. 196 of the Federal Register, Oct. 11, 1988 and supplemental guidance in Guidance For Data Quality Assessment (EPA/600/R-96/084 January 1998).

C. Failure to Maintain Best Available Technology Required by Permit

1. Permittee to Provide Information

In the event that the permittee fails to maintain best available technology or otherwise fails to meet best available technology standards as required by the permit, the permittee shall submit to the Executive Secretary a notification and description of the failure according to R317-6-6.13. Notification shall be given orally within 24 hours of the permittee's discovery of the failure of best available technology, and shall be followed up by written notification, including the information necessary to make a determination under R317-6-6.16.C.2, within five days of the permittee's discovery of the failure of best available technology.

2. Executive Secretary

The Executive Secretary shall use the information provided under R317-6-6.16.C.1 and any additional information provided by the permittee to determine whether to initiate a compliance action against the permittee for violation of permit conditions. The Executive Secretary shall not initiate a compliance action if the Executive Secretary determines that the permittee has met the standards for an affirmative defense, as specified in R317-6-6.16.C.3.

3. Affirmative Defense

In the event a compliance action is initiated against the permittee for violation of permit conditions relating to best available technology, the permittee may affirmatively defend against that action by demonstrating the following:

a. The permittee submitted notification according to R317-6-6.13;

b. The failure was not intentional or caused by the permittee's negligence, either in action or in failure to act;

c. The permittee has taken adequate measures to meet permit conditions in a timely manner or has submitted to the Executive Secretary, for the Executive Secretary's approval, an adequate plan and schedule for meeting permit conditions; and

d. The provisions of 19-5-107 have not been violated.

. . . . . .

KEY: water quality, ground water
2004
Notice of Continuation October 17, 2002
19-5

Environmental Quality, Water Quality
R317-100-3
Numeric Project Priority Ranking System

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27179
FILED: 05/14/2004, 17:24

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed changes are being made at the Utah Water Quality Board's direction to increase priority status on the Utah Wastewater Project Priority List for communities that achieve Quality Growth Certification.

SUMMARY OF THE RULE OR CHANGE: The proposed change adds priority points to the Utah Wastewater Project Priority List for communities that achieve Quality Growth Certification.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-4-104, and 40 CFR 35.3115

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: No change to the state budget. This rule applies to priority system and ranking for available SRF funding for wastewater projects and will not affect state resources.
❖ LOCAL GOVERNMENTS: No costs or savings to local government. Priority ranking may improve a local government's ability to receive funding under the State's wastewater loan programs.
❖ OTHER PERSONS: No costs of savings to other persons. This rule only incorporates funding priorities for municipalities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The State Wastewater Loan Program is a voluntary program. No compliance costs are associated with the priority system.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule does not apply to businesses. It only applies to communities that achieve quality growth certification.

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 07/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 07/16/2004

AUTHORIZED BY: Don Ostler, Director

R317. Environmental Quality, Water Quality.
R317-100. Utah State Project Priority System for the Utah Wastewater Project Assistance Program.
R317-100-3. Numeric Project Priority Ranking System.

A. PRIORITY POINT TOTAL

1. A priority number total for a project will be determined by adding the priority points from each of the four priority categories. Total Priority Points = Project Need for Reduction of Water Pollution + Potential for Improvement Factor + Existing Population Affected + Special Consideration. If two or more projects receive an equal number of priority points, such ties shall be broken using the following criteria:

a. The projects shall be ranked in order of the highest "Need for Reduction of Water Pollution."

b. If the tie cannot be broken on the basis of need, the projects shall be ranked in order of the "Potential for Improvement Factor."

c. If the tie cannot be broken on the basis of the above, the project serving the greatest population will be given priority.

. . . . . .

E. SPECIAL CONSIDERATION

1. The proposed project is an interceptor sewer which is part of a larger regional plan and is necessary to maintain the financial, environmental or engineering integrity of that regionalization plan: 20 points, or

2. The project is needed to preserve high quality waters such as prime cold water fishery and anti-degradation segments: 20 points.

3. The proposed project will change the facility's sludge disposal practice from a non-beneficial use to a beneficial use method: 20 points.

4. The users of the proposed project are subject to a documented water conservation plan: 20 points.

5. The sponsor of the proposed project has completed and submitted the most recent Municipal Wastewater Planning Program (MWPP) questionnaire: 20 points.

6. The sponsor of the proposed project, or its member entities, is certified as meeting the requirements for a Quality Growth Community: 20 points.

KEY: grants, state assisted loans, wastewater
[~~July 5, 2002~~]2004
Notice of Continuation October 7, 2002
19-5
19-5-104
40 CFR 35.915 and 40 CFR 35.2015

Environmental Quality, Water Quality
R317-103
Rural Communities Hardship Grants Program

NOTICE OF PROPOSED RULE
(Repeal)
DAR FILE NO.: 27180
FILED: 05/14/2004, 17:25

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The funds appropriated under this program have been expended. The administrative rule that governs the program is no longer needed.

SUMMARY OF THE RULE OR CHANGE: The rule is being repealed in its entirety. This program pertains to a one-time federal grants program that was developed in 1997. This program is independent of the on-going Hardship Grant Program that is capitalized with state, not federal, funds.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 19-4-104

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: No change to state budget. This rule applied to a one-time federal grants program that has been discontinued. Funds appropriated for this program have been expended.
❖ LOCAL GOVERNMENTS: No costs or savings to local government. This rule applied to a one-time federal grants program that has been discontinued. Funds appropriated for this program have been expended.
❖ OTHER PERSONS: No costs or savings to other persons. This rule applied to a one-time federal grants program that has been discontinued. Funds appropriated for this program have been expended.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The rule is being proposed for repeal in its entirety. No compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The existing rule did not apply to businesses. Repeal of the rule should not have any fiscal impact on businesses.

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 07/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 07/16/2004

AUTHORIZED BY: Don Ostler, Director

R317. Environmental Quality, Water Quality.
~~[R317-103. Rural Communities Hardship Grants Program.~~
~~R317-103-1. Policies and Guidelines.~~

~~A recipient of assistance under this program must apply for a loan from the Utah SRF loan program and must meet criteria described under R317-101-2.I. If a community cannot afford a loan for at least 15 percent of a project's SRF-eligible cost, the Water Quality Board may elect to provide an SRF loan which constitutes less than 15 percent of the total project cost. The Water Quality Board may also provide hardship assistance alone. In these cases, provisions in the general grant regulations of 40 CFR Part 31 and other rules that apply to subrecipients of grants, will apply to the recipient of the hardship grant. In addition to the general grant regulations, which prescribe rules on financial management, procurement and record keeping practices of subgrantees, projects receiving hardship assistance alone or less than 15 percent SRF funding must comply with Federal cross-cutting authorities and with EPA regulations implementing the National Environmental Policy Act of 40 CFR Part 6. The provisions of R317-101, Utah Wastewater Project Assistance Program, apply as a part of this Rule.~~

~~R317-103-2. Statutory Authority.~~

~~The authority for the Department of Environmental Quality acting through the Utah Water Quality Board to issue grants to political subdivisions to finance all or part of wastewater project costs from a federal grant is provided in Title VI of the Federal Clean Water Act and Sections 73-10c-1 and 73-10c-4 of the Utah Code Annotated.~~

~~R317-103-3. Definitions and Eligibility.~~

~~A. A qualifying community is defined as any community of more than a single household but no more than 3,000 inhabitants that is identified by the Water Quality Board as a rural community, is not a remote area within the corporate boundaries of a larger city, and satisfies the criteria described below:~~

~~1. The community lacks centralized wastewater treatment or collection systems or needs improvements to onsite wastewater treatment systems and the State determines that assistance will improve public health or reduce an environmental risk; and~~

~~2. Per capital annual income of residents served by the project does not exceed 80 percent of national, per capita income.~~

~~3. On the date the community applies for assistance, the local unemployment rate exceeds by one percentage point or more the most recently reported, average yearly national unemployment rate.~~

~~B. Eligible Activities of the Rural Communities Hardship Grants Fund. All funds within the Rural Communities Program fund must be used solely to provide grant awards to individual qualifying Utah communities or to provide technical assistance to qualifying communities for the planning, design and construction of a wastewater project as defined in R317-101-2(c) and which appears on the Utah State Revolving Fund Intended Use Plan.~~

~~**KEY: wastewater, loans, water quality**~~
~~**October 24, 1997**~~
~~**Notice of Continuation October 7, 2002**~~
~~**73-10c-5**~~**]**

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-49

Dental Service

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27176
FILED: 05/14/2004, 16:38

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is amended to make provisions for limited dental services to non-pregnant adults ages 21 and older.

SUMMARY OF THE RULE OR CHANGE: In Section R414-49-3, dental services are made available to categorically and medically needy clients. In Subsection R414-49-5(16), dental services to non-pregnant adults ages 20 and older are limited to X-rays, fillings, routine extractions for erupted teeth only, and root canals on permanent teeth excluding 2nd and 3rd molars. The provisions on preauthorization are modified and made more specific.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-18-3; and 42 CFR, October 1995 ed., Sections 440.100, 440.120, 483.460

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 42 CFR, October, 1995 ed., sections 440.100, 440.120, 483.460

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: This rulemaking will annually cost the State General Fund $1,000,000, that will be matched by $2,576,537 annually in federal funds.
❖ LOCAL GOVERNMENTS: Local governments do not provide dental services, therefore there is no impact to local governments.
❖ OTHER PERSONS: Providers will gain additional reimbursement, probably close to $3,500,000 annually as a result of this rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This restoration of service should not cause any compliance costs except for minimal reprogramming by providers to bill Medicaid for this service.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule restores limited dental service to adults as authorized by the 2004 Legislature (S.B. 1). It will have a positive impact on business. Scott D. Williams, MD (DAR NOTE: S.B. 1 is found at UT L 2004 Ch 256, and will be effective 07/01/2004.)

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ross Martin at the above address, by phone at 801-538-6592, by FAX at 801-538-6099, or by Internet E-mail at 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 07/01/2004

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 4/29/2004 at 2:00 PM, 288 N. 1460 W., Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2004

AUTHORIZED BY: Scott D. Williams, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-49. Dental Service.
R414-49-1. Introduction and Authority.

(1) The Medicaid Dental Program provides a scope of dental services to meet the basic dental needs of Medicaid recipients.

(2) Dental services are authorized by 42 CFR, October 1995[~~,~~] ed., [~~s~~]Sections 440.100, 440.120, 483.460, which are adopted and incorporated by reference.

R414-49-2. Definitions.

In addition to the definitions in R414-1-1, the following definitions apply to this rule:

(1) "Adult" means a person who has attained the age of 21.

(2) "Child" means a person under age 21 who is eligible for the EPSDT (CHEC) program.

(3) "Child Health Evaluation and Care" (CHEC) is the Utah-specific term for the federally mandated program of early and periodic screening, diagnosis, and treatment (EPSDT) for children under the age of 21.

(4) "Dental services" means diagnostic, preventive, or corrective procedures provided by, or under the supervision of, a dentist in the practice of his profession.

(5) "Emergency services" means treatment of an unforeseen, sudden, and acute onset of symptoms or injuries requiring immediate treatment, where delay in treatment would jeopardize or cause permanent damage to a person's dental health.

R414-49-3. Client Eligibility Requirements.

Dental services are available to categorically and medically needy clients[~~ who are ages 20 and younger or who are pregnant. Dental services to non-pregnant adults ages 21 and older are limited to emergency services only~~].

R414-49-4. Program Access Requirements.

Dental services are available only from a dentist who meets all of the requirements necessary to participate in the Utah Medicaid Program, and who has signed a provider agreement.

R414-49-5. Service Coverage.

Specific services are identified for adults and for children eligible for the EPSDT (CHEC) program, since program covered services may differ. Specific program covered services for residents of ICFs/MR are detailed in this section.

(1) Diagnostic services are covered as follows:

(a) Each provider may perform a comprehensive oral evaluation one time only for either a child or an adult.

(b) A limited problem-focused oral evaluation for a child or an adult.

(c) Each provider may perform either two periodic oral evaluations, or a comprehensive and a periodic oral evaluation per calendar year.

(d) A choice of panoramic film, a complete series of intraoral radiographs, or a bitewing series of radiographs of diagnostic quality.

(e) Study models or diagnostic casts for children.

(2) Preventive services are covered as follows:

(a) Child:

(i) Two prophylaxis treatments in a calendar year by a provider, with or without fluoride.

(ii) Occlusal sealants are a benefit on the permanent molars of children under age 18.

(iii) Space maintainers.

(b) Adult: Two prophylaxis treatments in a calendar year by a provider.

(3) Restorative services are covered as follows:

(a) Amalgam restorations, composite restorations on anterior teeth, stainless steel crowns, crown build-up, prefabricated post and core, crown repair, and resin or porcelain crowns on permanent anterior teeth for children.

(b) Amalgam restorations, and composite restorations on anterior teeth for adults.

(4) Endodontics services are covered as follows:

(a) Therapeutic pulpotomy for primary teeth.

(b) Root canals, except for permanent third molars or primary teeth, or permanent second molars for adults.

(c) Apicoectomies.

(5) Periodontics services are covered as follows:

(a) Root planing or periodontal treatment for children.

(b) Gingivectomies for patients who use anticonvulsant medication, as verified by their physician.

(6) Oral Surgery services are covered as follows:

(a) Extractions for adults and children.

(b) Surgery for emergency treatment of traumatic injury.

(c) Emergency oral and maxillofacial services provided by dentists or oral and maxillofacial surgeons.

(7) Prosthodontics services are covered as follows:

Initial placement of dentures, including the relining to assure the desired fit.

(a) Full Dentures

(i) Child: Complete dentures.

(ii) Adult: "Initial" dentures.

(b) Partial dentures may be provided if the denture replaces an anterior tooth or is required to restore mastication ability where there is no mastication ability present on either side.

(c) Relining, rebasing, or repairing of existing full or partial dentures.

(8) Medicaid covered dental services are available to residents of an ICF/MR on a fee-for-service basis, except for the annual exam, which is part of the per diem paid to the ICF/MR.

(9) Patients who receive total parenteral or enteral nutrition may not receive dentures.

(10) The provider must mark all new placements of full or partial dentures with the patient's name to prevent lost or stolen dentures in facilities licensed under Title 26, Chapter 21.

(11) General anesthesia and I.V. sedation are covered services.

(12) Fixed bridges, osseo-implants, sub-periosteal implants, ridge augmentation, transplants or replants are not covered services.

(13) pontic services, vestibuloplasty, occlusal appliances, or osteotomies are not covered services.

(14) Consultations or second opinions not requested by Medicaid are not covered services.

(15) Treatment for temporomandibular joint syndrome, its prevention or sequela, subluxation, therapy, arthrotomy, meniscectomy, condylectomy are not covered services.

(16) Services to non-pregnant adults ages 20 and older are limited to X-rays, fillings, routine extractions for erupted teeth only, and root canals on permanent teeth excluding 2nd and 3rd molars.

(17) Prior authorization is required for gingivectomies, full mouth debridements, dentures, partial dentures, porcelain to metal crowns and general anesthesia procedures.[~~Services requiring prior authorization or those with other limitations are listed in the Medicaid Dental Provider Manual. This manual is a public document published by the Division of Health Care Financing. A copy of the manual may be obtained by contacting Medicaid Information. In the Salt Lake City area, call 538-6155. In Utah, Idaho, Wyoming, Colorado, New Mexico, Arizona, and Nevada, call toll-free 1-800-662-9651. From other states, call 1-801-538-6155. A copy may also be obtained by writing to:~~

~~DEPARTMENT OF HEALTH~~

~~Division of Health Care Financing~~

~~P.O. Box 143106~~

~~Salt Lake City, UT 84114-3106~~]

R414-49-6. Reimbursement.

(1) Reimbursement for Dental Services is through select ADA dental codes which are based on an established fee schedule unless a lower amount is billed. The Department pays the lower of the amount billed and the rate on the schedule.

(2) The amount billed cannot exceed usual and customary charges for private pay patients. Fee schedules were initially established after consultation with provider representatives. Adjustments to the schedule are made in accordance with appropriations and to produce efficient and effective services.

KEY: Medicaid
2004
Notice of Continuation December 20, 1999
26-1-5
26-18-3

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-401

Nursing Care Facility Assessment

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 27143
FILED: 05/07/2004, 14:13

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rulemaking is necessary in order for all nursing facilities to be assessed a uniform amount for each non-Medicare patient day. The Division of Health Care Financing serves as the collecting agent for the assessment, which will be deposited in a restricted account from which the state legislature may appropriate funds to the Division to be used only to increase reimbursement rates to nursing care facilities. These reimbursement rates are used to provide services pursuant to the state Medicaid program and are used for administrative expenses applicable to the assessment and collection of funds. Administrative expenses are not to exceed 3% of the collected amount.

SUMMARY OF THE RULE OR CHANGE: This is a new rule that implements a uniform amount to be assessed for each non-Medicare patient day in a nursing facility.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Budget neutral due to collection of $10,100,000 from nursing facilities and a draw down of federal matching funds in the amount of approximately $26,000,000.

❖ LOCAL GOVERNMENTS: There is no budget impact to local governments because local governments do not fund nursing care facilities.

❖ OTHER PERSONS: There is an enhanced revenue of approximately $26,000,000 for nursing facility providers as a result of federal matching funds.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Compliance costs include a collection of $6.18 per non-Medicare patient day from each nursing facility or a total of $10,100,000. This collection will be used as state funds to draw down about $26,000,000 in federal funds. 99% of all facilities will gain from this process. The amount of gain depends on the number of Medicaid patients in the facility.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The 2004 Legislature passed S.B. 128 at the request of nursing facilities to fund a significant rate increase for these facilities. This rule implements the assessment which will have positive fiscal impact on this industry. Scott D. Williams, MD (DAR NOTE: S.B. 128 is found at UT L 2004 Ch 284, and will be effective 07/01/2004.)

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ross Martin at the above address, by phone at 801-538-6592, by FAX at 801-538-6099, or by Internet E-mail at 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 07/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2004

AUTHORIZED BY: Scott D. Williams, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-401. Nursing Care Facility Assessment.
R414-401-1. Introduction and Authority.

(1) This rule implements the assessment imposed on certain nursing care facilities by Utah Code Title 26, Chapter 35a.

(2) The rule is authorized by Section 26-1-30 and Utah Code Title 26, Chapter 35a.

R414-401-2. Definitions.

(1) The definitions in Section 26-35a-103 apply to this rule.

(2) The definitions in R414-1 apply to this rule.

R414-401-3. Assessment.

(1) The collection agent for the nursing care facility assessment shall be the Department, which is vested with the administration and enforcement of the assessment.

(2) The uniform rate of assessment for every facility is $6.18 per non-Medicare patient day provided by the facility. The Utah State Veteran's Home is exempted from this assessment and this rule.

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

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

R414-401-4. Reporting and Auditing Requirements.

(1) Each nursing care facility shall, on or before the end of the succeeding month, file with the Department a report for the month, and shall remit with the report the assessment required to be paid for the month covered by the report.

(2) Each report shall be on the Department-approved form, and shall disclose the total number of patient days in the facility, by designated category, during the period covered by the report.

(3) Each nursing care facility shall supply the data required in the report and certify that the information is accurate to the best of the representative's knowledge.

(4) Each nursing care facility subject to this assessment shall maintain complete and accurate records. The Department may inspect each nursing care facility's records and the records of the facility's owners to verify compliance.

(5) Separate nursing care facilities owned or controlled by a single entity may combine reports and payments of assessments provided that the required data are clearly set forth for each separately reporting nursing care facility.

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

R414-401-5. Penalties and Interest.

The penalties for failure to file a report, to pay the assessment due within the time prescribed, to pay within 30 days of a notice of deficiency of the assessment, for underpayment of the assessment, for intent to evade the assessment are as provided in Utah Code Section 26-35a-105.

KEY: Medicaid, nursing facility
2004
26-1-30
26-35a

▼ ▼

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-504
Nursing Facility Payments

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27171
FILED: 05/14/2004, 15:31

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rulemaking is necessary to implement the nursing facility reimbursement plan for FY 2005.

SUMMARY OF THE RULE OR CHANGE: This change amends the nursing facility payments rule by adding to the definition of "sole community provider," and changing the conditions and provisions of participation as a sole community provider. It also amends the provision for phase-out of the property as a separate component of the reimbursement rate, specifying that the property payment will continue under the current methodology for a period of six months. The rule provides that the case-mix rate and other non-property components of the total reimbursement rate effective July 2, 2004, will be the same as the rate in effect on June 30, 2004, pending federal approval of a Medicaid State Plan Amendment implementing Rule R414-401, Utah Nursing Care Facility Assessment Act. This rulemaking provides: that upon federal approval of the aforementioned State Plan Amendment, components of the reimbursement rate will be adjusted retroactive to July 1, 2004, to reflect the additional funding made available; adds a provision for incentive payments; and makes provisions for urban/rural differential payments based on labor costs. The rule anticipates adoption of a fair rental value model for property reimbursement in the future. (DAR NOTE: The proposed new rule of R414-401 is under DAR No. 27143 in this issue.)

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: No change--The clarifications in this rule change will not change the amount of state and federal funds that will be distributed to regulated health care facilities.

❖ LOCAL GOVERNMENTS: Local government operated nursing homes may benefit from the sole community provider adjustment. This change sets the terms and conditions for qualifying. This could have a positive benefit for local government.

❖ OTHER PERSONS: Except for sole community nursing facilities which may benefit from a rate adjustment, the overall impact on nursing facilities will be budget neutral. Facilities wishing to qualify for the sole community provider adjustment will be required to submit financial information and other data to support that they are in financial distress. Application for the adjustment is voluntary. Once the federal government approves the nursing home assessment, this rule will facilitate a significant increase in nursing home reimbursement.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Except for sole community nursing facilities which may benefit from a rate adjustment, the overall impact on nursing facilities will be budget neutral. Facilities wishing to qualify for the sole community provider adjustment will be required to submit

financial information and other data to support that they are in financial distress. Application for the adjustment is voluntary.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Upon federal approval of the nursing home assessment passed in the 2004 Legislature (S.B. 128), this rule will have a positive fiscal impact on nursing homes. Scott D. Williams, MD (DAR NOTE: S.B. 128 is found at UT L 2004 Ch 284, and will be effective 07/01/2004.)

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Ross Martin at the above address, by phone at 801-538-6592, by FAX at 801-538-6099, or by Internet E-mail at 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 07/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2004

AUTHORIZED BY: Scott D. Williams, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-504. Nursing Facility Payments.
R414-504-1. Introduction.

(1) This rule adopts a case mix or severity based payment system, commonly referred to as RUGS (Resource Utilization Group System). This system reimburses facilities based on the case mix index of the facility.

(2) This rule is authorized by Utah Code sections 26-1-5[~~, 26-18-2,~~] and 26-18-3.

R414-504-2. Definitions.

The definitions in R414-1-2 and R414-501-2 apply to this rule. In addition:

(1) "Behaviorally complex resident" means a long-term care resident with a severe, medically based behavior disorder, including traumatic brain injury, dementia, Alzheimer's, Huntington's Chorea, which causes diminished capacity for judgment, retention of information or decision-making skills, or a resident, who meets the Medicaid criteria for nursing facility level of care and who has a medically-based mental health disorder or diagnosis and has a high level resource use in the nursing facility not currently recognized in the case mix.

(2) "Case Mix Index" means a score assigned to each facility based on the average of the Medicaid patients' RUGS scores for that facility.

(3) "Facility Case Mix Rate" means the rate the Department issues to a facility for a specified period of time. This rate utilizes the case mix index for a provider, labor wage index application and other case mix related costs.

(4) "FCP" means the Facility Cost Profile cost report filed by the provider on an annual basis.

(5) "Minimum Data Set" (MDS) means a set of screening, clinical and functional status elements, including common definitions and coding categories, that form the foundation of the comprehensive assessment for all residents of long term care facilities certified to participate in Medicaid.

(6) "Nursing Costs" means the most current [~~property~~]costs from the annual FCP report reported on lines 070-012 Nursing Admin Salaries and Wages; 070-013 Nursing Admin Tax and Benefits; 070-040 Nursing Direct Care Salaries and Wages; [~~and~~]070-041 Nursing Direct Care Tax and Benefits, and 070-050 Purchased Nursing Services.

(7) "Nursing facility" or "facility" means a Medicaid-participating NF, SNF, or a combination thereof, as defined in 42 USC 1396r (a) (1988), 42 CFR 440.150 and 442.12 (1993), and UCA 26-21-2(15).

(8) "Patient day" means the care of one patient during a day of service, excluding the day of discharge.

(9) "Property costs" means the most current property costs from the annual FCP report reported on lines 230 (Rent and Leases Expense), 240 (Real Estate and Personal Property Taxes), 250 (Depreciation - Building and Improvement), 260 (Depreciation - Transportation Equipment), 270 (Depreciation - Equipment), 280 (Interest - Mortgage, Personal Property Furniture and Equipment - Small Items), 300 (Property Insurance).

(10) "RUGS" means the 34 RUG identification system based on the Resource Utilization Group System established by Medicare to measure and ultimately pay for the labor, fixed costs and other resources necessary to provide care to Medicaid patients. Each "RUG" is assigned a weight based on an assessment of its relative value as measured by resource utilization.

(11) "RUGS score" means a total number based on the individual RUGS derived from a resident's physical, mental and clinical condition, which projects the amount of relative resources needed to provide care to the resident. RUGS is calculated from the information obtained through the submission of the MDS data.

(12) "Sole community provider" means a facility that is not an urban provider and is not within 30 paved road miles of another existing facility is the only facility:

(a) within a city, if the facility is located within the incorporated boundaries of a city; or

(b) within the unincorporated area of the county if it is located in an unincorporated area.

(13) "Urban provider" means a facility located in a county of more than 90,000 population.

R414-504-3. Principles of Facility Case Mix Rates and Other Payments.

The following principles apply to the payment of freestanding and provider based nursing facilities for services rendered to nursing care level I, II, and III Medicaid patients, as defined in R414-502. This rule does not affect the system for reimbursement for intensive skilled Medicaid patients.

(1) Effective January 1, 2003, approximately 50% of total payments in aggregate to nursing facilities for nursing care level I, II and III Medicaid patients are based on a prospective facility case mix rate. In addition, these facilities shall be paid a flat basic operating expense payment equal to approximately 38% of the total payments. The balance of the total payments will be paid in aggregate to facilities as required by R414-504-3 based on other authorized factors, including property and behaviorally complex residents, in the proportion that the facility qualifies for the factor.

(2) Pending federal approval of a Medicaid State Plan Amendment implementing the Utah Nursing Care Facility Assessment Act, and consequent rules, the case mix rate in effect on July 2, 2004, as well as other components of the total rate will be the same as those in effect on June 30, 2004.

(3) Upon federal approval of the nursing care facility assessment State Plan Amendment, rate components will be adjusted retroactively to July 2, 2004, to reflect the additional funding made available.

(4) The Department calculates each nursing facility's case mix index quarterly based upon the previous 12 month moving average case mix history.

([~~3~~]5) A facility may apply for a special add-on rate for behaviorally complex residents by filing a written request with the Division of Health Care Financing. The Department may approve an add-on rate if an assessment of the acuity and needs of the patient demonstrates that the facility is not adequately reimbursed by the RUGS score for that patient. The rate is added on for the specific resident's payment and is not subsumed as part of the facility case mix rate. The Resident Assessment Section will make the determination as to qualification for any additional payment. The Division of Health Care Financing shall determine the amount of any add-on.

([~~4~~]6) Property costs are paid separately from the RUGS rate.[~~Each facility's property payment is as follows:~~]

(a) Each facility's reimbursement rate effective July [~~1~~]2, 200[~~2~~]4, includes a property payment [~~between~~]of $11.19 per patient day[~~or up to a maximum of $20.00 per patient day. No facility may receive a higher payment attributable to property as a result of this rule. The property payment shall be reduced if the occupancy of the facility is below 75%, by assuming occupancy of 75% and adjusting 2001 FCP allowable property costs accordingly. This adjusted patient day figure is then divided into actual property costs to determine allowable property costs~~].

(b) [~~The property payment shall be set on January 1, 2003, based on the calculation in (a), above. Property payments shall be phased out by reducing the payment by 25% of the January 1, 2003 amount for each of the succeeding two calendar years, with property payment stopping effective January 1, 2006.~~]A facility with property costs greater than $11.19 per patient day as reported on the most recent FCP may receive a property differential payment, as follows:

(i) For facilities with the most recent FCP-reported occupancy greater than 75%, the property differential is the FCP-reported property cost divided by the sum of the number of Medicaid patient days and non-Medicaid patient days from which the $11.19 base is subtracted. This can be algebraically stated as: (FCP-reported property cost / (total number of Medicaid patient days + non-Medicaid patient days)) - $11.19 = property differential.

(ii) For facilities with an FCP-reported occupancy less than 75%, the property differential is the FCP-reported property cost divided by the number of licensed beds times 365 times .75 from which the $11.19 base is subtracted. This can be algebraically stated as: (FCP-reported property cost / (total number of licensed beds x 365 x .75)) - $11.19 = property differential.

(c) Regardless of the result produced under subsection (b), the property differential payment shall not exceed $8.81 per patient day from the effective date of this rule until December 31, 2004. Regardless of the result produced under subsection (b), beginning January 1, 2005, the property differential shall not exceed $4.40. The amount reduced beginning January 1, 2005 from property payments shall be shifted to other components of the rate and distributed to facilities.

([~~5~~]7) Newly constructed facilities' case mix component of the rate shall be paid at the average rate. This average rate shall remain in place for a new facility for six months, whereupon the provider's case mix index and property payment is established. At this point, the Department shall issue a new case mix adjusted rate. The property payment to the facility is controlled by R414-504-3([4]6). A newly constructed [~~facilities'~~]facility's property payment may not exceed $20.00 per patient day[~~ and shall be reduced if R414-504-3(4)(b) is applicable~~].

([~~6~~]8) An existing facility acquired by a new owner will continue at the same case mix index and property cost payment established for the facility under the previous ownership for the remainder of the quarter. The new owners property payment may not exceed $20.00 per patient day[~~ and shall be reduced if R414-504-3(4)(b) is applicable~~].

([~~7~~]9)(a) A sole community provider that is financially distressed may apply for a payment adjustment above the case mix index established rate. The maximum increase will be the lesser of the facility's reasonable costs (as defined in CMS publication 15-1, Section 2102.2), or 7.5% above the average of the most recent FCP Medicaid daily rate for all Medicaid residents in all freestanding nursing facilities in the state. The maximum duration of this adjustment is 12 months.

(b) The application shall propose what the adjustment should be and include a financial review prepared by the facility documenting:

(i) the facility's income and expenses for the past 12 months; and

(ii) steps taken by the facility to reduce costs and increase occupancy.

(c) Financial support from the local municipality and county governing bodies for the continued operation of the facility in the community is a necessary prerequisite to an acceptable application. The Department, the facility, and the local governing bodies may negotiate the amount of the financial commitment from the governing bodies, but in no case may the local commitment be less than [~~10%~~]50% of the state share required to fund the proposed adjustment. Any continuation of the adjustment beyond 6 months requires a local commitment of 100% of the state share for the rate increase above the base rate. The applicant shall submit letters of commitment from the applicable municipality or county, or both, committing to make an intergovernmental transfer for the amount of the local commitment.

(d) The Department may conduct its own independent financial review of the facility prior to making a decision whether to approve a different payment rate.

(e) If the Department determines that the facility is in imminent peril of closing, it may make an interim rate adjustment for up to 90 days.

(f) The Department's determination shall be based on maintaining access to services on and maintaining economy and efficiency in the Medicaid program.

(g) If the facility desires an adjustment for more than 90 days, it must demonstrate that:

(i) the facility has taken all reasonable steps to reduce costs, increase revenue and increase occupancy;

(ii) despite those reasonable steps the facility is currently losing money and forecast to continue losing money; and

(iii) the amount of the approved adjustment will allow the facility to meet expenses and continue to support the needs of the community it serves, without unduly enriching any party.

(h) If the Department approves an interim or other adjustment, it shall notify the facility when the adjustment is scheduled to take effect and how much contribution is required from the local governing bodies. Payment of the adjustment is contingent on the facility obtaining a fully executed binding agreement with local governing bodies to pay the contribution to the Department.

(i) The Department may withhold or deny payment of the interim or other adjustment if the facility fails to obtain the required agreement prior to the scheduled effective date of the adjustment.

([~~8~~]10) A provider may challenge the rate set pursuant to this rule using the appeal in R410-14. A provider must exhaust administrative remedies before challenging rates in any other forum.

([~~9) The Department may adjust reimbursement to urban providers if it determines that there is a significant difference in industry wide nursing costs as between urban and other providers. Any adjustment shall use either:~~

~~(1) a wage index adjustment that reflects local labor market nursing costs relative to the state as a whole; or~~

~~(2) a Department analysis of nursing costs reported on FCPs.~~]11) In developing payment rates, the Department may adjust urban and non-urban rates to reflect differences in urban and non-urban labor costs. The urban labor costs reimbursement cannot exceed 106% of the non-urban labor costs. Labor costs are as reported on the most recent FCP but do not include FCP-reported management, consulting, director, and home office fees.

[~~R414-504-4. Transition Reimbursement Principles.~~

~~For each quarter of calendar year 2003 and for the first two quarters of calendar year 2004:~~

~~(1) The Department shall determine if any facility's total rate is scheduled to be reduced by more than $5.00 per patient day, as compared to the total rate for that facility in effect on December 31, 2002. The total rate amount for the facility determined to be in effect as of December 31, 2002 shall be adjusted by any disallowances or other adjustments;~~

~~(2) For all facilities with a drop of more than $5.00 per patient day in their total rate as of the applicable quarterly adjustment, the Department shall adjust up the total rate of all such facilities to a rate where the loss is equal to $5.00 per patient day; and~~

~~(3) The total rate for all facilities with a gain in rate or a drop of less than $5.00 per patient day shall be proportionately adjusted down to fund the adjustment in R414-504-4(2).~~]

R414-504-4. Quality Improvement Incentive.

Upon federal approval of the Nursing Care Facilities State Plan Amendment, funds in the amount of $500,000 shall be set aside annually to reimburse facilities that have a quality improvement plan and have no violations that are at an "immediate jeopardy" level, as determined by the Department, at the most recent recertification survey and during the incentive period. The Department shall distribute incentive payments to qualifying facilities based on the proportionate share of the total Medicaid patient days in qualifying facilities. If a facility appeals the determination of a survey violation, the incentive payment will be withheld pending the final administrative appeal. On appeal, if violations are found not to have occurred at a severity level of "immediate jeopardy" or higher, the incentive payment will be paid to the facility. If the survey findings are upheld, the remaining incentive payments will be distributed to all qualifying facilities.

KEY: Medicaid
[~~October 8, 2003~~]2004
26-1-5
[~~26-18-2~~
]26-18-3

Human Resource Management, Administration
R477-1
Definitions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27160
FILED: 05/14/2004, 15:00

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendments to this rule will add more precision to the use of two terms in the Department of Human Resource Management (DHRM) rules; "agency" and "career service exempt", and delete definitions that are vague, redundant or are no longer needed.

SUMMARY OF THE RULE OR CHANGE: In Subsection R477-1-1(8), "Agency" is amended to mean just a department of the executive branch of state government. The definition this replaces is broad and vague enough that it can be applied to describe a division or other lower level entity. In Subsection R477-1-1(13), "Assignment" is deleted; it is no longer needed as a term to describe actions associated with the state classification system. In Subsection R477-1-1(14), "At will" Employee is deleted. This term is one of three that are used interchangeably to describe an employee outside the career service protections of the Utah Code. The other two are "non-career service" and "career service exempt". For consistency throughout the R477 rules, the term "career service exempt" will be used in place of "at will" and "non-career service". Elements of this definition are being added to the new definition for "career service exempt employee". In Subsection R477-1-1(14), a nonsubstantive technical change is made that adds clarity to the definition. In Subsection R477-1-1(16), "Career Service Exempt Employee" is amended to include elements of the definition for "At will" which is being deleted. In Subsection R477-1-1(17), "Career Service Exempt Position" is changed to be consistent with the change to the definition for "Career Service Exempt Employee". In

Subsection R477-1-1(21), a nonsubstantive technical change that bring this definition in line with recent changes in the state job classification system is made. In Subsection R477-1-1(75), "Market Based Bonus" is a new definition that coincides with amendments to the state incentive award and bonus policy in Section R477-6-5. In Subsection R477-1-1(93), "Probationary Employee" is a new term that is needed to distinguish this status from the new definition for "Career Service Exempt Employee" because of the special status granted to this class of employee in the Utah Code.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The amendments to these definitions will require no changes to the operating procedures or practices of state agencies and thus will generate no costs or 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.

COMPLIANCE COSTS FOR AFFECTED PERSONS: By law, Section 67-19-15, DHRM rules effect only persons employed by the executive branch of state government. Rule amendments that create a cost for an employee will either impose a fee for a choice which an employee may make or will cancel a monetary benefit that an employee currently enjoys because of rule. The amendments to the definitions in this rule will do neither of these and will thus impose no costs on employees.

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 07/01/2004.
THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2004

AUTHORIZED BY: Kim Christensen, 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.

(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.~~]An entity of state government that is:

(a) directed by an executive director, elected official or commissioner defined in Chapter 67-22 or in other sections of the code ;

(b) authorized to employ personnel; and

(c) subject to DHRM rules.

(9) Agency Head: The [~~chief~~]executive [~~officer~~]director or commissioner 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~~]13) Bumping: A procedure that may be applied prior to a reduction in force action (RIF). It allows employees with higher retention points to bump other employees with lower retention points as

identified in the work force adjustment plan, as long as employees meet the eligibility criteria outlined in interchangeability of skills.[

~~(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~~]14) Career Mobility: A time[~~-~~] limited assignment of an employee to [~~another~~]a position of equal or higher salary range for purposes of professional growth or fulfillment of specific organizational needs.

([~~19~~]15) Career Service Employee: An employee who has successfully completed a probationary period in a career service position.

(16) Career Service Exempt Employee: An employee appointed to work for an unspecified period of time or who serves at the pleasure of the appointing authority and may be separated from state employment at any time without just cause.

(17) Career Service 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).

([~~20~~]18) Career Service Status: Status granted to employees who successfully complete a probationary period for competitive career service positions.

([~~21~~]19) Category of Work: 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~~]20) 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~~]21) Change of Workload: A change in [~~the work requirements~~]position responsibilities and duties or a need to eliminate or create particular positions in an agency caused by legislative action, financial circumstances, or administrative reorganization.

([~~24~~]22) 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~~]23) Classified Service: Positions that are subject to the classification and compensation provisions stipulated in Section 67-19-12 of the Utah Code Annotated.

([~~26~~]24) 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~~]25) Compensatory Time: Time off that is provided to an employee in lieu of monetary overtime compensation.

([~~28~~]26) 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~~]27) 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~~]28) 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~~]29) 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~~]30) 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.

([~~33~~]31) Demeaning Behavior: Any behavior which lowers the status, dignity or standing of any other individual.

([~~34~~]32) 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.

([~~35~~]33) Department: The Department of Human Resource Management.

([~~36~~]34) Derisive Behavior: Any behavior which insults, taunts, or otherwise belittles or shows contempt for another individual.

([~~37~~]35) Designated Hiring Rule: A rule promulgated by DHRM that defines which individuals on a certification are eligible for appointment to a career service position.

([~~38~~]36) DHRM: The Department of Human Resource Management.

([~~39~~]37) 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.

([~~40~~]38) 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.

([~~41~~]39) Disciplinary Action: Action taken by management under the rules outlined in R477-11.

([~~42~~]40) 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.

([~~43~~]41) Dismissal: A separation from state employment for cause.

([~~44~~]42) 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.

([~~45~~]43) 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.

([~~46~~]44) 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.

([~~47~~]45) "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.

([~~48~~]46) Equal Employment Opportunity (EEO): Non[~~-~~]discrimination in all facets of employment by eliminating patterns and practices of illegal discrimination.

([~~49~~]47) Excess Hours: A category of compensable hours separate and apart from compensatory or overtime hours that accrue at straight time only when an employee's actual hours [~~actually~~]worked, plus additional hours paid[~~ but not worked~~], exceed an employee's normal work period.

([~~50~~]48) Fair Employment Opportunity and Practice: Assures fair treatment of applicants and employees in all aspects of human resource administration without regard to age, disability, national origin, political or religious affiliation, race, sex, or any non-merit factor.

([~~51~~]49) Fitness For Duty Evaluation: Evaluation, assessment or study by a licensed professional to determine if an individual is able to meet the performance or conduct standards required by the position held, or is a direct threat to the safety of self or others.

([~~52~~]50) FLSA: Fair Labor Standards Act. The federal statute that governs overtime. See 29 USC 201 (1996).

([~~53~~]51) FLSA Exempt: Employees who are exempt from the Fair Labor Standards Act.

([~~54~~]52) FLSA [~~Non-Exempt~~]Nonexempt: Employees who are not exempt from the Fair Labor Standards Act.

([~~55~~]53) 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.

([~~56~~]54) Full Time Equivalent (FTE): The budgetary equivalent of one full time position filled for one year.

([~~57~~]55) Furlough: A temporary leave of absence from duty without pay for budgetary reasons or lack of work.

([~~58~~]56) Grievance: A career service employee's claim or charge of the existence of injustice or oppression, including dismissal from employment resulting from an act, occurrence, omission, condition, discriminatory practice or unfair employment practice not including position classification or schedule assignment.

([~~59~~]57) Grievance Procedures: The statutory process of grievances and appeals as set forth in Sections 67-19a-101 through 67-19a-408 and the rules promulgated by the Career Service Review Board.

([~~60~~]58) Gross Compensation: Employee's total earnings, taxable and [~~untaxable~~]nontaxable, as shown on the employee's paycheck stub.

([~~61~~]59) Hiring List: A list of qualified and interested applicants who are eligible to be considered for appointment or conditional appointment to a specific position.

([~~62~~]60) Hostile Work Environment: A work environment or work related situation where an individual suffers physical or emotional stress due to the unwelcome behavior of another individual which is motivated by race, religion, national origin, color, sex, age, disability or protected activity under the anti-discrimination statutes.

([~~63~~]61) HRE: Human Resource Enterprise; the state human resource management information system.

([~~64~~]62) Immediate Supervisor: The employee or officer who exercises direct authority over an employee and who appraises the employee's performance.

([~~65~~]63) Incompetence: Inadequacy or unsuitability in performance of assigned duties and responsibilities.

([~~66~~]64) Inefficiency: Wastefulness of government resources including time, energy, money, or staff resources or failure to maintain the required level of performance.

([~~67~~]65) 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.

([~~68~~]66) Intern: An individual in a college degree program assigned to work in an activity where on-the-job training is accepted.

([~~69~~]67) Job: A group of positions similar in duties performed, in degree of supervision exercised or required, in requirements of training, experience, or skill and other characteristics. The same salary range and test standards are applied to each position in the group.

([~~70~~]68) Job Description: A document containing the duties, distinguishing characteristics, knowledge, skills, and other requirements for a job.

([~~71~~]69) Job Identification Number: A unique number assigned to a job by DHRM.

([~~72~~]70) Job Proficiency Rating: An average of the last three annual performance evaluation ratings used in reduction in force proceedings.

([~~73~~]71) Job Requirements: Skill requirements defined a the job level.

([~~74~~]72) 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.

([~~75~~]73) Legislative Salary Adjustment: A legislatively approved salary increase for a specific category of employees based on criteria determined by the Legislature.

([~~76~~]74) Malfeasance: Intentional wrongdoing, deliberate violation of law or standard, or mismanagement of responsibilities.

(75) Market Based Bonus: One time lump sum monies given to a new hire or a current employee to encourage employment with the state.

([~~77~~]76) Market Comparability Adjustment: Legislatively approved reallocation of a salary range for a job based on a compensation survey conducted by DHRM.

([~~78~~]77) Merit Increase: A legislatively approved and funded salary increase for employees to recognize and reward successful performance.

([~~79~~]78) Misfeasance: The improper or unlawful performance of an act that is lawful or proper.

([~~80~~]79) Nonfeasance: Failure to perform either an official duty or legal requirement.

([~~81~~]80) Performance Evaluation: A formal, periodic evaluation of an employee's work performance.

([~~82~~]81) Performance Evaluation Date: The date when an employee's performance evaluation shall be conducted. An evaluation shall be conducted at least once during the probationary period and no less than once annually thereafter consistent with the common review date.

([~~83~~]82) Performance Management: The ongoing process of communication between the supervisor and the employee which defines work standards and expectations, and assesses performance leading to a formal annual performance evaluation.

([~~84~~]83) Performance Plan: A written summary of the standards and expectations required for the successful performance of each job duty or task. These standards normally include completion dates and qualitative and quantitative levels of performance expectations.

([~~85~~]84) Performance Standard: Specific, measurable, observable and attainable objectives that represent the level of performance to which an employee and supervisor are committed during an evaluation period.

([~~86~~]85) Personnel Adjudicatory Proceedings: The informal appeals procedure contained in Title 63, Chapter 46b, for all human resource policies and practices not covered by the state employees grievance procedure promulgated by the Career Service Review Board, or the classification appeals procedure.

([~~87~~]86) Position: A unique set of duties and responsibilities identified by DHRM authorized job and position management numbers.

([~~88~~]87) Position Description: A document that describes the detailed tasks performed, as well as the knowledge, skills, abilities, and other requirements of a specific position.

([~~89~~]88) Position Identification Number: A unique number assigned to a position for FTE management.

([~~90~~]89) 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.

([~~91~~]90) 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~~]91) 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~~]92) [~~Pre-Employment~~]Preemployment 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.

(93) Probationary Employee: An employee hired into a career service position who has not completed the required probationary period for that position.

(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.

(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.

(96) Promotion: [~~A management initiated~~]An action moving an employee from a position in one job to a position in another job having a higher maximum salary step.

(97) Protected Activity: Opposition to discrimination or participation in proceedings covered by the antidiscrimination statutes or the Utah State Grievance and Appeal Procedure. Harassment based on protected activity can constitute unlawful retaliation.

(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.

(99) Reappointment: Return to work of an individual from the reappointment register. Accrued annual leave, converted sick leave, compensatory time and excess hours in [~~their~~]the employee's former position were cashed out [~~at termination~~]upon separation.

(100) Reappointment Register: A register of individuals who have:

(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.

(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.

(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 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 different job or position;

(b) a different work location;

(c) a different organizational unit; or

(d) a different agency.

(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.

(105) Reduction in Force: (RIF) Abolishment of positions resulting in the termination of career service staff. RIFs can occur due to inadequate funds, a change of workload, or a lack of work.

(106) Reemployment: Return to work of an employee who [~~terminated~~]resigned from 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~~]separation.

(107) Rehire: Return to work of a former career service employee who [~~terminated~~]resigned from state employment. Accrued annual leave, converted sick leave, compensatory time and excess hours in their former position were cashed out at [~~termination~~]separation.

(108) Retaliation: An adverse employment action taken against an employee who has engaged in a protected 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.

(110) Requisition: An electronic document used for Utah Skill Match search and tracking purposes that includes specific information for a particular position.

(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.

(112) Ridiculing Behavior: Any behavior specifically performed to cause humiliation or to mock, taunt or tease another individual.

(113) RIF'd Individual: A former employee who is terminated as a result of a reduction in force.

(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.

(115) Salary Range: The segment of an approved pay plan assigned to a job.

(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).

(117) Serious Health Condition: An illness, injury, impairment, physical or mental condition that involves:

(a) inpatient care in a hospital, hospice, or residential medical care facility;

(b) continuing treatment by a health care provider.

(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.

(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.

(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.

(121) Transfer: An employee initiated movement 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.

(122) Underfill: DHRM authorization for an agency to fill a position at a lower salary range within the same job series.

(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.

(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.

(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.

(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.

(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.

(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 1, 2003~~]2004
Notice of Continuation June 11, 2002
67-19-6

Human Resource Management, Administration
R477-2
Administration

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27161
FILED: 05/14/2004, 15:01

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to clarify the requirement to maintain a medical file separate from the personnel file for employees and make various nonsubstantive changes.

SUMMARY OF THE RULE OR CHANGE: Subsection R477-2-5(2)(a) is amended to update the title and type of forms now required in an employees personnel record. Subsection R477-2-5(3) is a new subsection clarifying the obligation of agencies to maintain employee medical records in a separate confidential file when they exist.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 52-3-1 and 67-19-6, and Subsection 63-2-204(5)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Most agencies already comply with this requirement and thus will experience no additional work or assignment of resources to change operating procedures. No costs or savings are anticipated.
❖ 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, the Department of Human Resource Management's (DHRM) rules effect only persons employed by the executive branch of state government. Rule amendments that create a cost for an employee will either impose a fee for a choice which an employee may make or will cancel a monetary benefit that an employee currently enjoys because of rule. The amendments to this rule will do neither of these and will thus impose no costs on employees.

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 07/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2004

AUTHORIZED BY: Kim Christensen, Executive Director

R477. Human Resource Management, Administration.
R477-2. Administration.
R477-2-1. Rules Applicability.

These rules apply to all career and [~~non-career~~]career service exempt 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~~]career service exempt employees. The following employees are exempt from mandatory compliance with these rules:

(a) members of the Legislature and legislative employees;

(b) members of the judiciary and judicial employees;

(c) elected members of the executive branch and their direct staff who are career service-exempt employees;

(d) officers, faculty, and other employees of state institutions of higher education;

(e) any positions for which the salary is set by law;

(f) attorneys in the Attorney General's Office;

(g) agency heads and other persons appointed by the governor when authorized by statute;

(h) employees of the Department of Community and Economic Development whose positions have been designated executive/professional by the executive director of the Department of Community and Economic Development with the concurrence of the Executive Director, DHRM.

(4) All other exempt positions are covered by provisions of these rules except rules governing career service status in R477-4, 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 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.

(c) No state official shall impede any employee from the timely filing of a discrimination complaint in accordance with state and federal requirements.

R477-2-4. Control of Personal Service Expenditures.

(1) Statewide control of personal service expenditures shall be the shared responsibility of the employing agency, the Governor's Office of Planning and Budget, the Department of Human Resource Management and the Division of Finance.

(2) Agency management may request changes to the Position Management Report which are justified as cost reduction or improved service measures.

(a) Changes in the numbers, job identification, or salary ranges of positions listed in the Position Management Report shall be approved by the Executive Director, DHRM or designee.

(3) No person shall be placed or retained on an agency payroll unless that person occupies a position listed in an agency's approved Position Management Report.

R477-2-5. Records.

(1) DHRM shall maintain a computerized file for each employee that contains the following, as appropriate:

(a) performance ratings;

(b) records of actions affecting employee salary, current classification, title and salary range, salary history, and other personal data, status or standing.

(2) Agencies shall maintain the following records in each employee's personnel file:

(a) applications for employment, Employment Eligibility Certification record, Form I-9, and other documents required by Immigration and Naturalization Service (INS) Regulations, under the Immigration Reform and Control Act of 1986, employee signed overtime agreement, personnel action records, notices of corrective or disciplinary actions, new employee orientation form[~~, benefits notification forms~~], performance evaluation records, [~~termination records~~]separation and leave without pay records, including employee benefits notification forms for PEHP and URS;

(b) references to or copies of transcripts of academic, professional, or training certification or preparation;

(c) copies of items recorded in the DHRM computerized file and other materials required by agency management to be placed in the personnel file. The agency personnel file shall be considered a supplement to the DHRM computerized file and shall be subject to the rules governing personnel files;

(d) leave and time records; 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) Agencies shall maintain a separate file from the personnel file if the agency obtains confidential employee medical information.

(a) Information in this file shall include all written and orally obtained information pertaining to medical issues, including Family Medical and Leave Act forms, medical and dental enrollment forms which contain health related information, health statements, applications for additional life insurance, fitness for duty evaluations, drug testing results, and any other medical information.

(b) Information in this file is considered private or controlled information. Communication shall adhere to the Government Records Access & Management Act, Section 63-2-101.

(c) An employee who violates confidentiality is subject to state disciplinary procedures.

([~~3~~]4) [~~Employees have~~]An employee has the right to review [~~their~~]the employee's personnel file, upon request, in DHRM or the agency, as governed by law and as provided through agency policy.

(a) [~~Employees~~]An employee 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~~]5) When a disciplinary action is rescinded or disapproved upon appeal, forms, documents and records pertaining to the case shall be removed from the personnel file.

(a) When the record in question is on microfilm, a seal will be placed on the record and a suitable notice placed on the carton or envelope. This notice shall indicate the limits of the sealed section and the authority for the action.

([~~5~~]6) Upon employee [~~termination~~]separation, 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~~]7) 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~~]8) 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~~]9) 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~~]10) 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~~]11) 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~~]12) 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~~]13) [~~Employees~~]An employee may verbally request the release of information for personal use[~~:~~], or authorize in writing the release of [~~their~~]personal performance records for use by an outside agent based on a need to know authorization. "Private" data shall only be released, except to the employee, after a written request has been evaluated and approved.

R477-2-6. 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.

R477-2-7. Employment Eligibility Certification (Immigration Reform and Control Act - 1986).

(1) All career and [~~non-career~~]career service exempt employees appointed on and after November 7, 1986, as a new hire, rehire, [~~interdepartmental~~]agency 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 Bureau of Citizenship and Immigration Services (BCIS) Regulations. The I-9 form shall be maintained in the agency personnel file.

R477-2-8. Disclosure by Public Officers Supervising a Relative.

It is unlawful for a public officer to appoint, directly supervise, or to make salary or performance recommendations for relatives except as prescribed 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,~~]agency head in accordance with Section 52-3-1.

R477-2-9. Employee Liability.

An employee who becomes aware of any occurrence which may give rise to a law suit, who receives notice of claim, or is sued because of an incident related to 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~~]an employee shall receive defense and indemnification unless the case involves fraud, malice or the use of alcohol or drugs by the employee.

(2) If a law suit results against an employee, the GIA stipulates that the employee must request a defense from his agency head in writing within ten calendar days.

R477-2-10. 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 1, 2003~~]2004
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
R477-3
Classification

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27162
FILED: 05/14/2004, 15:01

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed amendment provides clarification regarding position classification grievances and reviews and make various nonsubstantive changes.

SUMMARY OF THE RULE OR CHANGE: Subsection R477-3-4(1) is amended to include new language giving an agency capability to conduct a classification review under the Department of Human Resource Management's (DHRM) authorization. Section R477-3-5 is amended to make it clear that agency management may also initiate a classification grievance.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-19-6 and 67-19-12

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: These amendments give agencies the ability to conduct classification reviews which will require resources. However, this is not mandatory for an agency and it is not anticipated that an agency will engage in this activity unless resources are already in place in the agency.
❖ 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, DHRM rules effect only persons employed by the executive branch of state government. Rule amendments that create a cost for an employee will either impose a fee for a choice which an employee may make or will cancel a monetary benefit that an employee currently enjoys because of rule. The amendments to this rule adjust the process for seeking a classification review but do not impose a fee or eliminate an employee right and thus impose no costs on employees.

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 07/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2004

AUTHORIZED BY: Kim Christensen, Executive Director

R477. Human Resource Management, Administration.
R477-3. Classification.
R477-3-1. Job Classification Methods.

The Executive Director, DHRM, shall prescribe the procedures and methods for classifying all positions not exempted by law from the classification plan. The Executive Director, DHRM, may authorize exceptions to provisions of the following rule, consistent with R477-2-2(1).

R477-3-2. Job Description.

DHRM shall maintain job descriptions, as appropriate, for all jobs in the classified plan.

(1) Job descriptions shall contain:

(a) job title;

(b) distinguishing characteristics;

(c) a description of tasks commonly associated with most positions in the job;

(d) statements of required knowledge, skills, and other requirements;

(e) FLSA status and other administrative information as approved by DHRM.

R477-3-3. Assignment of Duties.

Management may assign, modify, or remove any employee task or responsibility in order to accomplish reorganization, improve business practices or process, or for any other reason deemed appropriate by the department administration.

R477-3-4. Position Classification Review.

(1) A formal classification review may be conducted under the following circumstances:

(a) as part of a scheduled study;

(b) at the request of [~~the~~]an agency, with the approval of the Executive Director, DHRM;

(c) as part of a classification grievance review[~~.~~]; or

(d) by an agency authorized by DHRM to conduct classification studies.

(2) DHRM or an approved contract agency shall determine if there are significant changes in the duties of a position to warrant a review.

(3) When an agency is reorganized or positions are redesigned, no classification reviews shall be conducted during a three-month settling period unless otherwise determined necessary by DHRM or an approved contract agency.

(4) The Executive Director, DHRM, or designee shall make final classification decisions unless overturned by a hearing officer or court.

R477-3-5. Position Classification Grievances.

(1) [~~A~~]An agency or a career service employee may grieve formal classification decisions regarding the classification of a position[~~involving the duties and responsibilities of their own position~~].

(a) This rule refers to grievances concerning the assignment of individual positions to appropriate jobs based on duties and responsibilities. The assignment of salary ranges is not included in this rule.

(b) An employee may only grieve a formal classification decision regarding the employee's own position.

([~~b~~]c) [~~Career service employees~~]A career service employee or an agency who grieves a classification decision must complete the job classification grievance form. The form must be received by DHRM within 10 working days of receiving notice of the decision from DHRM or a contract agency; otherwise the grievance will not be processed.

(2) The position classification grievance process is as follows:

(a) Grievances must be submitted to DHRM on a currently approved grievance form.

(b) The Executive Director, DHRM, shall assign the grievance to a classification panel of three or more impartial persons who are trained in the state's classification procedures.

(c) The classification panel may:

(i) Access previous fact finding reviews, classification decisions, and reports;

(ii) Request new or additional fact finding interviews;

(iii) Consider new or additional information.

(d) The classification panel shall determine whether the assigned classification was appropriate. The panel shall follow the appropriate statutes, rules, and procedures which were current at the time the decision was made. The panel shall report its findings and recommendations to the Executive Director, DHRM. The Executive Director, DHRM, shall make a decision and notify the grievant and the agency representative of the decision.

(e) The grievant may grieve the Executive Director's decision to an impartial classification hearing officer contracted by the state. The grievance must be received by DHRM within 10 working days of the employee receiving notice of the panel decision.

(g) The hearing officer shall review the classification and make the final decision.

KEY: administrative procedures, grievances, job descriptions, position classifications
[~~July 5, 2002~~]2004
Notice of Continuation June 11, 2002
67-19-6
67-19-12

▼ ▼

Human Resource Management, Administration
R477-4
Filling Positions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27163
FILED: 05/14/2004, 15:02

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed amendment rewrites Section R477-4-5 to include information from Section R477-4-8, and then deletes Section R477-4-8 and makes various nonsubstantive changes. This and other changes will implement the Department of Human Resource Management's (DHRM) new recruitment and hiring system.

SUMMARY OF THE RULE OR CHANGE: In Section R477-4-2, these are nonsubstantive changes to make this section consistent with the new definition for the term "career service exempt". Section R477-4-5 is a new section designed to implement the new DHRM selection and recruitment system. It replaces the old Sections R477-4-5 and R477-4-8 which are deleted. The primary change from the old sections to the new is that agencies are now required to use the DHRM selection and recruitment system for all career service hires. Previously, the DHRM system was required only for external hires. This requirement also appears in Subsection R477-4-9(1)(a). Subsection R477-4-9(7) is deleted which removes a restrictive requirement for hiring RIF employees and gives these employees a wider range of opportunities for finding employment. In Section R477-4-11, the change places in rule current procedure and practice regarding the work time limitations for schedule AJ employees and the requirement for a time limited agreement. In Section R477-4-15, amendments to this section reinforce an employees right to return to the same or a similar position at the end of a career mobility and to certain salary protections. All other changes to Rule R477-4 are nonsubstantive substitutions to replace current terms with the new term "career service exempt".

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-19-6 and 67-19-16

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: No costs or savings are anticipated with these amendments for the agencies. Agencies are required to conduct their own recruitments and have staff and resources committed to this task. No additional resources will be required with the implementation of the new DHRM system. There will be savings in staff time in DHRM because the new system eliminates the requirement for manual verification of resumes that was an integral part of the system being replaced.

❖ 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, DHRM rules effect only persons employed by the executive branch of state government. Rule amendments that create a cost for an employee will either impose a fee for a choice which an employee may make or will cancel a monetary benefit that an employee currently enjoys because of rule. The amendments to this rule actually strengthen a job applicants rights with the implementation of the new recruitment processes and will thus impose no costs on employees.

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 07/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2004

AUTHORIZED BY: Kim Christensen, 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~~]Selection for Career Service Exempt Positions.

(1) Agencies and managers may use any process to select [~~employees~~]an employee for a career service exempt position[~~s~~] which complies with state and federal laws and regulations.

R477-4-3. Career Service [~~(Schedule B)~~]Positions.

(1) Selection of a career service employee[~~s~~] shall be governed by the following:

(a) DHRM standards and procedures;

(b) career service principles;

(c) equal employment opportunity principles;

(d) Utah Code governing nepotism found in Section 52-3-1;

(e) reasonable accommodation for qualified applicants covered under the Americans With Disabilities Act.

(2) DHRM shall take affirmative action to ensure that members of legally protected classes have the opportunity to apply and be considered for available positions in state government.

R477-4-4. Order of Selection for Career Service Positions.

(1) Prior to implementing the steps for order of selection, agencies may administer the following personnel actions:

(a) reemployment of a veteran eligible under USERRA;

(b) reassignment or transfer within an agency for the purposes of reasonable accommodation under the Americans with Disabilities Act;

(c) fill a position[~~s~~] as a result of return to work from long term disability or workers compensation at the same or lesser salary range;

(d) reassignments made in order to avoid a reduction in force, or for reorganization or bumping purposes;

(e) reassignments, management initiated career 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) 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 individuals who meet the position qualifications.

(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 a qualified career service employee[~~s~~] to another agency, career [~~exchange~~]mobility 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.~~]

R477-4-5. Recruitment for Career Service Positions.

(1) Agencies shall use the DHRM approved recruitment and selection system for all career service position vacancies. This includes recruitments open within an agency, across agency lines, or to the general public. Recruitment shall comply with federal and state laws and DHRM rules and procedures.

(a) In addition to the DHRM required recruitment announcement, all other recruitment announcements shall include the following:

(i) position information about available vacancies;

(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 equal employment opportunity, if applicable.

(2) Job information for career service positions shall be announced publicly for a minimum of five working days.

(3) Agencies are required to provide employees with information about the DHRM approved recruitment and selection system.

(4) Recruitment is not required for personnel actions outlined in R477-4-4(1).

(5) Appointment of an employee 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~~]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) 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.

(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 shall be based on all 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 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 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~~]8. Examinations.

(1) Examinations shall be designed to measure and predict success of individuals on the job. Appointment to career service positions shall be made through open, competitive selection.

(2) The Executive Director, DHRM, shall establish the standards for the development, approval and implementation of examinations. Examinations shall include the following:

(a) a documented job analysis;

(b) an initial, unbiased screening of the individual's qualifications;

(c) security of examinations and ratings;

(d) timely notification of individuals seeking positions;

(e) elimination from further consideration of individuals who abuse the process;

(f) unbiased evaluation and results;

(g) reasonable accommodation for qualified individuals with disabilities.

(3) When examinations utilizing ratings of training and experience are administered, agencies may establish maximum years of credit for training and experience for the purpose of rating qualified applicants. Separate maximums may be set for years of training and years of experience. These maximums shall be included in the agency's recruitment notice.

(4) The Executive Director, DHRM, may enter into delegation agreements with agencies to develop and administer examination instruments, subject to periodic administrative audits by DHRM.

R477-4-[~~10~~]9. Hiring Lists.

(1) The hiring list shall include the names of qualified and interested applicants who are eligible to be considered for appointment or conditional appointment to a specific position.

(a) Hiring lists shall be constructed using the DHRM approved recruitment and selection system[~~- or another competitive process pre-approved by DHRM~~]. All competitive processes shall be based on job[~~-~~] related criteria.

(b) All applicants included on a hiring list shall be examined with the same examination or examinations.

(c) An individual shall be considered an applicant when he is determined to be both qualified for and interested in a particular position identified through a specific requisition.

(2) An applicant may be removed from further consideration when he, without valid reason, does not pursue appointment to a position.

(3) An individual who falsifies any information in the job application, examination or evaluation processes may be disqualified from further consideration prior to hire, or disciplined if already hired.

(4) Five percent of the total possible score shall be added to the rating or an appropriate adjustment shall be made on the hiring list for any applicant claiming veterans preference who:

(a) has served more than 180 consecutive days of active duty in and honorably discharged or released from the armed forces of the United States; or

(b) is the spouse or unremarried surviving spouse of any veteran.

(5) Ten percent of the total possible score shall be added to the rating or an appropriate adjustment shall be made on the hiring list for any applicant claiming veterans preference who:

(a) was honorably discharged or released from active duty with a disability incurred in the line of duty or is a recipient of a Purple Heart, whether or not that person completed 180 days of active duty;or

(b) is the spouse or unremarried surviving spouse of any disabled veteran.

(6) The Executive Director, DHRM, may enter into delegation agreements with agencies to develop and maintain hiring lists and certify eligible applicants to their appointing authorities, subject to periodic administrative audits by DHRM.[

~~(7) Selection of intra-departmental RIF employees shall be made in order of their retention points.~~

~~(a) The employee with the highest retention points shall be reappointed first, provided that the employee:~~

~~(i) Meets job requirements; and~~

~~(ii) Previously attained the position level comparable to the vacancy.~~]

([~~8~~]7) When more than one RIF employee is certified by DHRM, the appointment shall be made from the most qualified.

([~~9~~]8) 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~~]9) The appointing authority shall ensure that any employee hired meets the job requirements as outlined in the official job description.

R477-4-[~~11~~]10. Time[~~-~~] Limited Exempt Positions.

The Executive Director, DHRM, may approve the creation and filling of [~~non-career service~~]career service exempt positions for temporary, emergency, seasonal, intermittent or other special and justified agency needs. These appointments shall be [~~"at will,"~~]career service exempt as [~~described below. See~~]defined in Section 67-19-15[~~for description of positions exempt from career service employment~~].

(1) Time limited, temporary or seasonal [~~non-career~~]career service exempt 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 12 month period.

(ii) AJ appointments which are less than half-time, 19 or fewer hours per week, do not have a limitation on the duration of the appointment.

(b) Appointments under schedules AE, AI and AL shall be [~~non-career~~]career service exempt 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.~~]

(3) A time limited agreement shall be signed by the parties.

R477-4-[~~12~~]11. 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~~]12. 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~~]13. Reorganization.

When [~~a department or~~]an 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~~]14. 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'~~]agency resources and to enhance the employee's career growth.

(a) Agencies shall establish [~~policies~~]procedures 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) An eligible employee, the agency or supervisor may initiate a career mobility.

([~~b~~]c) A [~~P~~]participating employee[~~s~~] shall retain all rights, privileges, entitlements, tenure and benefits from [~~their~~]the previous position while on career mobility.

([~~c~~]d) 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, the employee[~~s~~] shall return to [~~their~~]the previous position or a similar position[~~. They~~] and shall receive, at a minimum, the same salary rate and the same or higher salary range that the employee[~~ they~~] would have received without the career mobility assignment.

(a) [~~Employees~~]An employee who [~~have~~]has not attained career service status prior to the career mobility program cannot permanently fill a career service position until [~~they have obtained~~]the employee obtains career service status through a competitive process.

R477-4-[~~16~~]15. Assimilation.

(1) [~~Employees~~]An employee 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~~]16. 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~~]A position 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 1, 2003~~]2004
Notice of Continuation June 11, 2002
67-19-6

Human Resource Management, Administration
R477-6
Compensation

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 27165
FILED: 05/14/2004, 15:04

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendment clarifies and expands the Incentive Awards and bonus policy, clarifies policy for the FLEX program when an employee's status changes, places an important disclaimer in the policy for employee health insurance, and make various nonsubstantive changes.

SUMMARY OF THE RULE OR CHANGE: In Section R477-6-5, new language is added that contains two important additions to this policy; 1) at Subsection R477-6-5(1), a legal disclaimer stating that incentive awards and bonuses are not an entitlement and are subject to agency policy and budget; and 2) at Subsection R477-6-5(1)(b), an option to make payment to a 401K account as an incentive award is provided. Language in this section is reorganized to add clarity to existing policies. Two new types of bonuses are created in policy in Subsections R477-6-5(3) and (4). The first allows an agency to establish policies to reward cost savings proposals and the second provides for certain bonuses to encourage employees with critical job skills to stay with the state or come to work for the state. In Subsection R477-6-6(4), one clause is added to this policy at Subsection R477-6-6(4)(f) setting in rule that an employee who separates from state employment or becomes ineligible for FLEX benefits has 90 days to submit claims or elect COBRA for the health care account. Other changes are a rewriting of current language for clarification. In Section R477-6-8, an important disclaimer is added stating that an

employee in certain schedule A appointments must be approved through underwriting in order to receive life insurance benefits. In Section R477-6-9, amendments to this section make it clear that an employee who resigns in lieu of termination is eligible for the severance benefit. This concept is further clarified in amendments to Subsection R477-6-9(2) by limiting the conditions that make one ineligible for the severance. New language at Subsection R477-6-9(1)(b) adds a limited health care benefit to the severance package. Other changes to this section are a reorganization of the language for clarification purposes.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-19-6, 67-19-12, and 67-19-12.5; and Subsection 67-19-15.1(4)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The severance benefit was placed in rule in 1994 to satisfy the requirement of Section 67-19-15.1. The Department of Human Resource Management (DHRM) was required to develop incentives for employees to convert to career exempt status. Severance was one of the three conversion incentives recommended by DHRM and was approved by the Governor's Office. It is designed as a very limited benefit for those few people who are in high risk positions at the highest levels of government and who likely work at wages far below their private sector peers. This amendment is also limited in scope but it has the potential to create some increased costs which will be borne by agencies. The cost per person will be determined by the numbers of years of service (limited to six) and the premium rates for the insurance coverage the employee has at the time of separation from employment (single, two party or family coverage). In actual cost, this will vary from $300 to $5,000 per person. In a typical year, we would not expect there to be more than a few employees statewide who would qualify for this benefit. The cost would be in the range of $10,000 to $15,000. In an election year, if new leadership makes wholesale changes, costs would increase based upon the number of employees separated from state service.
❖ 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, DHRM rules effect only persons employed by the executive branch of state government. Rule amendments that create a cost for an employee will either impose a fee for a choice which an employee may make or will cancel a monetary benefit that an employee currently enjoys because of rule. The amendments to this rule impact contingent benefits where an employee must make a choice but no fees are imposed. No monetary benefits are effected 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, the potential costs associated with this amendment will be intermittent and absorbed by agencies and not passed on.

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

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THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2004

AUTHORIZED BY: Kim Christensen, 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~~]adjustments 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) Reemployed veterans under USERRA shall be placed in their previous position or a similar position at their previous salary range. Reemployment shall include the same seniority status, any cost of living allowances, reclassification of the veteran's preservice position, or market comparability adjustments that would have affected the veteran's preservice position during the time spent by the affected veteran in the uniformed services. Performance related salary increases are not included.

R477-6-4. Salary.

(1) Merit increases. The following 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 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~~]An employee who is on a longevity step or [~~who are~~]at the maximum step of [~~their~~]the salary range [~~are~~]is 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~~]An employee promoted or reclassified to a [~~position~~]job 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~~]An employee who [~~are~~]is promoted or reclassified to a [~~position~~]job 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~~]An employee 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~~]an employee in longevity shall be consistent with subsection R477-6-4(4).

(ii) [~~Employees~~]An employee who remains in longevity status after a promotion or reclassification shall retain [~~their~~]the same salary by being placed on the corresponding longevity step.

(b) To be eligible for a promotion, an employee shall:

(i) meet the job requirements and skills specified in the job description and position specific criteria as determined by the agency for the position unless the promotion is to a career service exempt position.

(c) [~~Employees~~]An employee whose position[~~s are~~] is reclassified or [~~whose position is~~]changed by administrative adjustment to a job with a lower salary range shall retain [~~their~~]the current salary. The employee shall be placed on the corresponding longevity step if [~~their~~]the salary exceeds the maximum of the new salary range.

(4) Longevity.

(a) An employee shall receive a longevity increase of 2.75 percent when:

(i) [~~they have~~]the employee has been in state service for eight years or more. [~~They~~]The employee may accrue years of service in more than one agency and such service is not required to be continuous; and

(ii) [~~they have~~]the employee has 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~~]An employee 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~~]An employee on a longevity step shall only be eligible for additional step increases every three years. To be eligible, an employee[~~s~~] must receive a performance appraisal rating of successful or higher within the 12-month period preceding the longevity increase.

(d) [~~Employees~~]An employee on a longevity step who [~~are~~]is reclassified to a lower salary range shall retain [~~their~~]the current salary.

(e) [~~Employees~~]An employee on a longevity step who [~~are~~]is promoted or reclassified to a higher salary range shall only receive an increase if [~~their~~]the current salary step is less than the highest salary step of [~~their~~]the 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~~]An employee whose [~~have had their~~]position has been 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.

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~~]An employee who transfers from one job or position to another job or position may be offered a salary increase[~~s~~] effective the same date as the transfer.

(8) Demotion[~~s~~].

[~~Employees~~]An employee 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) Productivity step adjustment.

Agency management may establish policies to reward an employee[~~s~~] who assumes 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~~]An employee at the maximum step of [~~their~~]the salary range or in longevity shall be given a one time lump sum bonus award of 2.75% of their annual salary.

(a) To implement this program, agencies shall apply the following criteria:

(i) either the employee[~~s~~] or management can make the suggestion;

(ii) the employee[~~s~~] and management agree;

(iii) the agency head approves;

(iv) a written program policy achieves increased productivity through labor/management collaboration;

(v) the agency human resource representative approves;

(vi) the position will be abolished from the position authorization plan for a minimum of one year;

(vii) staff receive[~~s~~] additional duties which are substantially above a normal full workload;

(viii) the same or higher level of service or productivity is achieved without accruing additional overtime hours;

(ix) the total dollar increase, including benefits, awarded to the workgroup as a result of the additional salary steps does not exceed 50 percent of the savings generated by eliminating the position.

(10) Administrative Salary Increase.

The agency head [~~or commissioner~~]authorizes and approves administrative salary increases under the following parameters:

(a) [~~Employees~~]An employee shall receive one or more steps up to the maximum of [~~their~~]the salary range.

(b) Administrative salary increases shall only be granted when the agency has sufficient funding within their annualized base budgets for the fiscal year in which the adjustment is given.

(c) Justifications for Administrative Salary Increases shall be:

(i) in writing;

(ii) approved by the agency head[~~, or commissioner~~];

(iii) 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 administrative salary increase.

(e) Administrative salary increases may be given during the probationary period. These increases alone do not constitute successful completion of probation or the granting of career service status.

(f) [~~Employees~~]An employee at the maximum step of [~~their~~]the range or on a longevity step may not be granted administrative salary increases.

(11) Administrative Salary Decrease.

The agency head [~~or commissioner~~]authorizes and approves administrative salary decreases for nondisciplinary reasons according to the following:

(a) [~~Employees~~]An employee shall receive a one or more step decrease not to exceed the minimum of [~~their~~]the 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.

(1) Only agencies with written and published incentive award and bonus policies may reward employees with [~~cash~~]incentive awards [~~and noncash incentive awards~~]or bonuses. Incentive awards and bonuses are discretionary, not an entitlement, and are subject to the availability of funds in the agency. [~~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.~~]

(a) Policies shall be approved annually by DHRM and be consistent with standards established in these rules and the Department of Administrative Services, Division of Finance, rules and procedures.

(b) Policies may provide for payments to a 401(k) program approved by the Utah Retirement System.

(c) Individual awards shall not exceed $4,000 per occurrence and $8,000 in a fiscal year.

(d) All cash incentive awards and bonuses shall be subject to payroll taxes.

(2) Performance Based Incentive Awards.

([~~1~~]a) Cash Incentive Awards

([~~a~~]i) Agencies may grant a cash incentive award to an employee or group of employees [~~a cash incentive award~~]who:[

~~(i) propose workable cost savings; or~~]

([~~i~~]A) demonstrate exceptional effort or accomplishment beyond what is normally expected on the job for a unique event or over a sustained period of time.[

~~(b) Individual awards shall not exceed $4,000 per occurrence and $8,000 in a fiscal year.~~]

([~~e~~]ii) All cash awards must be approved by the agency head or designee. They must be documented and a copy shall be maintained in the agency's individual employee file.

([~~2~~]b) Non[~~C~~]cash Incentive Awards

(i) Agency heads may recognize an employee[~~s~~] or group[~~s~~] of employees with non[~~-~~]cash incentive awards.

([~~a~~]ii) Individual noncash incentive awards shall not exceed a value of $50 per occurrence and $200 for each fiscal year.

([~~b~~]iii) Noncash incentive awards may not include cash equivalents such as gift certificates or tickets for admission.

(3) Cost Savings Bonus

(a) An agency may establish a bonus policy to increase productivity, generate savings within the agency, or reward an employee who submits a cost savings proposal.

(i) The agency shall document the cost savings involved.

(b) Amounts awarded are subject to the cost limits of R477-6-5(1)(c). In exceptional circumstances, an award may exceed these limits upon application to DHRM and approval by the Governor.

(4) Market Based Bonuses

Agencies may give a cash bonus to an employee as an incentive to acquire or retain an employee with job skills that are critical to the state and difficult to recruit in the market.

(a) Retention Bonus

An agency may pay a bonus to an employee who has unusually high or unique qualifications that are essential for the agency to retain.

(b) Recruitment or Signing Bonus

An agency may pay a bonus to a qualified job candidate to convince the candidate to work for the state.

(c) Scarce Skills Bonus

An agency may pay a bonus to a qualified job candidate that has the scarce skills required for the job.

(d) Relocation Bonus

An agency may pay a bonus to a current employee who must relocate to accept a position in a different commuting area.

(e) Referral Bonus

An agency may pay a bonus to a current employee who refers a job applicant who is subsequently selected and is successfully employed for at least six months.

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~~]An employee 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~~]An employee who does 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 Insurance within three days of the date entered on the enrollment form.

(4) Flex Benefits

(a) A benefits eligible employee may participate in the FLEX benefits program. 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~~]A new employee wishing to participate in the FLEX benefits program shall enroll within the first 60 days of [~~their~~]employment. Coverage becomes effective on [~~their~~]the employment date.

(ii) [~~Employees~~]An employee who [~~have~~]has 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.~~]A completed FLEX family status change form, accompanied by proper documentation such as a marriage license, divorce decree, or birth certificate, must be received by the plan administrator within 60 days of the change in family status.

(b) [~~Employees~~]An employee must reenroll 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~~]expenses must be incurred during the plan year.

(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~~].

(f) An employee terminating, retiring, or changing from eligible to ineligible status during the plan year may either submit claims incurred during employment no later than 90 days following the date of termination, retirement or status change, or elect COBRA for the health care account only.

(5) [~~Employees~~]An employee in a position[~~s~~] which normally requires working less than 40 hours per pay period [~~are~~]is ineligible for benefits. [~~Employees~~]An employee[~~, except those in positions specifically designated as ineligible for benefits,~~] in a position which normally requires working 40 hours or more per pay period shall be eligible for all benefits, unless the employee is in a position specifically designated as ineligible for benefits. Leave benefits shall be determined on a prorated basis according to actual hours paid in a pay period.

(6) [~~Reemployed~~]A reemployed veteran[~~s~~] under USERRA shall be entitled to the same employee benefits given to other continuously employed eligible employees to include seniority based increased pension and leave accrual.

R477-6-7. Employee[s] Converting from Career Service to Schedule AD, AR, or AS.

(1) [~~Career~~]A career service employee[~~s~~] in a position[~~s~~] 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, an employee[~~s~~] 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~~]An employee at the maximum of [~~their~~]the 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~~]An employee electing to convert to career service exempt after [~~their~~]the 60 day[~~s~~] 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~~]An employee electing not to convert to career service exemption shall retain career service status even though [~~their~~]the 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~~]the employee 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~~]A career service exempt employee[~~s~~] 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 if the employee is approved through underwriting:

(a) State paid term life insurance coverage if determined eligible by the Group Insurance Office to participate in the Term Life Program Public Employees Health Plan:

(i) Salaries less than $50,000 shall receive $125,000 of term life insurance;

(ii) Salaries between $50,000 and $60,000 shall receive $150,000 of term life insurance;

(iii) Salaries more than $60,000 shall receive $200,000 of term life insurance.

(2) [~~Employees~~]An employee 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 or AR who is [~~terminated~~]separated from state service through an action initiated by management, to include resignation in lieu of termination, shall receive at the time of severance a [~~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).~~]

(a) one week of pay, up to a maximum of 12 weeks, for each year of consecutive exempt service; and

(b) one month of health insurance coverage, up to a maximum of six months, for each year of consecutive exempt service, at the level of coverage the employee has at the time of severance, to be paid in a lump sum payment to the state's health care provider.

[~~(2) A benefits eligible career service exempt employee on schedule AB, AD 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.~~

] ([4]2) A severance benefit shall not be paid to an employee:

(a) whose statutory term has expired without reappointment;[

~~(b) who is voluntarily separating from the executive branch;~~]

([~~e~~]b) who is retiring from state service; or[

~~(d) who is eligible for retirement without incurring any early retirement reductions; or~~]

([~~e~~]c) who is discharged for cause.

(3) A benefits eligible career service exempt employee on schedule AB, AD 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 the current hourly rate of pay and the new hourly rate of pay multiplied by the number of accrued annual leave, converted sick leave, and excess hours on the date of reassignment.

([~~5~~]4) An employee on schedule AC, AK, AM or AS may be provided these same severance benefits at the discretion of the appointing authority.

R477-6-10. Human Resource Transactions.

The Executive Director, DHRM, shall publicize procedures for processing payroll[~~,~~] and human resource transactions actions and documents.

KEY: salaries, employee benefit plans, insurance, personnel management
[~~July 1, 2003~~]2004
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.: 27166
FILED: 05/14/2004, 15:05

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed amendment implements significant changes in state policy for Leave without Pay, Workers Compensation, Administrative leave, and Family and Medical leave, and make various nonsubstantive changes.

SUMMARY OF THE RULE OR CHANGE: In Section R477-7-1, additions are made to this section that will require management approval for the use of compensatory time, annual leave, converted sick leave, and excess leave, and clarify that payout monies transferred to a 401K or 457 account are subject to nondeferred taxes. Management is also given flexibility to grant certain types of leave after the last day worked. This is designed to assist management in negotiated separations from employment. In Section R477-7-3, the sentence removed at Subsection R477-7-3(2) is no longer necessary; the sentence removed at Subsection R477-7-3(4) is moved to the R477-7-1(5). The removal of schedule AA employees at Subsection R477-7-3(7)(a) is necessary because these employees do not qualify for leave benefits. In Section R477-7-4, new language at Subsection R477-7-4(3)(b) clarifies in rule that FMLA purposes qualify for the granting of sick leave. In Section R477-7-5, new language at Subsection R477-7-5(5)(e) places in rule a requirement that is already in code. In Section R477-7-7, the amendment to section places a limit of 40 hours on the amount of administrative leave an employee may receive as an incentive award in one year. In Section R477-7-13, this section is completely rewritten to distinguish between leave without pay for medical and nonmedical reasons. This is an important change given recent developments in the areas of Family and Medical Leave, Workers Compensation, and Long Term Disability. The policy now requires that an employee who cannot return to work at the end of the grant of leave without pay must be separated from state employment. In Section R477-7-15, amendments to this section represent a major policy shift in determining how much Family and Medical Leave an employee may receive at any point. This eligibility will now be calculated on a rolling year rather than the current calendar year. The major impact for an employee is that this shift will prevent stacking of the FMLA entitlement at the end of one calendar year with the beginning of the next calendar year. New language also requires an employee to apply in writing for the use of FMLA or follow up within certain time frames if the request is made orally. In Section R477-7-16, this section is amended to be consistent with amendments to

Section R477-7-13. New language requires that the employee be separated from employment if he cannot return to work at the end of workers compensation leave. In Section R477-7-17, amendments to this section clarify in rule that an employee must pay for the employee portion of health insurance premiums for the first two months of Long Term Disability and requires that the employee be separated from state employment if he cannot return to work at the conclusion of long term disability leave.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 49-9-203, 63-13-2, 67-19-6, 67-19-12.9, and 67-19-14.5

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: All agencies are managing the various leave programs with their own policies and procedures. These amendments will require no changes to these practices and thus will generate no costs or savings. There are possible "opportunity" savings in two places of this new policy. One is the new Family and Medical Leave Act (FMLA) policy that will prevent employees from stacking FMLA leave. Currently with this practice, an employee can be away from work for 24 weeks (12 weeks at the end of the calendar year and 12 more weeks at the beginning of the new calendar year). Some employees will now be at their work station more frequently. The second potential source of opportunity savings are in the provisions that require an employee to be separated from employment if he cannot return to work at the end of granted Leave Without Pay, Long Term Disability or Workers Compensation. This has the potential to save an agency productive time by eliminating negotiations with an employee or eliminating possible grievances.

❖ 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, the Department of Human Resource Management's (DHRM) rules effect only persons employed by the executive branch of state government. Rule amendments that create a cost for an employee will either impose a fee for a choice which an employee may make or will cancel a monetary benefit that an employee currently enjoys because of rule. Most of the benefits in this rule have monetary value for an employee but the amendments do not eliminate any of these benefits.

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 07/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2004

AUTHORIZED BY: Kim Christensen, Executive Director

R477. Human Resource Management, Administration.
R477-7. Leave.
R477-7-1. Conditions of Leave.

(1) [~~All employees~~]An employee who [~~regularly~~]normally works 40 hours or more per pay period, except those identified as [~~"at will"~~]career service exempt in R477-4-1[~~1~~]0, [~~are~~]is eligible for leave benefits. [~~Employees~~]An employee receives leave benefits in proportion to the time paid.

(a) [~~Eligible~~]An eligible employee[~~s~~] who works 40 or more hours per pay period shall accrue annual and sick leave in proportion to the time paid.

(b) [~~Employees~~]An employee shall use leave in no less than quarter hour increments.

(2) [~~Seasonal~~]A seasonal, temporary, or part-time employee[~~s~~] working less than 40 hours per pay period [~~are~~]is 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) An employee may not use compensatory, annual, converted sick leave used as annual, or excess leave without advance approval by management.

([~~5~~]6) [~~Employees~~]An employee transferring from one agency [~~of State service~~]to another [~~are~~]is entitled to transfer all accrued annual, sick, and converted sick leave to the new agency.

([~~6~~]7) [~~Employees~~]An employee on paid leave shall continue to accrue annual and sick leave.

([~~7~~]8) [~~Employees~~]An employee separating [~~terminating~~]from state service shall be paid in a lump sum for all annual leave, excess hours, and converted sick leave. [~~Employees who are~~]An FLSA non[ ]exempt employee shall also be paid in a lump sum for all compensatory hours. A retiring[~~Retiring~~] employee[~~s~~] shall be paid for all eligible accrued leave.

(a) [~~Employees~~]An employee may transfer this pay[-]out, minus all nondeferred taxes, to [~~their~~]a 401(k) or 457 account up to the amount allowed by IRS regulation.

(b) No leave on leave may accrue or be paid on the cashed out leave.

(c) Leave cannot be used or accrued after the last day worked, except for FMLA or other medical reasons, or administrative leave specifically approved by management to be used 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~~]9) Contributions to benefits may not be paid on cashed out leave, other than FICA tax, except as it applies to converted sick leave in 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~~]A full-time employee[~~s~~] shall accrue eight hours of paid holiday leave on holidays.

(b) [~~Part-time~~]A part-time career service employee[~~s~~] and a partner[~~s~~] in a shared position who works 40 hours or more per pay period shall receive holiday leave in proportion to the hours [~~they are~~]paid in the pay period in which the holiday falls.

(c) [~~Employees~~]An employee 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, a flex[~~-~~]time employee[~~s~~] 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~~]An employee receives holiday leave in proportion to the number of hours [~~they are~~]paid during the pay period in which the holiday falls.

(a) [~~New~~]A new hire[~~s~~] shall be in a paid status on or before the holiday in order to receive holiday leave.

(b) [~~Terminating~~]A separating employee[~~s~~] shall be in a paid status on or after the holiday in order to receive holiday leave.

(c) [~~Employees~~]An employee 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~~]An employee eligible for annual leave shall accrue leave based on the following years of state service:

(a) zero through five years -- four hours per pay period;

(b) beginning of sixth year through ten years -- five hours per pay period;

(c) beginning of eleventh year through twenty years --six hours per pay period;

(d) beginning of the twenty-first year or more -- seven hours per pay period.

(2) The accrual rate for an employee[~~s~~] rehired to a position which receives leave benefits shall be based on all 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~~]An eligible employee[~~s~~] 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 a certain employee[~~s~~] under the following conditions:

(a) an employee[~~s~~] on the Executive Pay Plan, as described in 67-22-2, an employee[~~s~~] in schedule[~~s AA and~~] AB, and [~~department~~]agency deputy directors and division directors appointed to career service exempt positions.

(b) an employee[~~s~~] who [~~have~~]has a direct reporting relationship[~~s~~] to an elected official[~~s~~], executive director[~~s~~], or deputy director[~~s~~] who [~~are~~]is 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~~]the leave accrual rate adjusted prospectively.

(d) [~~They shall~~]The employee may not be eligible for any transfer of leave from other jurisdictions.

(e) Other provisions of leave shall apply as defined in R477-7-[~~3~~]1.

R477-7-4. Sick Leave.

(1) [~~Employees~~]An employee shall accrue sick leave with pay at the rate of four hours each pay period. Sick leave shall accrue without limit.

(2) [~~Employees~~]An employee 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:

(a) 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.~~]

(b) FMLA purposes under R477-7-15; or

(c) exceptions for other unique medical situations.

(4) [~~Employees~~]An employee shall arrange for a telephone report to supervisors at the beginning of the scheduled workday [~~they are~~]the employee is 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~~]resignation notice, an employee[~~s~~] must support a sick leave request[~~s~~] with a doctor's certificate.

(8) [~~Employees~~]An employee separating from [~~S~~]state service may not receive compensation for accrued unused sick leave unless [~~they are~~]retiring.

(a) [~~Employees~~]An employee who [~~are~~]is 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~~]An employee who retires from [~~S~~]state service and [~~are then~~]is 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 calendar year in which the employee is eligible.

(1) To be eligible, an employee's sick leave account must have accrued a minimum total of 144 hours 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. [~~Employees~~]An employee who does not wish to have [~~their~~]the sick leave converted shall notify [~~their~~]agency management no later than the end of February. The converted sick leave hours will then be returned to the sick leave account.

(b) Upon [~~termination~~]separation, 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~~]the 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~~]The retiree shall pay the same percentage of the premium as a current employee on the same plan.

R477-7-6. Sick Leave Retirement Benefit.

[~~Employees~~]Upon retirement from active employment, an employee may be offered a retirement benefit program, according to Section 67-19-14(2).

(1) This program is optional for each [~~department~~]agency. 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~~]agency shall provide the same health and life insurance benefits as provided to current employees for five years or until the employee reaches the age eligible for Medicare, whichever comes first.

(i) Health insurance provided shall be the same coverage carried by the employee at the time of retirement; i.e., family, two-party, or single. If the employee has no health coverage in place upon retirement, none shall be offered or provided.

(ii) Life insurance provided shall be the minimum authorized coverage provided for all state employees at the time the employee retires.

(iii) The retiree [~~participation rate on premium payments shall be the same as the employee participation rate for~~]shall pay the same percentage of the premium as a current employee[~~s~~] 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 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~~]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 shall pay the same percentage of the premium as a[~~participation rate on premium payments shall be the same as the employee participation rate for~~] current employee[~~s~~] 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.

(e) In the event an employee is killed in the line of duty, the employee's spouse shall be eligible to use the employee's available sick leave hours for the purchase of health and dental insurance as provided in R477-7-6.

R477-7-7. Administrative Leave.

(1) Administrative leave may be granted consistent with agency policy for the following reasons:

(a) administrative;

(i) governor approved holiday leave;

(ii) during management decisions that benefit the organization;

(iii) when no work is available due to unavoidable conditions or influences; or

(iv) other reasons consistent with agency policy.

(b) protected;

(i) suspension with pay pending hearing results;

(ii) personal decision making prior to discipline;

(iii) removal from adverse or hostile work environment situations;

(iv) fitness for duty or employee assistance; or

(v) other reasons consistent with agency policy.

(c) reward in lieu of cash;

(i) the agency head or designee may grant paid administrative leave up to eight hours per occurrence;

(ii) administrative leave in excess of eight hours may be granted with written approval by the agency head.

(iii) administrative leave given as a reward in lieu of cash may not exceed 40 hours in a fiscal year.

(d) student educational assistance[~~;~~].

(2) With the exception of administrative leave used as a reward, as described in R477-7(1)(c), the agency head or designee may grant paid administrative leave up to ten consecutive working days per occurrence. Administrative leave in excess of ten consecutive working days per occurrence may be granted by the agency head.

(3) Administrative leave taken must be documented in the employee's leave record.

R477-7-8. Jury Leave.

(1) [~~Employees~~]An employee [~~are~~]is entitled to a leave of absence with full pay when, in obedience to a subpoena or direction by proper authority, [~~they are~~]the employee is required to:

(a) appear as a witness as part of [~~their~~]the employee's position for the federal government, the State of Utah, or a political subdivision of the state; or

(b) serve as a witness in a grievance hearing as provided in Section 67-19-31 and Title 67, Chapter 19a; or

(c) serve on a jury.

(2) [~~Employees~~]An employee who [~~are~~]is absent in order to litigate in matters unrelated to [~~their~~]state employment shall use eligible accrued leave or leave without pay.

(3) [~~Employees~~]An employee choosing to use paid leave while on jury duty shall be entitled to keep juror's fees; otherwise, juror's fees received shall be returned to agency payroll clerks for deposit with the State Treasurer. The fees shall be deposited as a refund of expenditure in the low org. where the salary is recorded.

R477-7-9. Funeral Leave.

[~~Employees~~]An employee may receive a maximum of [~~twenty-four~~]24 hours funeral leave per occurrence with pay, at management's discretion, to attend the funeral of a member of the employee's 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, 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 eight hours.

(1) [~~Employees~~]An employee who [~~are~~]is a member[~~s~~] of the National Guard or Military Reserves [~~are~~]is entitled to military leave not to exceed 15 days per calendar year without loss of pay, annual leave or sick leave. [~~Employees~~]An employee 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 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~~]An employee may use accrued leave while on active duty.

(3) [~~Employees~~]An employee shall give notice of active military service as soon as [~~they are~~]notified.

(4) Upon [~~termination~~]separation from active military service under honorable conditions, an employee[~~s~~] shall be placed in [~~their~~]the original position or one of like seniority, status and pay. The cumulative length of time allowed for reemployment may not exceed five years. [~~Employees~~]An employee [~~are~~]is entitled to reemployment rights and benefits including increased pension and leave accrual. [~~Persons~~]An employee entering military leave may elect to have payment for annual leave deferred. In order to be reemployed, an employee[~~s~~] shall present evidence of military service and leave without pay status, and:

(a) for service less than 31 days, return at the beginning of the next regularly scheduled work period on the first full day after release from service, taking into account safe travel home plus an eight hour rest period;

(b) for service of more than 31 days but less than 181 days, submit an application for reemployment within 14 days of release from service; or

(c) for service of more than 180 days, submit an application for reemployment within 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~~]An employee who serves as a bone marrow or human organ donor[~~s~~] shall be granted paid leave for the donation and recovery.

(1) [~~Employees~~]An employee who donates bone marrow shall be granted up to seven days of paid leave.

(2) [~~Employees~~]An employee who donates a human organ shall be granted up to 30 days of paid leave.

R477-7-13. Leave of Absence Without Pay.

[~~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 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.~~]An employee shall apply in writing to agency management for approval of a leave of absence without pay. Approval may be granted for continuous leave for up to 12 months from the last day worked. If unable to return to work within the time period granted, the employee shall be separated from state employment.

(1) Nonmedical Reasons

(a) Leave without pay may be granted only when there is an expectation that the employee will return to work. This section does not apply for military leave.

(b) Agency management may approve leave without pay for an employee even though annual or sick leave balances exist. An employee may take up to ten consecutive working days of leave without pay without affecting the leave accrual rate.

(c) An employee who receives no compensation for a complete pay period shall be responsible for payment of the full premium of state provided benefits.

(d) An employee who returns to work on or before the expiration of leave without pay shall be placed in a position with comparable pay and seniority to the previously held position. The employee shall also be entitled to previously accrued annual and sick leave.

(2) Medical Reasons

(a) An employee who is ineligible for FMLA, Workers Compensation, or Long Term Disability may be granted leave without pay for medical reasons.

(b) Medical leave without pay may be granted for no more than 12 months. Medical leave may be approved if a registered health practitioner certifies that an employee is temporarily disabled.

(c) An employee who is granted this leave shall provide a monthly status update to the employee's supervisor.

R477-7-14. Furlough.

(1) Agency management may furlough employees as a means of saving salary costs in lieu of or in addition to a reduction in force. Furlough plans are subject to the approval of the agency head and the following conditions:

(a) [~~Employees~~]An employee shall accrue annual and sick leave.

(b) Full payment of all fringe benefits shall continue at the agency's expense.

(c) [~~Employees~~]An employee shall return to [~~their~~]the current position[~~s~~].

(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 section, R477-7-15(1), is effective until January 1, 2005. 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 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.

This paragraph and section, R477-7-15(1), are effective on January 1, 2005. This rule parallels the federal Family and Medical Leave Act, 29 USC 2601. Family and medical leave (FMLA) may be authorized when appropriate. This provision does not authorize FMLA leave in excess of that provided for by federal statutes and regulations.

(1) An employee is entitled to 12 weeks of family and medical leave in a 12 month period.

(a) The amount of FMLA leave available to an employee shall be 12 weeks minus any FMLA leave used in the immediately preceding 12 month period.

(b) Agency management shall approve FMLA leave 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.

(c) An employee on FMLA leave shall continue to receive the same health insurance benefits the employee was receiving prior to the commencement of FMLA leave.

(2) To be eligible for [~~the 12 weeks of~~]family medical leave, the employee must[~~be~~]:

(a) be employed by the state for at least 12 months;[~~and~~]

(b) be 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[~~-~~]; and

(c) apply in writing to the agency when the reason for requesting family medical leave changes in the course of a year.

(3) [~~Employees~~]An employee, or an appropriate spokesperson, shall submit a leave request:

(a) thirty days in advance for foreseeable needs; or

(b) as soon as possible in emergencies.

(4) Agency Responsibility

(a) Agency management shall be responsible for:

(i) documenting employee leave requests which qualify as FMLA leave; and

(ii) designating any qualifying leave taken by an employee[~~s~~] 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 an employee[~~s~~] orally or 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.

(A) An oral notice must be confirmed in writing no later than the following payday.

(B) If the payday is less than one week after the oral notice, then written notice must be issued by the subsequent payday.

(b) Written notification to an employee[~~s~~] 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~~]which types of leave the employee will be required to exhaust [~~unused annual, converted, and sick leave, ~~]before going into a LWOP status;

(iv) [~~any~~]the requirement for the employee to make [~~any~~]premium payments to maintain health benefits, 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 known 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 the employee[~~s~~] 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~~]An employee shall be required to use accrued sick leave only in situations considered eligible under R477-7-4(3). [~~Employees~~]An employee who takes family and medical leave in a leave without pay status must comply with R477-7-13.

(a) [~~Employees~~]An employee 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~~]An employee shall be eligible to return to work under R477-7-13.

(a) If an employee has gone into leave without pay status and 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~~]the employee returns for at least 30 calendar days.

(b) Exceptions to this provision include:

(i) an FLSA exempt and schedule AB, AD and AR employee[~~s~~] who [~~have~~]has been denied restoration upon expiration of their leave time;

(ii) an employee[~~s~~] whose circumstances change unexpectedly beyond [~~their~~]the employee's control during the leave period preventing [~~and he or she cannot~~]the return to work at the end of 12 weeks.[

~~(7) For maternity and child placement leave, time must be taken in no less than eight hour increments.~~]

([~~8~~]7) Leave taken for purposes of childbirth, adoption, placement for adoption or foster care shall not be taken intermittently or on a reduced leave schedule unless the employee and employer mutually agree.

([~~9~~]8) Leave required for certified medical reasons may be taken intermittently.

([~~10~~]9) 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~~]10) Medical records created for purposes of FMLA and the Americans with Disabilities Act must be maintained in accordance with confidentiality requirements of R477-2-5(6).

R477-7-16. 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;

(ii) the workers compensation fund terminates the benefit;

(iii) the employee has been absent from work for one year;

(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~~]An employee will continue to accrue state paid benefits and leave benefits while receiving a workers compensation time loss benefit for up to one year.

(3) Health insurance benefits shall continue for an employee on leave without pay while receiving workers compensation benefits. The employee is responsible for the payment of the employee share of the premium.

(4) If the employee is unable to return to work within one year of the last day worked, the agency shall place the employee in the previously held position or a similar position at a comparable salary range.

(5) If the employee is unable to return to work within 12 months, the employee shall be separate from state employment.

([~~3~~]6) [~~Employees~~]An employee who files a fraudulent workers compensation claim[~~s~~] shall be disciplined according to the provisions of R477-11.

R477-7-17. Long Term Disability Leave.

(1) [~~Employees~~]An employee who [~~are~~]is 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, an employee[~~s~~] may use available sick and converted sick leave. When those balances are exhausted, an employee[~~s~~] may use other leave balances available.

(b) [~~Employees~~]An employee 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 employee is responsible for the employee share of the premium during the two months following the last day worked. The health insurance benefit shall continue without premium payment for up to 22 months or until [~~they are eligible~~]eligibility for Medicare or Medicaid, whichever occurs first. After 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) Biweekly salary payments that the employee may be receiving shall cease. If the employee received any salary payments after the three month waiting period, the LTD benefit shall be offset by the amount received.

(ii) The employee shall be paid for remaining balances of annual leave, 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~~]separation 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~~]An employee 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~~]the previously held position or similar position in a comparable salary range provided [~~they are~~]the employee is 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 agency shall place the employee in the best available, vacant position for which [~~he is~~]the employee qualifies[~~d~~] and is 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~~]If an employee is unable to return to work within one year after the last day worked, the employee shall be separated from state employment.

(4) [~~Employees~~]An employee who files a fraudulent long term disability claim[~~s~~] shall be disciplined according to the provisions of R477-11.

R477-7-18. Leave Bank.

With the approval of the agency [~~director~~]head, agencies may establish a leave bank program as follows:

(1) Only annual leave, excess hours, compensatory time earned by an FLSA nonexempt employee, and converted sick leave hours may be donated to a leave bank.

(2) Only employees of agencies with approved leave bank programs may donate leave hours to another agency with a leave bank program, if mutually agreed on by both agencies.

(3) [~~Employees~~]An employee [~~shall~~]may not receive donated leave until [~~they use~~]all [~~of their~~]individually accrued leave is used.

(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 1, 2003~~]2004
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.: 27167
FILED: 05/14/2004, 15:06

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendments clarify what happens to an employee's compensatory time when his Fair Labor Standards Act (FLSA) status changes and make various nonsubstantive changes.

SUMMARY OF THE RULE OR CHANGE: In Section R477-8-6, amendments to Subsection R477-8-6(4)(c) define when accrued compensatory time lapses and allows an employee to use accrued compensatory time within the prescribed overtime year when his status changes to nonexempt. The amendments at Subsection R477-8-6(8) are a simplification and clarification of the obligation of the state to compensate an employee for hours worked.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-19-6 and 67-19-6.7

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Amendments to this rule will require no changes to the operating procedures or practices of state agencies and thus will generate no costs or 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.

COMPLIANCE COSTS FOR AFFECTED PERSONS: By law, Section 67-19-15, the Department of Human Resource Management's (DHRM) rules effect only persons employed by the executive branch of state government. Rule amendments that create a cost for an employee will either impose a fee for a choice which an employee may make or will cancel a monetary benefit that an employee currently enjoys because of rule. The amendments to this rule clarify how an agency administers an employees accrued compensatory time. This right is still protected however and there will thus be no costs for an employee.

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 07/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2004

AUTHORIZED BY: Kim Christensen, 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~~]An employee may negotiate for flexible starting and quitting times with [~~their~~]the 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~~]An employee [~~are~~]is required to be at work on time. [~~Employees~~]An employee who [~~are~~]is 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) establish a written policy governing telecommuting;

(b) enter into a written contract with each telecommuting employee to specify conditions, such as use of state or personal equipment, and results such as identifiable benefits to the state and how customer needs are being met; and

(c) not allow telecommuting employees to violate overtime rules.

R477-8-5. Lunch and Break Periods.

(1) Each full-time work day shall include a minimum of 30 minutes non[~~-~~]compensated lunch period. This lunch period is normally scheduled between 11:00 a.m. and 1:00 p.m. for a regular day shift.

(2) [~~Employees~~]An employee 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(2002) and Utah Code Section 67-19-6.7.

(1) Management may direct an employee to work overtime. Each agency shall develop internal rules and procedures to ensure overtime usage is efficient and economical. These policies and procedures shall include:

(a) prior supervisory approval for all overtime worked;

(b) recordkeeping guidelines for all overtime worked;

(c) verification that there are sufficient funds in the budget to compensate for overtime worked.

(2) Overtime compensation standards are identified for each job title in HRE as either FLSA nonexempt, or FLSA exempt.

(a) [~~Employees~~]An employee may appeal [~~their~~]the FLSA designation to [~~their~~]the 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) An FLSA nonexempt employee[~~s~~] may not work more than 40 hours a week without management approval. [~~They~~]Overtime shall accrue [~~receive overtime~~] when [~~they~~]the employee actually works more than 40 hours a week. Leave and holiday time taken within the work period shall not count as hours worked when calculating overtime accrual[~~ing~~]. 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) An FLSA nonexempt employee[~~s~~] shall sign a prior overtime agreement authorizing management to compensate [~~them~~]the employee for overtime worked by actual payment or time off at time and one half.

(b) An FLSA nonexempt employee[~~s~~] may receive compensatory time for overtime up to a maximum of 80 hours. Only with prior approval of the Executive Director, DHRM, may compensatory time accrue up to 240 hours for regular employees or up to 480 hours for peace or correctional officers, emergency or seasonal employees. Once an employee[~~s~~] reach the maximum, [~~they shall be paid for~~]additional overtime shall be paid on the payday for the period in which it was earned.

(4) An FLSA exempt employee[~~s~~] may not work more than 80 hours in a pay period without management approval. [~~They shall accrue c~~]Compensatory time shall accrue when [~~they~~]the employee actually works more than 80 hours in a work period. Leave and holiday time taken within the work period may not count as hours worked when calculating compensatory time. Each agency shall compensate an FLSA exempt employee[~~s~~] who works overtime by [~~giving them~~]granting 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 an FLSA exempt employee[~~s~~] is not an entitlement, a benefit, nor a vested right.

(c) Any compensatory time earned by an FLSA exempt employee[~~s~~] shall lapse [~~at the end of an agency's annual overtime year~~]upon occurrence of any one of the following events: when an employee transfers to another agency, terminates, retires, or otherwise does not return to work before the end of the overtime year.

(i) If an FLSA exempt employee's status changes to nonexempt, that employee's compensatory time earned while in exempt status shall lapse if not used by the end of the current overtime year.[

~~(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~~]d) The agency [~~director~~]head may approve overtime for [~~non-career service~~]career service exempt 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;

(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 nonexempt 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) the Fair Labor Standards Act, Section 207(k);

(ii) 29 CFR 553.230;

(iii) the state's payroll period;

(iv) the approval of the Executive Director, DHRM.

(6) Compensatory Time

(a) Agency management shall arrange for an employee's use of compensatory time as soon as possible without unduly disrupting agency operations or endangering public health, safety or property.

(b) Compensatory time balances for an FLSA nonexempt employee[~~s~~] shall be paid down to zero when 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) An FLSA nonexempt employee[~~s~~] must complete and sign a state approved biweekly time sheet. Time sheets developed by the agency shall have the same elements of the state approved time sheet and be approved by the Department of Administrative Services, Division of Finance.

(b) An FLSA exempt employee[~~s~~] who works more than 80 hours in a work period must record [~~their~~]the total hours worked[~~,~~] and the compensatory time used on [~~their~~]a 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: An FLSA nonexempt employee[~~s~~] shall be compensated for all hours [~~they are permitted to work~~]worked.[~~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~~]An employee who works unauthorized overtime may be subject to disciplinary action.

(a) All time that an FLSA nonexempt employee[~~s are~~] is required to wait for an assignment while on duty, before reporting to duty, or before performing [~~their~~]activities is counted towards hours worked.

(b) Time spent waiting after being relieved from duty is not counted as hours worked if one or more of the following conditions apply:

(i) the employee arrives voluntarily before their scheduled shift and waits before starting duties;

(ii) the employee is completely relieved from duty and allowed to leave the job;

(iii) the employee is relieved until a definite specified time;

(iv) the relief period is long enough for the employee to use as the employee sees fit.

(c) On-call time: [~~Employees~~]An employee required by agency management to be available for on-call work shall be compensated for on-call time at a rate of one hour for every 12 hours the employee is on-call.

(i) Time is considered "on-call time" when the employee has freedom of movement in personal matters as long as 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~~]An employee restricted to "stand-by" at a specified location ready for work must be paid full-time or overtime, as appropriate. [~~Workers~~]An employee must be paid for stand-by time if [~~they are~~]required to stand by [~~their~~]the post[~~s~~] ready for duty, even during lunch periods, equipment breakdowns, or other temporary work shutdowns.

(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 an employee[~~s~~] spends traveling from one job site to another during the normal work schedule shall count towards hours worked.

(iii) Time an employee[~~s~~] spends 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~~]An employee 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~~]An employee on schedule AB may not accumulate more than 80 excess hours.

(iv) Agency management may pay out excess hours under one of the following:

(A) paid off automatically in the same pay period accrued;[~~(B) all hours accrued above 40;~~]

([~~C~~]B) all hours accrued above 80; or

([~~D~~]C) an employee[~~s~~] on schedule AB shall only be paid for excess hours at [~~retirement or termination~~]separation.

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 may work in up to four different positions in state government.

(2) An employee's benefit status for any secondary position(s), regardless of schedule of any of the positions, shall be the same as the primary position.

(3) An employee's FLSA status (exempt or nonexempt) for any secondary position(s) shall be the same as the primary position.

(4) Leave accrual shall be based on all hours worked in all positions and may not exceed the maximum amount allowed in the primary position.

(5) As a condition of dual employment, an employee in dual employment status is prohibited from accruing excess hours in either the primary or secondary positions. All excess hours earned shall be paid at straight time in the pay period in which the excess hours are earned.

(6) As a condition of dual employment, the Overtime or Comp selection shall be as overtime paid regardless of FLSA status. An employee may not accrue comp hours while in dual employment status.

(7) Overtime shall be calculated at straight time or time and one half depending on the FLSA status of the primary position. Time and a half overtime rates shall be calculated based on the weighted average rate of the multiple positions. Refer to Division of Finance's payroll policies, dual employment section.

(8) The Accepting Terms of Dual Employment form shall be completed, signed by the employee and supervisor, and placed in the employee's personnel file with a copy sent to the Division of Finance.

(9) Secondary positions may not interfere with the efficient performance of the employee's primary position or create a conflict of interest. An employee in dual employment status shall comply with conditions 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) return to work from injury or illness;

(2) when management determines that there is a direct threat to the health or safety of self or others;

(3) in conjunction with corrective action, performance or conduct issues, or discipline;

(4) when a fitness for duty evaluation is a bona fide occupational qualification for selection, retention, or promotion.

R477-8-10. Temporary Transitional Assignment.

Temporary transitional assignments may be part of any of the following:

(1) return to work from injury or illness;

(2) when management determines that there is a direct threat to the health or safety of self or others;

(3) in conjunction with corrective action, performance or conduct issues, or discipline;

(4) where there is a bona fide occupational qualification for retention in a position;

(5) as a temporary measure while an employee is being evaluated to determine if reasonable accommodation is appropriate.

R477-8-11. Change in Work Location.

(1) A change in work location shall not be permitted if this requires the employee to commute or relocate 50 miles or more, one way, beyond his current one way commute, unless:

(a) the policy is communicated to the employee at employment;

(b) the agency shall either pay to move the employee consistent with R25-6-8 and Department of Administrative Services, Division of Finance Policy 05-04.03, or reimburse commuting expenses up to the cost of a move.

KEY: breaks, telecommuting, overtime, dual employment
[~~July 1, 2003~~]2004
Notice of Continuation June 11, 2002
67-19-6
67-19-6.7

Human Resource Management, Administration
R477-9
Employee Conduct

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 27168
FILED: 05/14/2004, 15:08

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment adds a new Section R477-9-6 (Acceptable Use of Information Technology Resources), renumbers the current Section R477-9-6, and make various nonsubstantive changes.

SUMMARY OF THE RULE OR CHANGE: Section R477-9-6 is added in coordination with the Office of the Chief Information Officer. An employee is required to comply with the Acceptable Use Policy authored by the Chief Information Officer or face possible discipline.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: All agencies are complying with the acceptable use policy. This amendment will require no changes to the operating procedures or practices of state agencies with this policy and thus will generate no costs or 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.

COMPLIANCE COSTS FOR AFFECTED PERSONS: By law, Section 67-19-15, the Department of Human Resource Management's (DHRM) rules effect only persons employed by the executive branch of state government. Rule amendments that create a cost for an employee will either impose a fee for a choice which an employee may make or will cancel a monetary benefit that an employee currently enjoys because of rule. The amendments to this rule will do neither of these and will thus impose no costs on employees.

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 07/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2004

AUTHORIZED BY: Kim Christensen, Executive Director

R477. Human Resource Management, Administration.
R477-9. Employee Conduct.
R477-9-1. Standards of Conduct.

[~~Employees~~]An employee shall comply with the standards of conduct established in these rules and the policies and rules established by [~~their~~]agency[~~'s~~] management.

(1) Employees shall apply themselves to and shall fulfill their assigned duties during the full-time for which they are compensated.

(a) [~~Employees~~]An employee shall:

(i) comply with the standards established in [~~their~~]the individual performance plans;

(ii) maintain an acceptable level of performance and conduct on all other verbal and written job expectations;

(iii) report conditions and circumstances, including controlled substances or alcohol impairment, that may prevent [~~them~~]the employee from performing their job effectively and safely;

(iv) inform [~~their~~]the supervisor of any unclear instructions or procedures.

(2) [~~Employees~~]An employee shall make prudent and frugal use of state funds, equipment, buildings, and supplies.

(3) [~~Employees~~]An employee who reports for duty or attempts to perform the duties of [~~their~~]the position[~~s~~] while under the influence of alcohol or nonprescribed controlled substances shall be subject to corrective action or discipline in accordance with R477-10-2, R477-11 and R477-14.

(a) The agency may decline to defend and indemnify an employee[~~s~~] found violating this rule, in accordance with Section 63-30-36 (c)(ii) of the Utah Governmental Immunity Act.

(4) [~~Employees~~]An employee shall not drive a state vehicle, or any other vehicle, on state time while under the influence of alcohol or controlled substances.

(a) [~~Employees~~]An employee who violates this rule shall be subject to corrective action or discipline pursuant to R477-10-2, R477-11 and R477-14.

(b) The agency may decline to defend or indemnify an employee[~~s~~] who violates this rule, according to Section 63-30-36(3)(c)(i) of the Utah Governmental Immunity Act.

R477-9-2. Outside Employment.

(1) State employment shall be the principal vocation for a full-time employee[~~s~~] governed by these rules. An employee may engage in outside employment under the following conditions:

(a) Outside employment must not interfere with an employee's efficient performance in his state position.

(b) Outside employment must not conflict with the interests of the agency or the State of Utah.

(c) Outside employment must not give reason for criticism or suspicion of conflicting interests or duties.

(d) [~~Employees~~]An employee shall notify agency management in writing if the outside employment has the potential or appears to conflict with Title 67, Chapter 16, Employee Ethics Act.

(e) Agency management may deny an employee[~~s~~] permission to engage in outside employment, or to receive payment, if [~~they determine~~]the outside activity is determined to cause[~~s~~] a real or potential conflict of interest.

(i) [~~Employees~~]An employee may grieve this decision.

(ii) Failure to notify the employer and to gain approval for outside employment is grounds for disciplinary action if the secondary employment is found to be a conflict of interest.

R477-9-3. Conflict of Interest.

(1) An employee may receive honoraria or paid expenses for activities outside of state employment under the following conditions:

(a) Outside activities must not interfere with the employee's efficient performance in his state position.

(b) Outside activities must not conflict with the interests of the agency or the State of Utah.

(c) Outside activities must not give reasons for criticism or suspicion of conflicting interests or duties.

(2) An employee shall not use his state position or any influence, power, authority or confidential information [~~he receives~~]received in that position, or state time, equipment, property, or supplies for private gain.

(3) An employee shall not receive outside compensation for performing state duties, except for the following:

(a) awards for meritorious public contribution;

(b) honoraria or expenses paid for papers, speeches, or appearances on an employee's own time with the approval of agency management, which are not compensated by the state or prohibited by rule;

(c) usual social amenities, ceremonial gifts, or non[-]substantial advertising gifts.

(4) An employee shall declare a potential conflict of interest when [~~he is~~]required to do or decide something that could be interpreted as a conflict of interest. Agency management shall then excuse the employee from making decisions or taking actions that may cause a conflict of interest.

R477-9-4. Political Activity.

[~~State~~]A state career service employee[~~s~~] may voluntarily participate in political activity according to the provisions in this rule or other federal laws. The following rules apply to a career service employee[~~s~~] in [~~all~~]any salary range[~~s~~] and position[~~s~~].

(1) Any state career service employee elected to any partisan or full-time non[-]partisan political office shall be granted a leave of absence without pay while being monetarily compensated for service in political office. [~~Employees~~]An employee shall not receive annual leave while serving in a political office.

(2) During work time, no career service employee may engage in any political activity. No person shall solicit political contributions from employees of the executive branch during hours of employment. However, a state employee[~~s~~] may voluntarily contribute to any party or any candidate.

(3) Decisions regarding employment, promotion, demotion or dismissal or any other human resource actions shall not be based on partisan political activity.

(4) Regardless of other provisions in these rules, no member of the Utah State Highway Patrol may use official authority or influence to interfere with an election or to affect election results. No person may induce or attempt to induce any member of the Utah State Highway Patrol to participate in any prohibited activity.

(5) This rule shall not apply to an employee[~~s~~] who [~~are~~]is restricted or prevented from engaging in political activity through the provisions of the federal Hatch Act. To determine whether an employee shall adhere to the federal Hatch Act, an employee[~~s~~] may contact DHRM or the employing agency's human resource office for guidelines.

(6) Violations of law governing political activity shall be reported in writing to the Executive Director, DHRM, who shall investigate the validity of any allegation and assess the extent to which any activity was knowingly and willfully conducted in violation of law.

R477-9-5. Employee Indebtedness to the State.

(1) [~~Employees~~]An employee indebted to the state because of an action or performance in [~~their~~]official duties may have a portion of [~~their~~]pay that exceeds the minimum federal wage withheld. Overtime pay shall not be withheld.

(a) The following three conditions must be met before withholding of pay may occur:

(i) The debt must be a legitimately owed amount which can be validated through physical documentation or other evidence.

(ii) The employee must know about and, in most cases, acknowledge the debt. As much as possible, the employee should provide written authorization to withhold the pay.

(iii) [~~Employees~~]An employee must be notified of this rule which allows the state to withhold pay.

(b) [~~Employees terminating~~]An employee separating from state service will have pay withheld from the last paycheck.

(c) [~~Employees~~]An employee going on leave without pay for more than two pay periods may have pay withheld from their last paycheck.

(d) The state may withhold an employee's pay to satisfy the following specific obligations:

(i) travel advances where travel and reimbursement for the travel has already occurred;

(ii) state credit card obligations where the state's share of the obligation has been reimbursed to the employee but not paid to the credit card company by the employee;

(iii) evidence that the employee negligently caused loss or damage of state property;

(iv) payroll advance obligations that are signed by the employee and that the Division of Finance authorizes;

(v) misappropriation of state assets for unauthorized personal use or for personal financial gain. This includes reparation for employee theft of state property or use of state property for personal financial gain or benefit;

(vi) overpayment of pay determined by evidence that an employee did not work the hours for which they received pay or was not eligible for the benefits received and paid for by the state;

(vii) excessive reimbursement of funds from flexible reimbursement accounts;

(viii) other obligations that satisfy the requirements of R477-9-4(1) above.

(2) This rule does not apply to state employee obligations to other state agencies where the obligation was not caused by their actions or performance as an employee.

R477-9-6. Acceptable Use of Information Technology Resources.

Information technology resources are provided to a state employee to assist in the performance of assigned tasks and in the efficient day to day operations of state government.

(1) An employee shall use assigned information technology resources in compliance with R365-7, Acceptable Use of Information Technology Resources.

(2) An employee who violates the Acceptable Use of Information Technology Resources policy may be disciplined according to R477-11.

R477-9-[~~6~~]7. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to the provisions of this rule, consistent with R477-2-2(1).

KEY: conflict of interest, government ethics, Hatch Act, personnel management
[~~July 5, 2002~~]2004
Notice of Continuation June 11, 2002
67-19-6
67-19-19

Human Resource Management, Administration
R477-11
Discipline

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27169
FILED: 05/14/2004, 15:10

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The amendment amends the policy for the Dismissal and demotion of career service exempt employees and make various nonsubstantive changes.

SUMMARY OF THE RULE OR CHANGE: In Subsection R477-11-2(1), this change removes the requirement that an agency head notify a career exempt employee in writing when he is demoted or dismissed.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-19-6 and 67-19-18, and Title 63, Chapter 2

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: This amendment is merely a due process issue and will require no changes to the operating procedures or practices of state agencies and thus will generate no costs or 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.

COMPLIANCE COSTS FOR AFFECTED PERSONS: By law, Section 67-19-15, the Department of Human Resource Management's (DHRM) rules effect only persons employed by the executive branch of state government. Rule amendments that create a cost for an employee will either impose a fee for a choice which an employee may make or will cancel a monetary benefit that an employee currently enjoys because of rule. The substantive amendment to this rule removes the right of a career service exempt employee to receive a written notification when being separated from state employment. Loss of employment is a cost to the employee but the amount will vary based on the salary of the employee, how long the employee is unemployed and the salary of the new job.

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 07/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2004

AUTHORIZED BY: Kim Christensen, 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. The disciplinary process shall include all of the following, except as provided under Subsection 67-19-18(4):

(a) The agency representative notifies the employee in writing of the proposed discipline and the underlying reasons supporting the intended action.

(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~~]career service

exempt employee not subject to the same procedural rights, by imposing one or more of the following:

(a) written reprimand;

(b) suspension without pay up to 30 calendar days per incident requiring discipline;

(c) demotion of any employee through one of the following methods:

(i) An employee may be moved from a position in one job to a position in another job having a lower maximum salary range and may receive a reduction in pay.

(ii) A demotion within the employee's current pay range may be accomplished by lowering the employee's salary rate back on the range, as determined by the agency head or designee.

(d) dismissal.

An agency head shall dismiss or demote a career service employee only in accordance with the provisions of Subsection 67-19-18(5) and R477-11-2.

(4) If [~~an agency~~]agency management determines that a career service employee endangers or threatens the peace and safety of others or poses a grave threat to the public service or is charged with aggravated or repeated misconduct, the agency may impose the following actions, as provided by subsection 67-19-18-(4), pending an investigation and determination of facts:

(a) paid administrative leave; or

(b) temporary reassignment to another position or work location at the same 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~~]career service exempt 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~~]head or designee to consider the reply before discipline is imposed.

(c) The employee shall have an opportunity to be heard by the agency head or designee. The hearing before the 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) consistent application of rules and standards;

(b) prior knowledge of rules and standards;

(c) the severity of the infraction;

(d) the repeated nature of violations;

(e) prior disciplinary/corrective actions;

(f) previous oral warnings, written warnings and discussions;

(g) the employee's past work record;

(h) the effect on agency operations;

(i) the potential of the violations for causing damage to persons or property.

KEY: discipline of employees, dismissal of employees, grievances, government hearings
[~~July 1, 2003~~]2004
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.: 27170
FILED: 05/14/2004, 15:11

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed amendments are a clarification of policy for an employee resignation and make an important policy change for an employee's rights in a reductions in force and make various nonsubstantive changes.

SUMMARY OF THE RULE OR CHANGE: In Section R477-12-1, this amendment is designed to make it clear that a notice of resignation and a withdrawal of that notice must be made to

the immediate supervisor or another appropriate person in the employee's "chain of command" or "management team". It also requires a written follow up within 24 hours of the withdrawal if it is made orally. In Section R477-12-3, new language is added as a basic policy change designed to give the RIF'd employee more options for reemployment by the state. The RIF'd employee is no longer limited to jobs where he has an "interchangeability of skills" which is defined tightly as a job the employee has held or supervised (Subsection R477-1-1(67)). This amendment allows the employee to be placed in a job for which he meets the qualifications. This will allow the employee to take advantage of all his job skills and opens up a larger number of possible employment opportunities with the state. All other amendments to this rule are nonsubstantive corrections or replacement of words consistent with changes in definitions.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-19-6, 67-19-17, and 67-19-18

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Amendments to this rule will require no changes to the operating procedures or practices of state agencies and thus will generate no costs or 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.

COMPLIANCE COSTS FOR AFFECTED PERSONS: By law, Section 67-19-15, the Department of Human Resource Management's (DHRM) rules effect only persons employed by the executive branch of state government. Rule amendments that create a cost for an employee will either impose a fee for a choice which an employee may make or will cancel a monetary benefit that an employee currently enjoys because of rule. The amendments to this rule will do neither of these as they clarify the procedure for submitting and retracting a resignation.

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 07/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2004

AUTHORIZED BY: Kim Christensen, Executive Director

R477. Human Resource Management, Administration.
R477-12. Separations.
R477-12-1. Resignation.

[~~Employees~~]A career service employee may resign by giving written or verbal notice to the [~~appointing authority~~]immediate supervisor or an appropriate representative of management in the work unit.[~~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, an employee[~~s~~] may withdraw [~~their~~]it [~~resignation~~]on the next working day by notifying the immediate supervisor or an appropriate representative of management in the work unit.[~~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.~~]

(a) After the close of the next working day following submission, withdrawal of a resignation may occur only with the consent of agency management.

(b) If the resignation withdrawal notice is verbal, the employee shall submit a written notification within 24 hours of the verbal notice.

R477-12-2. Abandonment of Position.

[~~Employees~~]An employee who [~~are~~]is absent from work for three consecutive working days and [~~are~~]is capable of providing proper notification to [~~their~~]the supervisor, but does not, shall be considered to have abandoned [~~their~~]his position.

(1) [~~Management may terminate an~~]An employee who has abandoned his position may be separated from state employment. 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~~]separation 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, 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~~]categories of work, agency management shall develop a work force adjustment plan (WFAP). [~~Career~~]A career service employee[~~s~~] shall only be given formal written notification of separation after a WFAP has been

reviewed and approved by the Executive Director, DHRM, or designee. The following items shall be considered in developing the work force adjustment plan:

(a) the categories of work to be eliminated, including positions impacted through bumping, as determined by management;

(b) a decision by agency management allowing or disallowing bumping;

(c) specifications of measures taken to facilitate the placement of affected employees through normal attrition, retirement, reassignment, relocation, and movement to vacant positions for which the employee qualifies[~~based on interchangeability of skills~~];

(d) a list of all affected employees showing the retention points for each employee.

(2) Eligibility for RIF.

(a) Only career service employees who have been identified in an approved WFAP and given an opportunity for a hearing with the agency head may be RIF'd.

(b) [~~Employees~~]An employee covered by USERRA and in a leave without pay status must be identified, assigned retention points, and notified of the RIF of [~~their~~]the previous position in the same manner as a career service employee[~~s~~].

(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 employees~~]An employee 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 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~~]an employee covered under USERRA and in a leave without pay status in the same manner as for current employees in the affected class. If there are no performance evaluation ratings for an employee covered under USERRA, no proficiency rating shall be included in the retention points.

(4) The order of separation shall be:

(a) [~~non-career service~~]career service exempt employees;

(b) probationary employees;

(c) career service employees in the order of their retention points with the lowest points are released first. In the event of ties in retention points, the amount of seniority in the affected agency serves as the tie breaker.

(5) [~~Employees~~]An employee, including [~~those~~]one covered under USERRA in a leave without pay status, who [~~are~~]is 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 separation due to a reduction in force may appeal to the agency head for an administrative review 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 individual.

(a) A RIF'd 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. R477-4-4 applies for selection of 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 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~~]agency'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, 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 individual who is reappointed to a career service position shall not be required to serve a probationary period. The RIF'd individual shall enjoy all the rights and privileges of a regular career service employee.

(e) At agency discretion, an individual[~~s~~] 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 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~~]A career service employee[~~s~~] in an exempt position[~~s~~]. 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 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:

(i) be appointed to any half time or greater career service position for which the individual qualifies in a pay range comparable to the individual's last position in the career service, provided an opening exists; or

(ii) be appointed to any lesser career service position for which the individual qualifies, pending the opening of a position at the last career service salary range held.

(b) The Executive Director, DHRM, shall make the final determination on whether an eligible individual meets the job requirements for position vacancies.

(c) The individual shall declare 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 1, 2003~~]2004
Notice of Continuation June 11, 2002
67-19-6
69-19-17
69-19-18

Insurance, Administration
R590-167
Individual and Small Employer Health Insurance Rule

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27150
FILED: 05/13/2004, 13:06

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended to implement code changes made as a result of H.B. 207 and H.B. 218 both passed during the 2004 Legislative Session. (DAR NOTE: H.B. 207 is found at UT L 2004 Ch 108, and was effective 05/03/2004; and H.B. 218 is found at UT L 2004 Ch 348, and was effective 05/03/2004.)

SUMMARY OF THE RULE OR CHANGE: The following changes are made to this rule: 1) the outlining changes to comply with rulemaking guidelines; 2) the title changes to comply with the new title of Title 31A, Chapter. This change was made in H.B. 207 in the 2004 Legislative Session; 3) definitions have been moved from the general text of the rule to the definition section; 4) rule and code citations are updated; 5) rule now clarifies that a request for approval of a rating factor change must be explicit; 6) rule clarifies that smoker status is not an allowable case characteristic; 7) Section R590-167-9 is changed to comply with requirements of H.B. 218 passed during the 2004 Legislative Session; 8) due dates of reports required in Section R590-167-11 changes from March 15 to April 1; 9) information required in reporting requirements in Section R590-167-11 reduced to eliminate data not utilized by the department; 10) adds a reference for index reporting as required by Title 31A, Chapter 29; and 11) creates a form that may be used for the mid-year coverage count report.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-201 and 31A-30-106

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The changes to this rule will not affect anticipated cost or savings to the state budget. No additional people will need to be hired and no additional revenue will be created or lost as a result.
❖ LOCAL GOVERNMENTS: The changes to this rule will not affect local government since it deals solely with the relationship between health insurers, their agents and consumers.
❖ OTHER PERSONS: This rule will have no fiscal impact on insurance companies, their agents or consumers. They will not need to change their forms, benefits or the number of reports they are required to make to the department. The rule does provide insurers with a form they can use, if they wish to, in reporting the mid-year coverage count report and it does reduce the number of questions required in some of their reports, which will save them some time but should not reduce the number of employees required to do the job. As a result, no additional cost or savings should be passed on insureds.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule will have no fiscal impact on insurance companies, their agents or consumers. They will not need to change their forms, benefits or the number of reports they are required to make to the department. The rule does provide insurers with a form they can use, if they wish to, in reporting the mid-year coverage count report and it does reduce the number of questions required in some of their reports, which will save them some time but should not reduce the number of employees required to do the job. As a result, no additional cost or savings should be passed on insureds.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The changes made to this rule will create no fiscal impact on businesses in Utah.

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 07/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2004

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-167. Individual[~~and~~], Small Employer, and Group Health Insurance Rule.
R590-167-1. [~~Statement of~~]Authority, Purpose and [~~Authority~~]Scope.

(1) Authority.

This rule is intended to implement the provisions of Chapter 30, Title 31A, [~~Utah Code Annotated, ~~]the Individual and Small Employer Health Insurance Act, referred to in this rule as the Act. The commissioner's authority to enforce this rule is provided under Subsections 31A-2-201[~~(1), 31A-2-201~~](3)(a) and 31A-30-106(1)(k).

(2) Purpose.

(a) The general purposes of the Act and this rule are:

(i) to enhance the availability of health insurance coverage to individuals and small employers;

(ii) to regulate and prevent abuse in insurer rating practices and establish limits on differences in rates between health benefit plans;

(iii) to ensure renewability of coverage;

(iv) to establish limitations on the use of preexisting condition exclusions;

(v) to provide for portability; and

(vi) to improve the overall fairness and efficiency of the individual and small employer health insurance market.

(b) The Act and this rule are intended to:

(i) promote broader spreading of risk in the individual and small employer marketplace[~~.~~]; and

(ii) [~~The Act and rule are intended to~~]regulate rating practices for all health benefit plans sold to individuals and small employers, whether sold directly or through associations or other groupings of individuals and small employers.

(3) Scope.

Carriers that provide health benefit plans to individuals and small employers are intended to be subject to all of the provisions of this rule.

R590-167-2. Definitions.

[~~As used in this rule:~~]In addition to the definitions in Sections 31A-1-301 and 31A-30-103, the following definitions shall apply for the purposes of this rule:

[~~A.~~](1) "Associate member of an employee organization" means any individual who participates in an employee benefit plan, as defined in 29 U.S.C. Section 1002(1), that is a multi-employer plan, as defined in 29 U.S.C. Section 1002(37A), other than the following:

([~~1~~]a) an individual, or the beneficiary of such individual, who is employed by a participating employer within a bargaining unit covered by at least one of the collective bargaining agreements under or pursuant to which the employee benefit plan is established or maintained; or

([~~2~~]b) an individual who is a present or former employee, or a beneficiary of such employee, of the sponsoring employee organization, of an employer who is or was a party to at least one of the collective bargaining agreements under or pursuant to which the employee benefit plan is established or maintained, or of the employee benefit plan, or of a related plan.

(2) "Change in a Rating Factor" means the cumulative change with respect to such factor considered over a 12 month period. If a covered carrier changes rating factors with respect to more than one case characteristic in a 12 month period, the carrier shall consider the cumulative effect of all such changes in applying the 10% test.

(3) "Change in Rating Method" means:

(a) a change in the number of case characteristics used by a covered carrier to determine premium rates for health benefit plans in a class of business;

(b) a change in the manner or procedures by which insureds are assigned into categories for the purpose of applying a case characteristic to determine premium rates for health benefit plans in a class of business;

(c) a change in the method of allocating expenses among health benefit plans in a class of business; or

(d) a change in a rating factor with respect to any case characteristic if the change would produce a change in premium for any individual or small employer that exceeds 10%.

[~~B.~~](4) "New entrant" means an eligible employee, or the dependent of an eligible employee, who becomes part of an employer group after the initial period for enrollment in a health benefit plan.

[~~C.~~](5) "Risk characteristic" means the health status, claims experience, duration of coverage, or any similar characteristic related to the health status or experience of an individual, a small employer[~~-group~~] or of any member of a small employer[~~-group~~].

[~~D.~~](6) "Risk load" means the percentage above the applicable base premium rate that is charged by a covered carrier to a covered insured to reflect the risk characteristics of the covered individuals.[~~E. Other terms retain the definitions in 31A-30-103.~~]

R590-167-3. Applicability and Scope.

[~~A.~~](1) This rule shall apply to any health benefit plan which:

([~~1~~]a) meets one or more of the conditions set forth in Subsections 31A-30-104(1) and (2);

([~~2~~]b) provides coverage to a covered insured located in this state, without regard to whether the policy or certificate was issued in this state; and

([~~3~~]c) is in effect on or after the effective date of this rule.

[~~B. The provisions of this rule shall apply to a health benefit plan provided to an individual, a small employer or to the employees of a small employer without regard to whether the health benefit plan is offered under or provided through a group policy or trust arrangement of any size sponsored by an association or discretionary group.~~

~~C.~~]([~~1~~]2)(a) If a small employer has employees in more than one state, the provisions of the Act and this rule shall apply to a health benefit plan issued to the small employer if:

(i) the majority of eligible employees of such small employer are employed in this state; or

(ii) if no state contains a majority of the eligible employees of the small employer, the primary business location of the small employer is in this state.

(b) In determining whether the laws of this state or another state apply to a health benefit plan issued to a small employer

described in [~~Subparagraph~~]Subsection R590-167-3(2)(a), the provisions of the [~~paragraph~~]subsection shall be applied as of the date the health benefit plan was issued to the small employer for the period that the health benefit plan remains in effect.

([~~2~~]c) If a health benefit plan is subject to the Act and this rule, the provisions of the Act and this rule shall apply to all individuals covered under the health benefit plan, whether they reside in this state or in another state.

[~~D.~~](3) A carrier that is not operating as a covered carrier in this state may not become subject to the provisions of the Act and this rule solely because an individual or a small employer that was issued a health benefit plan in another state by that carrier moves to this state.

R590-167-4. Establishment of Classes of Business.

[~~A.~~](1) A covered carrier that establishes more than one class of business pursuant to the provisions of Section 31A-30-105 shall maintain on file for inspection by the commissioner the following information with respect to each class of business so established:

([~~1~~]a) a description of each criterion employed by the carrier, or any of its agents, for determining membership in the class of business;

([~~2~~]b) a statement describing the justification for establishing the class as a separate class of business and documentation that the establishment of the class of business is intended to reflect substantial differences in expected claims experience or administrative costs related to the reasons set forth in Section 31A-30-105; and

([~~3~~]c) a statement disclosing which, if any, health benefit plans are currently available for purchase in the class and any significant limitations related to the purchase of such plans.

[~~B.~~](2) A carrier may not directly or indirectly use group size as a criterion for establishing eligibility for a class of business.

R590-167-5. Transition for Assumptions of Business from Another Carrier.

[~~A.~~](1)(a) A covered carrier may not transfer or assume the entire insurance obligation[~~and/or~~], risk, or both of a health benefit plan covering an individual or a small employer in this state unless:

([~~a~~]i) the transaction has been approved by the commissioner of the state of domicile of the assuming carrier;

([~~b~~]ii) the transaction has been approved by the commissioner of the state of domicile of the ceding carrier; and

([~~c~~]iii) the transaction otherwise meets the requirements of this section.

([~~2~~]b) A carrier domiciled in this state that proposes to assume or cede the entire insurance obligation [~~and/or~~], risk, or both of one or more health benefit plans covering covered individuals from or to another carrier shall make a filing for approval with the commissioner at least 60 days prior to the date of the proposed assumption. The commissioner may approve the transaction, if the commissioner finds that the transaction is in the best interests of the individuals insured under the health benefit plans to be transferred and is consistent with the purposes of the Act and this rule. The commissioner may not approve the transaction until at least 30 days after the date of the filing; except that, if the carrier is in hazardous financial condition, the commissioner may approve the transaction as soon as the commissioner deems reasonable after the filing.

([~~3~~]c)([~~a~~]i) The filing required under Subsection R590-167-5([~~A~~]1)([~~2~~]b) shall:

([~~i~~]A) describe the class of business, including any eligibility requirements, of the ceding carrier from which the health benefit plans will be ceded;

([~~ii~~]B) describe whether the assuming carrier will maintain the assumed health benefit plans as a separate class of business, pursuant to Subsection [~~C~~]R590-167-5(3), or will incorporate them into an existing class of business, pursuant to Subsection [~~D~~]R590-167-5(4). If the assumed health benefit plans will be incorporated into an existing class of business, the filing shall describe the class of business of the assuming carrier into which the health benefit plans will be incorporated;

([~~iii~~]C) describe whether the health benefit plans being assumed are currently available for purchase by individuals or small employers;

([~~iv~~]D) describe the potential effect of the assumption, if any, on the benefits provided by the health benefit plans to be assumed;

([~~v~~]E) describe the potential effect of the assumption, if any, on the premiums for the health benefit plans to be assumed;

([~~vi~~]F) describe any other potential material effects of the assumption on the coverage provided to the individuals and small employers covered by the health benefit plans to be assumed; and

([~~vii~~]G) include any other information required by the commissioner.

([~~b~~]ii) A covered carrier required to make a filing under Subsection R590-167-5([~~A~~]1)([~~2~~]b) shall also make an informational filing with the commissioner of each state in which there are individual or small employer health benefit plans that would be included in the transaction. The informational filing to each state shall be made concurrently with the filing made under Subsection R590-167-5([~~A~~]1)([~~2~~]b) and shall include at least the information specified in [~~Subparagraph~~]Subsection R590-167-5([~~a~~]1)(b)(ii) for the individual or small employer health benefit plans in that state.

([4]d) A covered carrier may not transfer or assume the entire insurance obligation and/or risk of a health benefit plan covering an individual or a small employer in this state unless it complies with the following provisions:

([~~a~~]i) The carrier has provided notice to the commissioner at least 60 days prior to the date of the proposed assumption. The notice shall contain the information specified in Subsection R590-167-5([~~A~~]1)([~~3~~]c) for the health benefit plans covering individuals and small employers in this state.

([~~b~~]ii) If the assumption of a class of business would result in the assuming covered carrier being out of compliance with the limitations related to premium rates contained in Section 31A-30-106, the assuming carrier shall make a filing with the commissioner pursuant to Subsection 31A-30-105(3) seeking an extended transition period.

([~~c~~]iii) An assuming carrier seeking an extended transition period may not complete the assumption of health benefit plans covering individuals or small employers in this state unless the commissioner grants the extended transition period requested pursuant to [~~Subparagraph~~]Subsection R590-167-5([~~b~~]1)(d)(ii).

([~~d~~]iv) Unless a different period is approved by the commissioner, an extended transition period shall, with respect to an assumed class of business, be for no more than 15 months and, with respect to each individual small employer, shall last only until the anniversary date of such employer's coverage, except that the period with respect to an individual small employer may be extended beyond its first anniversary date for a period of up to [~~twelve (~~]12[~~)~~]

months if the anniversary date occurs within three[~~(3)~~] months of the date of assumption of the class of business.

[~~B.~~]([~~1~~]2)(a) Except as provided in Subsection [~~(B)~~]R590-167-5(2)(b), a covered carrier may not cede or assume the entire insurance obligation[~~and/or~~], risk, or both for an individual or small employer health benefit plan unless the transaction includes the ceding to the assuming carrier of the entire class of business which includes such health benefit plan.

([~~2~~]b) A covered carrier may cede less than an entire class of business to an assuming carrier if:

([~~a~~]i) one or more individuals or small employers in the class have exercised their right under contract or state law to reject, either directly or by implication, the ceding of their health benefit plans to another carrier. In that instance, the transaction shall include each health benefit plan in the class of business except those health benefit plans for which an individual or a small employer has rejected the proposed cession; or

([~~b~~]ii) after a written request from the transferring carrier, the commissioner determines that the transfer of less than the entire class of business is in the best interests of the individual or small employers insured in that class of business.

[~~C.~~](3) Except as provided in Subsection [~~D~~]R590-167-5(4), a covered carrier that assumes one or more health benefit plans from another carrier shall maintain such health benefit plans as a separate class of business.

[~~D.~~](4) A covered carrier that assumes one or more health benefit plans from another carrier may exceed the limitation contained in Section 31A-30-105 relating to the maximum number of classes of business a carrier may establish, due solely to such assumption for a period of up to 15 months after the date of the assumption, provided that the carrier complies with the following provisions:

([~~1~~]a) Upon assumption of the health benefit plans, such health benefit plans shall be maintained as a separate class of business. During the [~~fifteen~~]15-month period following the assumption, each of the assumed individual or small employer health benefit plans shall be transferred by the assuming covered carrier into a single class of business operated by the assuming covered carrier. The assuming covered carrier shall select the class of business into which the assumed health benefit plans will be transferred in a manner such that the transfer results in the least possible change to the benefits and rating method of the assumed health benefit plans.

([~~2~~]b) The transfers authorized in Subsection R590-167-5([~~D~~]4)([~~1~~]a) shall occur with respect to each individual or small employer on the anniversary date of the individual's or small employer's coverage, except that the period with respect to an individual small employer may be extended beyond its first anniversary date for a period of up to 12 months if the anniversary date occurs within three[~~(3)~~] months of the date of assumption of the class of business.

([~~3~~]c) A covered carrier making a transfer pursuant to Subsection R590-167-5([~~D~~]4)([~~1~~]a) may alter the benefits of the assumed health benefit plans to conform to the benefits currently offered by the carrier in the class of business into which the health benefit plans have been transferred.

([~~4~~]d) The premium rate for an assumed individual or small employer health benefit plan may not be modified by the assuming covered carrier until the health benefit plan is transferred pursuant to Subsection R590-167-5([~~D~~]4)([~~1~~]a). Upon transfer, the assuming covered carrier shall calculate a new premium rate for the health benefit plan from the rate manual established for the class of business into which the health benefit plan is transferred. In making such calculation, the risk load applied to the health benefit plan shall be no higher than the risk load applicable to such health benefit plan prior to the assumption.

([~~5~~]e) During the 15 month period provided in this subsection, the transfer of individual or small employer health benefit plans from the assumed class of business in accordance with this subsection may not be considered a violation of the first sentence of Subsection 31A-30-106(2).

[~~E.~~](5) An assuming carrier may not apply eligibility requirements, including minimum participation and contribution requirements, with respect to an assumed health benefit plan, or with respect to any health benefit plan subsequently offered to an individual or small employer covered by such an assumed health benefit plan, that are more stringent than the requirements applicable to such health benefit plan prior to the assumption.

[~~F.~~](6) The commissioner may approve a longer period of transition upon application of a covered carrier. The application shall be made within 60 days after the date of assumption of the class of business and shall clearly state the justification for a longer transition period.

[~~G.~~](7) Nothing in this section or in the Act is intended to:

([~~1~~]a) reduce or diminish any legal or contractual obligation or requirement, including any obligation provided in Section 31A-14-213, of the ceding or assuming carrier related to the transaction;

([~~2~~]b) authorize a carrier that is not admitted to transact the business of insurance in this state to offer or insure health benefit plans in this state; or

([~~3~~]c) reduce or diminish the protections related to an assumption reinsurance transaction provided in Section 31A-14-213 or otherwise provided by law.

R590-167-6. Restrictions Relating to Premium Rates.

[~~A.~~](1) A covered carrier shall develop a separate rate manual for each class of business. Base premium rates and new business premium rates charged to individuals and small employers by the covered carrier shall be computed solely from the applicable rate manual developed pursuant to this subsection. To the extent that a portion of the premium rates charged by a covered carrier is based on the carrier's discretion, the manual shall specify the criteria and factors considered by the carrier in exercising such discretion.

(2)(a) A covered carrier may not modify the rating method, as defined in Section R590-167-2, used in the rate manual for a class of business until the change has been approved as provided in this [~~paragraph~~]subsection. The commissioner may approve a change to a rating method if the commissioner finds that the change is reasonable, actuarially appropriate, and consistent with the purposes of the Act and this rule.

(b) A carrier may modify the rating method for a class of business only after filing an actuarial certification. The filing shall clearly request approval for a change in rating method and contain at least the following information:

(i) the reasons the change in rating method is being requested;

(ii) a complete description of each of the proposed modifications to the rating method;

(iii) a description of how the change in rating method would affect the premium rates currently charged to individuals and small employers in the class of business, including an estimate from a qualified actuary of the number of groups or individuals, and a description of the types of groups or individuals, whose premium rates may change by more than 10% due to the proposed change in

rating method, not including general increases in premium rates applicable to all individuals and small employers in a health benefit plan;

(iv) a certification from a qualified actuary that the new rating method would be based on objective and credible data and would be actuarially sound and appropriate; and

(v) a certification from a qualified actuary that the proposed change in rating method would not produce premium rates for individuals and small employers that would be in violation of [~~Section~~]Sections 31A-30-106 and 31A-30-106.5.

[~~(c) For the purpose of this section a change in rating method shall mean:~~

~~(i) a change in the number of case characteristics used by a covered carrier to determine premium rates for health benefit plans in a class of business;~~

~~(ii) change in the manner or procedures by which insureds are assigned into categories for the purpose of applying a case characteristic to determine premium rates for health benefit plans in a class of business;~~

~~(iii) change in the method of allocating expenses among health benefit plans in a class of business; or~~

~~(iv) change in a rating factor with respect to any case characteristic if the change would produce a change in premium for any individual or small employer that exceeds 10%.~~

~~A change in a rating factor shall mean the cumulative change with respect to such factor considered over a 12 month period. If a covered carrier changes rating factors with respect to more than one case characteristic in a 12 month period, the carrier shall consider the cumulative effect of all such changes in applying the 10% test.~~

~~B.(1)~~](3) The rate manual developed pursuant to [~~Subsection A~~]Subsections 31A-30-106(4) and R590-167-6(1) shall specify the case characteristics and rate factors to be applied by the covered carrier in establishing premium rates for the class of business.

([~~2~~]a) A covered carrier may not use case characteristics other than those specified in Subsection 31A-30-106(1)([~~j~~]h) without the prior approval of the commissioner. A covered carrier seeking such an approval shall make a filing with the commissioner for a change in rating method under Subsection [~~A~~]R590-167-6(2)(b). Smoker status is not an allowable case characteristic.

([~~3~~]b) A covered carrier shall use the same case characteristics in establishing premium rates for each health benefit plan in a class of business and shall apply them in the same manner in establishing premium rates for each such health benefit plan. Case characteristics shall be applied without regard to the risk characteristics of an individual or small employer.

([~~4~~]c) The rate manual[~~ developed pursuant to Subsection A~~] shall clearly illustrate the relationship among the base premium rates charged for each health benefit plan in the class of business. If the new business premium rate is different than the base premium rate for a health benefit plan, the rate manual shall illustrate the difference.

([~~5~~]d) Differences among base premium rates for health benefit plans shall be based solely on the reasonable and objective differences in the design and benefits of the health benefit plans and may not be based in any way on the nature of [~~the~~]an individual or small employer[~~ groups~~] that choose or are expected to choose a particular health benefit plan. A covered carrier shall apply case characteristics and rate factors within a class of business in a manner that assures that premium differences among health benefit plans for identical individuals or small employers[~~ groups~~] vary only due to reasonable and objective differences in the design and benefits of the health benefit plans and are not due to the nature of the individuals or small employers[~~ groups~~] that choose or are expected to choose a particular health benefit plan.

([~~6~~]e) The rate manual [~~developed pursuant to Subsection A~~] shall provide for premium rates to be developed in a two step process.

(i) In the first step, a base premium rate shall be developed for the individual or small employer[~~ group~~] without regard to any risk characteristics[~~ of the group~~].

(ii) In the second step, the resulting base premium rate may be adjusted by a risk load, subject to the provisions of Sections 31A-30-106[~~,~~] and 31A-30-106.5, to reflect the risk characteristics[~~ of the group~~].

(f) Each rate manual developed pursuant to Subsection R590-167-6(1) shall be maintained by the carrier for a period of six years. Updates and changes to the manual shall be maintained with the manual.

([~~7~~]4)(a) Except as provided in [~~Subparagraph~~]Subsection R590-167-6(4)(b), a premium charged to an individual or small employer for a health benefit plan may not include a separate application fee, underwriting fee, or any other separate fee or charge.

(b) A carrier may charge a separate fee with respect [~~a~~]an individual or small employer health benefit plan, but only one fee with respect to such plan, provided the fee is no more than $5 per month per individual or employee and is applied in a uniform manner to each health benefit plan in a class of business.

[~~(8) Each rate manual developed pursuant to Subsection A shall be maintained by the carrier for a period of six years. Updates and changes to the manual shall be maintained with the manual.~~

~~C.~~](5) If group size is used as a case characteristic by a covered carrier, the highest rate factor associated with a group size classification may not exceed the lowest rate factor associated with such a classification by more than 20% without prior approval of the commissioner.

[~~D.~~](6) The restrictions related to changes in premium rates in Subsections 31A-30-106(1)(c) and 31A-30-106(1)([~~h~~]f) shall be applied as follows:

([~~1~~]a) A covered carrier shall revise its rate manual each rating period to reflect changes in base premium rates and changes in new business premium rates.

([~~2~~]b)([~~a~~]i) If, for any health benefit plan with respect to any rating period, the percentage change in the new business premium rate is less than or the same as the percentage change in the base premium rate, the change in the new business premium rate shall be deemed to be the change in the base premium rate for the purposes of Subsections 31A-30-106(1)(c) and 31A-30-106(1)([~~h~~]f).

([~~b~~]ii) If, for any health benefit plan with respect to any rating period, the percentage change in the new business premium rate exceeds the percentage change in the base premium rate, the health benefit plan shall be considered a health benefit plan into which the covered carrier is no longer enrolling new individuals or small employers for the purposes of Subsections 31A-30-106(1)(c) and 31A-30-106(1)([~~h~~]f).

([~~3~~]c) If, for any rating period, the change in the new business premium rate for a health benefit plan differs from the change in the new business premium rate for any other health benefit plan in the same class of business by more than 20%, the carrier shall make a filing with the commissioner containing a complete explanation of how the respective changes in new business premium rates were established and the reason for the difference. The filing shall be made 30 days before the beginning of the rating period.

([~~4~~]d) A covered carrier shall keep on file for a period of at least six years the calculations used to determine the change in base premium rates and new business premium rates for each health benefit plan for each rating period.

[~~E.~~]([~~1~~]7)(a) Except as provided in Subsection[~~s~~] R590-167-6([~~E~~]7)([~~2) through (4~~]b), a change in premium rate for an individual or small employer shall produce a revised premium rate that is no more than the following:

([~~a~~]i) the base premium rate for the individual or small employer, as shown in the rate manual as revised for the rating period, multiplied by:

([~~b~~]ii) one plus the sum of:

([~~i~~]iii) the risk load applicable to the individual or small employer during the previous rating period; and

([~~ii~~]iv) 15% prorated for periods of less than one year.

([~~2~~]b) In the case of a health benefit plan into which a covered carrier is no longer enrolling new individuals or small employers, a change in premium rate for an individual or small employer shall produce a revised premium rate that is no more than the following:

([~~a~~]i) the base premium rate for the individual or small employer, given its present composition and as shown in the rate manual in effect for the individual or small employer at the beginning of the previous rating period, multiplied by:

([~~b~~]ii) one plus the lesser of:

([~~i~~]A) the change in the base rate; or

([~~ii~~]B) the percentage change in the new business premium for the most similar health benefit plan into which the covered carrier is enrolling new individuals or small employers, multiplied by:

([~~c~~]iii) one plus the sum of:

([~~i~~]A) the risk load applicable to the individual or small employer during the previous rating period; and

([~~ii~~]B) 15%, prorated for periods of less than one year.[~~(3) In the case of a health benefit plan described in 31A-30-106(1)(f), if the current premium rate for the health benefit plan exceeds the ranges set forth in 31A-30-106(1), the formulae set forth in Subsections (E)(1) and (2) will be applied as if the 15% adjustment provided in Subsection (E)(1)(b) and Subsection (E)(2) were a 0% adjustment.~~]

([4]c) Notwithstanding the provisions of Subsections R590-167-6([~~E~~]7)([~~1~~]a) and ([~~2~~]b), a change in premium rate for an individual or small employer may not produce a revised premium rate that would exceed the limitations on rates provided in Subsection 31A-30-106(1)(b).

[~~F.~~]([~~1~~]8)(a) A representative of a Taft Hartley trust, including a carrier upon the written request of such a trust, may file in writing with the commissioner a request for the waiver of application of the provisions of Subsection 31A-30-106(1) with respect to such trust.

([~~2~~]b) A request made under Subsection R590-167-6(8)([~~F~~)(~~1~~]a) shall identify the provisions for which the trust is seeking the waiver and shall describe, with respect to each provision, the extent to which application of such provision would:

([~~a~~]i) adversely affect the participants and beneficiaries of the trust; and

([~~b~~]ii) require modifications to one or more of the collective bargaining agreements under or pursuant to which the trust was or is established or maintained.

([~~3~~]c) A waiver granted under Subsection 31A-30-104([~~3~~]5) [~~may~~]shall not apply to an individual who participates in the trust because the individual is an associate member of an employee organization or the beneficiary of such an individual.

R590-167-7. Application to Reenter State.

[~~A.~~](1) A carrier that has been prohibited from writing coverage for individuals or small employers in this state pursuant to Subsection 31A-30-[~~107(2)~~]107.3 may not resume offering health benefit plans to individuals or small employers in this state until the carrier has made a petition to the commissioner to be reinstated as a covered carrier and the petition has been approved by the commissioner. In reviewing a petition, the commissioner may ask for such information and assurances as the commissioner finds reasonable and appropriate.

[~~B.~~](2) In the case of a covered carrier doing business in only one established geographic service area of the state, if the covered carrier elects to nonrenew a health benefit plan under Subsections 31A-30-107([~~1~~]3)([~~f~~]e) or 107.1(3)(e), the covered carrier shall be prohibited from offering health benefit plans to individuals or small employers in any part of the service area for a period of five years. In addition, the covered carrier may not offer health benefit plans to individuals or small employers in any other geographic area of the state without the prior approval of the commissioner. In considering whether to grant approval, the commissioner may ask for such information and assurances as the commissioner finds reasonable and appropriate.

R590-167-8. Qualifying Previous [~~Coverages~~]Coverage.

A covered carrier shall not deny, exclude, or limit benefits because of a preexisting condition without first ascertaining the existence and source of previous coverage. The covered carrier shall have the responsibility to contact the source of such previous coverage to resolve any questions about the benefits or limitations related to such previous coverage. Previous coverage may be coverage that continues after the issuance of the new health benefit plan. The previous carrier shall fully cooperate in furnishing the needed information required by this section.

R590-167-9. Restrictive Riders.

A restrictive rider, endorsement or other provision that [~~would violate~~]violates the provisions of Subsection 31A-30-[~~107(4) and that was in force on the effective date of this rule~~]107.5 may not remain in force[~~ beyond the first anniversary date of the health benefit plan subject to the restrictive provision that follows the effective date of this rule~~]. A covered carrier shall immediately provide written notice to those individuals or small employers whose coverage will be changed pursuant to this section[~~ at least 30 days prior to the required change~~].

R590-167-10. Status of Carriers as Covered Carriers.

[~~A.~~](1) Prior to marketing a health benefit plan, a carrier shall make a filing with the commissioner indicating whether the carrier intends to operate as a covered carrier in this state under the terms of the Act and of this rule. Such filing will indicate if the covered carrier intends to market to individuals, small employers or both, and be signed by an officer of the company.

[~~B.~~](2) [~~Subject to~~]Except as provided by Subsection [~~C~~]R590-167-10(3), a carrier may not offer health benefit plans to individuals[~~and~~], small employers, or continue to provide coverage under health benefit plans previously issued to individuals [~~and~~]or small employers in this state, unless the filing provided pursuant to Subsection [~~A~~]R590-167-10(1) indicates that the carrier intends to operate as a covered carrier in this state.

[~~C.~~](3) If[~~ the filing made pursuant Subsection A indicates that~~] a carrier does not intend to operate as a covered carrier in this

state, the carrier may continue to provide coverage under health benefit plans previously issued to individuals and small employers in this state only if the carrier complies with the following provisions:

([~~1~~]a) the carrier complies with the requirements of the Act with respect to each of the health benefit plans previously issued to individuals and small employers by the carrier;

([~~2~~]b) the carrier provides coverage to each new entrant to a health benefit plan previously issued to an individual or small employer by the carrier;[~~ and~~]

([~~3~~]c) the carrier complies with the requirements of Sections 31A-30-106[~~(1)(k)(iii)~~] and [~~Sections 9~~]106.6, and[~~ 12 of~~] this rule as they apply to individuals and small employers whose coverage has been terminated by the carrier and to individuals and small employers whose coverage has been limited or restricted by the carrier[-]; and

(d) the carrier files a letter of intent indicating the carrier does not intend to operate as a covered carrier in this state and will maintain the business in compliance with the Act and this rule.

[~~D.~~](4) If the filing made pursuant Subsection [~~A~~]R590-167-10(3) indicates that a carrier does not intend to operate as a covered carrier in this state, the carrier shall be precluded from operating as a covered carrier in this state, except as provided for in Subsection [~~C~~]R590-167-10(3), for a period of five years from the date of the filing. Upon a written request from such a carrier, the commissioner may reduce the period provided for in the previous sentence if the commissioner finds that permitting the carrier to operate as a covered carrier would be in the best interests of the individuals and small employers in the state.

R590-167-11. Actuarial Certification and Additional Filing Requirements.

[~~A. The actuarial certification shall meet the following requirements:~~](1) Actuarial Certification.

([~~1~~]a) [~~The~~]An actuarial certification shall be [~~a written statement that meets~~]filed annually and meet the requirements of Section 31A-30-106(4)(b)[~~, R590-167,~~] and the following:

(i) the actuarial certification shall be a written statement that meets the requirements of Title 31A Chapter 30, R590-167, and the Actuarial Standards Board including the provisions of Interpretative Opinion 3: Professional Communications of Actuaries regarding Actuarial Reports[-];

([~~2~~]ii) [~~The~~]the actuary must state that he or she meets the qualifications of Subsection 31A-30-103(1)[-];

([~~3~~]iii) [~~The~~]the actuarial certification shall contain the following statement: "I, (name), certify that (name of covered carrier) is in compliance with the provisions of [~~Section~~]Title 31A Chapter 30, and R590-167,[~~ 31A-30-106,~~] based upon the examination of (name of covered carrier), including review of the appropriate records and of the actuarial assumptions and methods utilized by (name of covered carrier) in establishing premium rates for applicable health benefit plans[-];" and

([4]iv) [~~The~~]the actuarial certification shall list and describe each written demonstration used by the actuary to establish compliance with Title 31A Chapter 30 and R590-167.

[~~(5) The information described in Subsection A shall be filed no later than March 15~~](b) The actuarial certification shall be filed no later than April 1 of each year.

(2) Rating Manual.

[~~B.~~](a) For every health benefit plan subject to the Act and this rule, the carrier shall file with the commissioner [~~the following:~~

~~(1) ~~]a copy of the applicable rating manual, [~~which includes a complete and detailed description of how the final premium, including any fees, is calculated from the rating manual. This description shall include both new business and renewal rates; and~~

~~(2) all changes and updates, which includes a complete and detailed description of how the final premium, including any fees, is calculated from the rating manual. This description shall include~~] for both new business and renewal rates[-], which includes:

([~~3~~]i) [~~The~~]an actuarial certification that includes the information described in Subsection [~~B shall be filed 30 days prior to use.~~]R590-167-11(1);

(ii) a complete and detailed description of how the final premium, including any fees, is calculated from the rating manual;

(iii) all changes and updates, which includes a complete and detailed description of how the final premium, including any fees, is calculated from the rating manual; and

(iv) a description of the carriers classes of business as described in Subsection R590-167-4(1).

(b) The rate manual shall be filed:

(i) with an initial product filing; or

(ii) within 30 days prior to use for an existing health benefit plan

(3) List of Health Benefit Plan Forms.

(a) The carrier shall file annually with the commissioner a list of every form to which the rule applies, that includes a description of how to find the applicable information in Subsection R590-167-11(2) for each form.

(b) The information described in Subsection R590-167-11(3)(a) shall be filed no later than April 1 of each year.

(4) Statistical Report.

[~~C. The carrier shall file with the commissioner the following:~~

~~(1) a list of every policy form to which the rule applies, that includes a description of how to find the applicable information in Subsection (B)(1) and (2) for each policy form.~~

~~(2) The information described in Subsection C shall be filed no later than March 15 of each year.~~]

[~~D.~~](a) A covered carrier shall file annually the following information with the commissioner related to health benefit plans issued by the covered carrier to individuals or small employers in this state:

([~~1~~]i) [~~the~~]number of individuals and small employers that were issued health benefit plans in the previous calendar year, separated as to newly issued plans and renewals;

([~~2~~]ii) [~~the~~]number of individuals[~~ and small employers~~] that were not issued due to underwriting rules;

([~~3~~]iii) [~~the~~]number of individual and small employer [~~health benefit plans in force in each zip code of the state as of December 31 of the previous calendar year;~~

~~(4) the number of individual and small employer health benefit plans that were voluntarily not renewed by individuals and small employers in the previous calendar year, including termination for non-payment of the required premium;~~

~~(5) the number of individual market health benefit plans and small employer market~~] health benefit plans terminated or nonrenewed[~~, for reasons other than nonpayment of premium, by the carrier~~] in the previous calendar year categorized as:

([~~a~~]A) fraud or misrepresentation of the employer or insureds;

([~~b~~]B) noncompliance with the carrier's minimum participation requirements;

([~~c~~]C) noncompliance with the carrier's employer contribution requirements;

([~~d~~]D) [~~misuse of a provider network provision; or~~]nonpayment of premium; or

([~~e~~]E) carrier's election to nonrenew all health benefit plans issued to individuals and small employers in this state[~~-~~]; and[

~~(6) The number of individual and small employer health benefit plans that were issued to individuals and small employers that were uninsured for at least the three months prior to issue.~~]

([~~7~~]iv) Total number of natural covered lives, including the insured, spouse and dependents, for individual market health benefit plans and small employer market health benefit plans as of December 31 of the previous calendar year.

([~~8~~]b) The information described in Subsection [~~D.~~]R590-167-11(4) shall be filed no later than [~~March 15~~]April 1 of each year in the format provided in Appendix I, Statistical Report, published [~~January 12, 1999~~]July 1, 2004. This appendix is available at the Insurance Department [~~and is incorporated herein~~]and on their website.

(5) Index Premium Rates.

(a) A small employer carrier shall file annually the index premium rate information required by Section 31A-29-117. The report shall include:

(i) the small employer index premium rate as of March 1 of the previous year;

(ii) the small employer index premium rate as of March 1 of the current year; and

(iii) the average percentage change in the index premium rate as of March 1, of the current and preceding year.

(b) The information described in Subsection R590-167-11(5)(a) shall be filed no later than April 1 of each year.

(6) Midyear Coverage Count.

[~~E.~~](a) A covered carrier shall file [~~by August 15 of each year,~~]annually the total number of natural covered lives, including the insured, spouse and dependents, for individual market health benefit plans and small employer market health benefit plans as of June 30 of the current calendar year, in the format provided in Appendix II, Midyear Report, published July 1, 2004, which is available at the Insurance Department and on their website.

(b) The information described in Subsection R590-167-11(6)(a) shall be filed no later than August 1 of each year.

R590-167-12. [~~Severability~~]Penalties.

A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R590-167-13. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 45 days from the rule's effective date.

R590-167-14. Severability.

[~~A.~~]If any provision of this rule or the application of it to any person or circumstance is, for any reason, held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances will not be affected by the invalid provision.

KEY: health insurance
[~~March 11, 1999~~]2004
Notice of Continuation December 14, 1999
31A-30-106

▼ ▼

Labor Commission, Occupational Safety and Health
R614-1-4
Incorporation of Federal Standards

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27147
FILED: 05/12/2004, 11:36

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed amendment provides adequate safety protections for Utah workers and in order to maintain federal acceptance and funding of the Utah Occupational Safety and Health Division, Utah's occupational safety and health program must be "as effective as" federal Occupational Safety and Health Administration. To that end, the Commission is required to enact the proposed amendment to Section R614-1-4, which incorporates recently enacted federal standards for 1) respiratory protection for tuberculosis, and 2) commercial diving operations. Respiratory protection for tuberculosis: Application of this standard is limited to establishments in the health services industry that follow Center For Disease Control Guidelines and provide respiratory protection for employees potentially exposed to tuberculosis. Commercial diving operations: Application of this standard will allow employers of recreational diving instructors and diving guides to expand operations to include "Nitrox" diving because they will no longer be required to maintain a decompression chamber at the dive site.

SUMMARY OF THE RULE OR CHANGE: Respiratory protection for tuberculosis: The proposed amendment incorporates by reference the federal rule published in the Federal Register, Vol. 68, No. 250, Wednesday, December 31, 2003, pp. 75776 through 75780, "Respiratory Protection for M. Tuberculosis; Final Rule." In effect, the amendment revokes a previously-adopted federal standard ("Respiratory Protection for M. Tuberculosis, 29 CFR 1910.139). As a result, the Utah Occupational Safety and Health Division will apply the General Industry Respiratory Protection Standard (29 CFR 1910.134) to provide respiratory protection against tuberculosis. Commercial diving operations: The proposed amendment incorporates by reference the federal rule regarding commercial diving operations published in the Federal Register at Vol 69. No. 31, Tuesday, February 17, 2004, pp. 7351 through 7366, "Commercial Diving Operations; Final Rule." This rule allows employers of recreational diving instructors and diving guides to comply with an alternative set of requirements instead of the decompression chamber requirements in the current standards.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 34A, Chapter 6

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 68 FR 75776 to 75780 (December 31, 2003); and 69 FR 7351 to 7366 (February 17, 2004)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Respiratory protection for tuberculosis: The proposed amendment will not increase or lessen the Division's costs of enforcement and will result in no costs or savings to the State budget in that regard. With respect to the State's compliance with the proposed rule's new tuberculosis protection standards, the cost per covered employee is estimated at $300. Commercial diving operations: The proposed amendment will not increase or lessen the Division's costs of enforcement and will result in no costs or savings to the State budget in that regard. The Commission is unaware of any State activities that are covered by this standard. Consequently, the proposed rule's standard for commercial diving operations is not anticipated to result in any cost or savings to the State Budget.
❖ LOCAL GOVERNMENTS: Respiratory protection for tuberculosis: With respect to local government compliance with the proposed rule's new tuberculosis protection standards, the cost per covered employee is estimated at $300. Commercial diving operations: The Commission is unaware of any local government activities that are covered by this standard. Consequently, the proposed rule's standard for commercial diving operations is not anticipated to result in any cost or savings to local government budgets.
❖ OTHER PERSONS: Respiratory protection for tuberculosis: While application of this proposed rule is limited to the health services industry, the Commission recognizes it may cover a large number of employees in hospitals, nursing homes, correctional facilities or substance abuse treatment centers. The Commission cannot determine the number of employees subject to the requirement, but at an estimated cost of $300 per covered employee, compliance costs will be substantial. Commercial diving operations: The proposed rule applicable to commercial diving operations will result in an estimated savings of $500 per site. The Commission believes there are fewer than 10 such operations within Utah resulting in an aggregate reduction of compliance costs of $5,000.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Respiratory protection for tuberculosis: With respect to affected persons' compliance with the proposed rule's new tuberculosis protection standards, the cost per covered employee is estimated at $300. Commercial diving operations: The Commission estimates that commercial diving operations subject to the proposed rule's new standards will save $500 in compliance costs per location.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Respiratory protection for tuberculosis: As noted above, at an estimated cost of $300 per covered employee, compliance costs for large health care employers will be substantial. The Commission has been advised by one such health care provider that objections to the federal rule, on which this proposed amendment is based, have been filed with the United States Department of Labor. However, unless and until the federal rule is modified or revoked, the Commission is required to adopt equivalent standards. Commercial diving operations: By lowering compliance costs, the proposed rule applicable to commercial diving operations should have a positive fiscal impact on such businesses.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
LABOR COMMISSION
OCCUPATIONAL SAFETY AND HEALTH
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:
William Adams at the above address, by phone at 801-530-6897, by FAX at 801-530-7606, or by Internet E-mail at wadams@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 07/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2004

AUTHORIZED BY: R Lee Ellertson, Commissioner

R614. Labor Commission, Occupational Safety and Health.
R614-1. General Provisions.
R614-1-4. Incorporation of Federal Standards.

A. General Industry Standards.

1. Sections 29 CFR 1910.21 to 1910.999 and 1910.1000 through the end of part 1910 of the July 1, 2002, edition are incorporated by reference.

2. 29 CFR 1908, July 1, 2001, is incorporated by reference.

3. 29 CFR 1904, July 1, 2001, is incorporated by reference.

4. FR Vol. 67, No. 126, Monday, July 1, 2002, Pages 44037 to and including 44048, "29 CFR Part 1904 Occupational Injury and Illness Recording and Reporting Requirements; Final Rule" is incorporated by reference.

5. FR Vol. 67, No. 216, Thursday, November 7, 2002, Pages 67949 to and including 67965, "Exit Routes, Emergency Action Plans, and Fire Protection Plans; Final Rule" is incorporated by reference.

6. FR Vol. 67, No. 242, Tuesday, December 17, 2002, Pages 77165 to and including 77170, "Occupational Injury and Illness Recording Requirements: Final Rule" is incorporated by reference.

7. FR Vol. 68, No. 105, Monday, June 2, 2003, Pages 32637 to and including 32638, "29 CFR Part 1910.178 Powered Industrial Trucks; Final Rule" technical amendment in incorporated by reference.

8. FR Vol. 68, No. 125, Monday June 30, 2003, Pages 38601 to and including 38607, "29 CFR Part 1904 Occupational Injury and Illnesses Recording and Reporting Requirements; Final Rule" is incorporated by reference.

9. FR Vol. 68, No. 250, Wednesday, December 31, 2003, Pages 75776 to and including 75780, "Respiratory Protection for M. Tuberculosis"; Final Rule is incorporated by reference.

10. FR Vol. 69, No. 31, Tuesday, February 17, 2004, Pages 7351 to and including 7366, "Commercial Diving Operations"; Final Rule is incorporated by reference.

B. Construction Standards.

1. Section 29 CFR 1926.20 through the end of part 1926, of the July 1, 2002, edition is incorporated by reference.

2. FR Vol. 67, No. 177, Thursday, September 12, 2002, Pages 57722 to and including 57736, "Safety Standards for Signs, Signals, and Barricades; Final Rule" is incorporated by reference.

KEY: safety
[~~June 3, 2003~~]2004
Notice of Continuation November 25, 2002
34A-6

Labor Commission, Occupational Safety and Health
R614-1-5
Adoption and Extension of Established Federal Safety Standards and State of Utah General Safety Orders

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27148
FILED: 05/12/2004, 11:38

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In order to conform with federal requirements, Subsection 34A-6-301(3)(b)(ii) of the Utah Occupational Safety and Health Act was amended by the 2004 Utah Legislature (S.B. 96) to change from 12 hours to 8 hours the time limit for employers to report fatalities, serious injuries, or occupational disease incidents to the Utah Occupational Safety and Health Division. The proposed amendment to Subsection R614-1-5(C)(2) conforms the rule to the statutory amendment. (DAR NOTE: S.B. 96 is found at UT L 2004 Ch 145, and was effective 05/03/2004.)

SUMMARY OF THE RULE OR CHANGE: The proposed amendment to Subsection R614-1-5(C)(2) changes from 12 hours to 8 hours the time limit for employers to report fatalities, serious injuries or occupational disease incidents to the Utah Occupational Safety and Health Division.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 34A, Chapter 6

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The proposed amendment will not result in any increase or decrease to the cost of enforcing Utah's Occupational Safety and Health Act, nor will it increase or decrease the State's cost of compliance as an employer. Consequently, the Commission anticipates no cost or savings to the State budget as a result of this amendment.

❖ LOCAL GOVERNMENTS: The proposed amendment will not result in any increase or decrease to the cost of local government compliance with Subsection R614-1-5(C)(2). Consequently, the Commission anticipates no cost or savings to local government budgets as a result of this amendment.

❖ OTHER PERSONS: The proposed amendment will not result in any increase or decrease to the cost of other persons' compliance with Subsection R614-1-5(C)(2). Consequently, the Commission anticipates no cost or savings to other persons as a result of this amendment.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Persons affected by this rule are currently required to report fatalities, serious injuries, or occupational disease incidents to the Utah Occupational Safety and Health Division. The proposed amendment merely reduces the time for making such reports from 12 hours to 8 hours, but does not impose any additional requirements or other burdens. Consequently, the Commission is unaware of any additional compliance costs that can be attributed to this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule amendment does not add any additional requirements to existing standards, but only tightens the time requirements for reporting serious injuries, fatalities, and occupational disease incidents. The amendment will not have any appreciable fiscal impact on businesses.

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

LABOR COMMISSION
OCCUPATIONAL SAFETY AND HEALTH
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:
William Adams at the above address, by phone at 801-530-6897, by FAX at 801-530-7606, or by Internet E-mail at wadams@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 07/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2004

AUTHORIZED BY: R Lee Ellertson, Commissioner

R614. Labor Commission, Occupational Safety and Health.
R614-1. General Provisions.
R614-1-5. Adoption and Extension of Established Federal Safety Standards and State of Utah General Safety Orders.

A. Scope and Purpose.

1. The provisions of this rule adopt and extend the applicability of: (1) established Federal Safety Standards, (2) R614, and (3) Workers' Compensation Coverage, as in effect July 1, 1973 and subsequent

revisions, with respect to every employer, employee and employment within the boundaries of the State of Utah, covered by the Utah Occupational Safety and Health Act of 1973.

2. All standards and rules including emergency and/or temporary, promulgated under the Federal Occupational Safety and Health Act of 1970 shall be accepted as part of the Standards, Rules and Regulations under the Utah Occupational Safety and Health Act of 1973, unless specifically revoked or deleted.

3. All employers will provide workers' compensation benefits as required in Section 34A-2-201.

4. Any person, firm, company, corporation or association employing minors must comply fully with all orders and standards of the Labor Division of the Commission. UOSH standards shall prevail in cases of conflict.

B. Construction Work.

Federal Standards, 29 CFR 1926 and selected applicable sections of R614 are accepted covering every employer and place of employment of every employee engaged in construction work of:

1. New construction and building;

2. Remodeling, alteration and repair;

3. Decorating and painting;

4. Demolition; and

5. Transmission and distribution lines and equipment erection, alteration, conversion or improvement.

C. Reporting Requirements.

1. Each employer shall investigate or cause to be investigated all work-related injuries and occupational diseases and any sudden or unusual occurrence or change of conditions that pose an unsafe or unhealthful exposure to employees.

2. Each employer shall within [~~12~~]8 hours of occurrence, notify the Division of Utah Occupational Safety and Health of the Commission of any work-related fatalities, of any disabling, serious, or significant injury and of any occupational disease incident. Call (801) 530-6901.

3. Each employer shall file a report with the Commission within seven days after the occurrence of an injury or occupational disease, after the employer's first knowledge of the occurrence, or after the employee's notification of the same, on forms prescribed by the Commission, of any work-related fatality or any work-related injury or occupational disease resulting in medical treatment, loss of consciousness or loss of work, restriction of work, or transfer to another job. Each employer shall file a subsequent report with the Commission of any previously reported injury or occupational disease that later resulted in death. The subsequent report shall be filed with the Commission within seven days following the death or the employer's first knowledge or notification of the death. No report is required for minor injuries, such as cuts or scratches that require first-aid treatment only, unless the treating physician files, or is required to file the physician's initial report of work injury or occupational disease with the Commission. Also, no report is required for occupational diseases which manifest after the employee is no longer employed by the employer with which the exposure occurred, or where the employer is not aware of an exposure occasioned by the employment which results in an occupational disease as defined by Section 34A-3-103.

4. Each employer shall provide the employee with a copy of the report submitted to the Commission. The employer shall also provide the employee with a statement, as prepared by the Commission, of his rights and responsibilities related to the industrial injury or occupational disease.

5. Each employer shall maintain a record in a manner prescribed by the Commission of all work-related injuries and all occupational diseases resulting in medical treatment, loss of consciousness, loss of work, restriction of work, or transfer to another job.

6. Tools, equipment, materials or other evidence that might pertain to the cause of such accident shall not be removed or destroyed until so authorized by the Labor Commission or one of its Compliance Officers.

7. No person shall remove, displace, destroy, or carry away any safety devices or safeguards provided for use in any place of employment, or interfere in any way with the use thereof by other persons, or interfere in any method or process adopted for the protection of employees. No employee shall refuse or neglect to follow and obey reasonable orders that are issued for the protection of health, life, safety, and welfare of employees.

D. Employer, Employee Responsibility.

1. It shall be the duty and responsibility of any employee upon entering his or her place of employment, to examine carefully such working place and ascertain if the place is safe, if the tools and equipment can be used with safety, and if the work can be performed safely. After such examination, it shall be the duty of the employee to make the place, tools, or equipment safe. If this cannot be done, then it becomes his or her duty to immediately report the unsafe place, tools, equipment, or conditions to the foreman or supervisor.

2. Employees must comply with all safety rules of their employer and with all the Rules and Regulations promulgated by UOSH which are applicable to their type of employment.

3. Management shall inspect or designate a competent person or persons to inspect frequently for unsafe conditions and practices, defective equipment and materials, and where such conditions are found to take appropriate action to correct such conditions immediately.

4. Supervisory personnel shall enforce safety regulations and issue such rules as may be necessary to safeguard the health and lives of employees. They shall warn all employees of any dangerous condition and permit no one to work in an unsafe place, except for the purpose of making it safe.

E. General Safety Requirements.

1. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

2. Body protection: Clothing which is appropriate for the work being done should be worn. Loose sleeves, tails, ties, lapels, cuffs, or similar garments which can become entangled in moving machinery shall not be worn where an entanglement hazard exists. Clothing saturated or impregnated with flammable liquids, corrosive substances, irritant, oxidizing agents or other toxic materials shall be removed and shall not be worn until properly cleaned.

3. General. Wrist watches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

4. Safety Committees. It is recommended that a safety committee comprised of management and employee representatives be established. The committee or the individual member of the committee shall not assume the responsibility of management to maintain and conduct a safe operation. The duties of the committee should be outlined by management, and may include such items as reviewing the use of safety apparel, recommending action to correct unsafe conditions, etc.

5. No intoxicated person shall be allowed to go into or loiter around any operation where workers are employed.

6. No employee shall carry intoxicating liquor into a place of employment, except that the place of employment shall be engaged in liquor business and this is a part of his assigned duties.

7. Employees who do not understand or speak the English language shall not be assigned to any duty or place where the lack or partial lack of understanding or speaking English might adversely affect their safety or that of other employees.

8. Good housekeeping is the first law of accident prevention and shall be a primary concern of all supervisors and workers. An excessively littered or dirty work area will not be tolerated as it constitutes an unsafe, hazardous condition of employment.

9. Emergency Posting Required.

a. Good communications are necessary if a fire or disaster situation is to be adequately coped with. A system for alerting and directing employees to safety is an essential step in a safety program.

b. A list of telephone numbers or addresses as may be applicable shall be posted in a conspicuous place so the necessary help can be obtained in case of emergency. This list shall include:

(1) Responsible supervision (superintendent or equivalent)
(2) Doctor
(3) Hospital
(4) Ambulance
(5) Fire Department
(6) Sheriff or Police

10. Lockouts and Tagging.

a. Where there is any possibility of machinery being started or electrical circuits being energized while repairs or maintenance work is being done, the electrical circuits shall be locked open and/or tagged and the employee in charge (the one who places the lock) shall keep the key until the job is completed or he is relieved from the job, such as by shift change or other assignment. If it is expected that the job may be assigned to other workers, he may remove his lock provided the supervisor or other workers apply their lock and tag immediately. Where there is danger of machinery being started or of steam or air creating a hazard to workers while repairs on maintenance work is being done, the employee in charge shall disconnect the lines or lock and tag the main valve closed or blank the line on all steam driven machinery, pressurized lines or lines connected to such equipment if they could create a hazard to workers.

b. After tagging and lockout procedures have been applied, machinery, lines, and equipment shall be checked to insure that they cannot be operated.

c. If locks and tags cannot be applied, conspicuous tags made of nonconducting material and plainly lettered, "EMPLOYEES WORKING" followed by the other appropriate wording, such as "Do not close this switch" shall be used.

d. When in doubt as to procedure, the worker shall consult his supervisor concerning safe procedure.

11. Safety-Type hooks shall be used wherever possible.

12. Emergency Showers, Bubblers, and Eye Washers.

a. Readily accessible, well marked, rapid action safety showers and eye wash facilities must be available in areas where strong acid, caustic or highly oxidizing or irritating chemicals are being handled. (This is not applicable where first aid practices specifically preclude flushing with running water.)

b. Showers should have deluge type heads, easily accessible, plainly marked and controlled by quick opening valves of the type that stay open. The valve handle should be equipped with a pull chain, rope, etc., so the blinded employee will be able to more easily locate the valve control. In addition, it is recommended that the floor platform be so constructed to actuate the quick opening valve. The shower should be capable of supplying large quantities of water under moderately high pressure. Blankets should be located so as to be reasonably accessible to the shower area.

c. All safety equipment should be inspected and tested at regular intervals, preferably daily and especially during freezing weather, to make sure it is in good working condition at all times.

13. Grizzlies Over Chutes, Bins and Tank Openings.

a. Employees shall be furnished with and be required to use approved type safety harnesses and shall be tied off securely so as to suspend him above the level of the product before entering any bin, chute or storage place containing material that might cave or run. Cleaning and barring down in such places shall be started from the top using only bars blunt on one end or having a ring type or D handhold.

b. Employees shall not work on top of material stored or piled above chutes, drawholes or conveyor systems while material is being withdrawn unless protected.

c. Chutes, bins, drawholes and similar openings shall be equipped with grizzlies or other safety devices that will prevent employees from falling into the openings.

d. Bars for grizzly grids shall be so fitted that they will not loosen and slip out of place, and the operator shall not remove a bar temporarily to let large rocks through rather than to break them.

F. All requirements of PSM Standard 29 CFR 1910.119 are hereby extended to include the blister agents, HT, HD, H, Lewisite, and the nerve agents, GA, VX.

KEY: safety
[~~June 3, 2003~~]2004
Notice of Continuation November 25, 2002
34A-6

Natural Resources, Parks and Recreation

R651-407

Off-Highway Vehicle Advisory Council

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 27153
FILED: 05/13/2004, 15:45

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: H.B. 51 and H.B. 220 (off-highway vehicles (OHV) bills) made it necessary to address the composition of the Utah OHV Advisory Council. The Utah School and Institutional Trust Land Administration was given authority to begin collecting revenues from OHV registrations to enable them to manage OHV recreation on their substantial land holdings. The Utah School and Institutional Trust Land Administration (SITLA) is, by most accounts, the third largest land holder in the state of Utah, and as such, hosts a substantial amount of the OHV recreation that transpires in the state. They have not, however been actively engaged in managing OHV access or recreation and are now stepping into that arena. Utah State Parks desires to work closely with SITLA to make certain that their management of OHV recreation dovetails with management on other public lands throughout the state. Also, there has been concern about the lack of youth participation in organized OHV activities. Along with partners such as the

state 4-H office, Parks has wondered if our program elements are "youth friendly." Today's youth are tomorrow's leaders, and Parks desire to engage the youth to a greater extent in the OHV activities throughout the state.

SUMMARY OF THE RULE OR CHANGE: The Utah OHV Advisory Council is going from nine members to eleven members with the addition of a member from SITLA and a member from the youth of Utah to help make sure the program elements are "youth friendly" and generate more activity within that age group.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 41-22-10(1)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The appointment of the two new members does not constitute any increase in expenses to the state of Utah as these are volunteer positions, and therefore there is no aggregate anticipated cost or savings to the State budget.
❖ LOCAL GOVERNMENTS: Local government's budget are not affected as these are state volunteers and have no effect on anticipated cost or savings to local government.
❖ OTHER PERSONS: The two new OHV Advisory Council members will pay their own travel for meetings and events connected with the OHV Advisory Council.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The only expenses are to pay for travel costs and that is only for the two new council members and they will pay their own.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Because the two new positions will be filled by volunteers, there should be no fiscal impact to businesses.

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

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-537-3144, or by Internet E-mail at deeguess@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 07/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2004

AUTHORIZED BY: Mary Tullius, Interim Director

R651. Natural Resources, Parks and Recreation.
R651-407. Off-Highway Vehicle Advisory Council.
R651-407-1. Appointment and Description of Vehicle Advisory Council Membership.

The board will appoint [~~a nine~~]an eleven-member off-highway vehicle advisory council representing off-highway vehicle users in the state. One member will be from each of the following interests: the Bureau of Land Management; the U.S.D.A. Forest Service; the Utah School and Institutional Trust Lands Administration; snowmobiling; motorcycling; all-terrain vehicle usage; four-wheel drive vehicle usage; off-highway vehicle dealers; off-highway vehicle safety; a youth member; and a member-at-large.

KEY: off-highway vehicles
[~~1989~~]July 16, 2004
Notice of Continuation October 23, 2003
41-22-10(1)

▼ ▼

Natural Resources, Parks and Recreation
R651-619-2
Alcohol in Buildings

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27154
FILED: 05/13/2004, 15:46

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: There is a new Utah Field House of Natural History in Vernal, Utah. It is one of the state parks and as such, an interpretation was needed regarding alcohol in such a building. An interpretation from the Attorney General's office indicated that Parks should modify Section R651-619-2 to clearly allow alcohol.

SUMMARY OF THE RULE OR CHANGE: Alcohol in the state park system will not be allowed, unless express permission is given, in writing, by the division director, or designee, and the organizations that are approved to dispense alcohol shall carry $1,000,000 of insurance to cover their events.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63-11-17

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: parks

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: This amendment clarifies the possession and/or consumption of alcohol in the state park system visitor centers, museums, and administrative offices. Therefore, there is no anticipated cost or savings to the State budget.
❖ LOCAL GOVERNMENTS: This is a clarification for the state park system and does not involved local government or their budget.

❖ OTHER PERSONS: Persons who have in their possession or are consuming alcoholic beverages in the park system visitor centers, museums, and administrative offices will be required to fulfill the compliance costs and carry the proper approval to engage in such activities.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Any "person" who is allowed in writing by the division to dispense alcohol, will be required to carry $1,000,000 in insurance. If there are any other local/state licenses or permits required, they will also have to comply to those restrictions.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule amendment is not likely to negatively impact businesses. In fact, it may provide more flexibility to businesses providing services at the new Utah Field House of Natural History in Vernal, Utah, and may result in increased or sustained business opportunities for such entities.

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

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-537-3144, or by Internet E-mail at deeguess@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 07/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2004

AUTHORIZED BY: Gordon Topham, Deputy Director

R651. Natural Resources, Parks and Recreation.
R651-619. Possession of Alcoholic Beverages or Controlled Substances.
R651-619-2. Alcohol in Buildings.

[~~Possession and consumption of any alcoholic beverage in park system visitor centers, museums and administration offices is prohibited.~~]There shall be no possession and/or consumption of any alcoholic beverage in the state park system visitor centers, museums and administrative offices, unless permission is expressly given, in writing, by the division director, or designee. Organizations dispensing such beverages are required to carry one million dollars ($1,000,000) in insurance coverage.

KEY: parks
[~~October 4, 1999~~]July 16, 2004

Notice of Continuation October 23, 2003
63-11-17(2)(b)

▼ ▼

Natural Resources, Parks and Recreation
R651-626
Skating and Skateboards

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27152
FILED: 05/13/2004, 15:45

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: To further define the recreational use of roller skates, inline skates, motorized transportation devices (MTD), and skateboards and where they are allowed and where they are prohibited.

SUMMARY OF THE RULE OR CHANGE: There has been no definition for the motorized transportation devices (MTD) such as motorized riding machines, or wheelchairs for disabled or injured visitors. This amendment makes those types of transportation devices part of the rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63-11-17

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There is no anticipated cost or savings to the State budget as this puts into rule the use of MTD's and where they are allowed in the State Park system.
❖ LOCAL GOVERNMENTS: Local government will not be affected as they are not participating in this program with the state.
❖ OTHER PERSONS: Those having MTD's will have to comply with the park rules and signing or designated areas where they can go. Locations where they will be permitted will be indicated on signs.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Anyone breaking the rule will be stopped and the same penalties that apply to the roller skates, inline skates, and skateboards when used in a prohibited area will apply for MTD's as well.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The proposed rule amendment is not likely to negatively impact businesses. The amendment will clarify use of Motorized Transportation Devices (MTDs) in state parks, making the park experience safer and more enjoyable for all users.

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

NATURAL RESOURCES
PARKS AND RECREATION

Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-537-3144, or by Internet E-mail at deeguess@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 07/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2004

AUTHORIZED BY: Gordon Topham, Deputy Director

R651. Natural Resources, Parks and Recreation.
R651-626. Skating, [~~and~~]Skateboards and Motorized Transportation Devices.
R651-626-1. Use of[~~,~~]Roller Skates, Inline Skates, Motorized Transportation Devices (MTD), and Skateboards.

The recreational use of roller skates, inline skates, motorized transportation devices (MTD), and skateboards is prohibited except in locations designated and posted for that activity by the park manager.

KEY: parks
[~~1989~~]July 16, 2004
Notice of Continuation October 23, 2003
63-11-17(2)(b)

▼ ▼

Natural Resources, Wildlife Resources
R657-5
Taking Big Game

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27159
FILED: 05/14/2004, 14:46

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: Provisions are being amended to eliminate the remaining drawing and providing that any permits remaining after the initial antlerless big game drawing will be available on a first-come, first-served basis over-the-counter. Sections R657-5-42 and R657-5-48 are being amended to clarify that a person who obtains an antlerless elk permit and a permit valid during the general archery deer hunt may use the antlerless elk permit during the established season for the antlerless elk permit and during the general archery season. Other changes are being made for consistency and clarity.

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 eliminate the process for drawing remaining permits. Therefore, the Division of Wildlife Resources (DWR) determines that these amendments do not create a cost or savings impact to the state budget or the DWR's budget.
❖ LOCAL GOVERNMENTS: None--This filing does not create any direct cost or savings impact to local governments because they are not directly affected by the 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 eliminate the process for drawing remaining permits. 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 eliminate the process for drawing remaining permits. 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 07/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2004

AUTHORIZED BY: Kevin Conway, Director

R657. Natural Resources, Wildlife Resources.
R657-5. Taking Big Game.
R657-5-42. Antlerless Deer Hunts.

(1) To hunt an antlerless deer, a hunter must obtain an antlerless deer permit.

(2)(a) An antlerless deer permit allows a person to take one antlerless deer, per antlerless deer tag, using any legal weapon within the area and season as specified on the permit and in the antlerless addendum.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless deer permit for a cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained an antlerless deer permit may not hunt during any other antlerless deer hunt or obtain any other antlerless deer permit.

(4)(a) A person who obtains an antlerless deer permit and any of the permits listed in Subsection (b), or any permit valid during the general archery deer hunt, may use the antlerless deer permit during the established season for the antlerless deer permit and during the established season for the permits listed in Subsection (b) provided:

(i) the permits are both valid for the same area;

(ii) the appropriate archery equipment is used if hunting with an archery permit;

(iii) the appropriate muzzleloader equipment is used if hunting with a muzzleloader permit.

(b)(i) General archery deer;

(ii) general muzzleloader deer;

(iii) limited entry archery deer; or

(iv) limited entry muzzleloader deer.

R657-5-48. Antlerless Elk Hunts.

(1) To hunt an antlerless elk, a hunter must obtain an antlerless elk permit.

(2)(a) An antlerless elk permit allows a person to take one antlerless elk using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless elk permit for a cooperative wildlife management unit as specified on the permit.

(3)(a) A person may obtain two elk permits each year, provided one or both of the elk permits is an antlerless elk permit.

(b) For the purposes of obtaining two elk permits, a hunter's choice elk permit may not be considered an antlerless elk permit.

(4)(a) A person who obtains an antlerless elk permit and any of the permits listed in Subsection (b), or any permit valid during the general archery deer hunt, may use the antlerless elk permit during the established season for the antlerless elk permit and during the established season for the permits listed in Subsection (b) provided:

(i) the permits are both valid for the same area;

(ii) the appropriate archery equipment is used if hunting with an archery permit;

(iii) the appropriate muzzleloader equipment is used if hunting with a muzzleloader permit.

(b)(i) General archery deer;

(ii) general archery elk;

(iii) general muzzleloader deer;

(iv) general muzzleloader elk;

(v) limited entry archery deer;

(vi) limited entry archery elk;

(vii) limited entry muzzleloader deer; or

(viii) limited entry muzzleloader elk.

R657-5-50. Doe Pronghorn Hunts.

(1) To hunt a doe pronghorn, a hunter must obtain a doe pronghorn permit.

(2)(a) A doe pronghorn permit allows a person to take one doe pronghorn, per doe pronghorn tag, using any legal weapon within the area and season as specified on the permit and in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(b) A person may not hunt on any cooperative wildlife management units unless that person obtains an antlerless moose permit for a cooperative wildlife management unit as specified on the permit.

(3) A person who has obtained a doe pronghorn permit may not hunt during any other pronghorn hunt or obtain any other pronghorn permit.

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 a pronghorn permit, or a moose permit may not apply for 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~~]antlerless 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~~]Subsection R657-5-59(3) and Section 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 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.

R657-5-59. Antlerless Big Game Drawing.

(1) The antlerless drawing results [~~are~~]may 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.

(2) Permits are drawn in the order listed in the Antlerless Addendum to the Bucks, Bulls and Once-In-A-Lifetime Proclamation of the Wildlife Board for taking big game.

(3) If permits remain after all choices have been evaluated separately for residents and nonresidents, a second evaluation will be done allowing cross-over usage of remaining resident and nonresident permit quotas.

R657-5-60. Antlerless Application Refunds.

(1)[~~(a)~~] Unsuccessful applicants, who applied [~~in the initial drawing and who applied~~]with a check or money order will receive a refund in August.[~~- September.~~

~~(b) Unsuccessful applicants, who applied for remaining permits and who applied with a check or money order will receive a refund in October.~~]

(2)(a) Unsuccessful applicants, who applied with a credit or debit card, will not be charged for a permit.

(b) Unsuccessful applicants, who applied as a group, will receive an equally distributed refund of money remaining after the successful applicants' permits are paid for in accordance with Section R657-5-26(6).

(3) The handling fees are nonrefundable.

R657-5-61. [~~Drawing for Remaining Antlerless Permits and~~]Over-the-counter Permit Sales After the Antlerless [~~Drawings.~~]Drawing.

[~~(1)(a) The list of~~]Permits remaining [~~permits~~]after the drawing will be [~~available by~~]sold beginning on the date [~~provided~~]prescribed 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.~~] from Division offices, through participating online license agents, and through the mail.

KEY: wildlife, game laws, big game seasons
[~~January 21,~~] 2004
Notice of Continuation November 30, 2000
23-14-18
23-14-19
23-16-5
23-16-6

Natural Resources, Wildlife Resources
R657-27
License Agent Procedures

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27158
FILED: 05/14/2004, 14:45

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed amendment adds provisions requiring license agents for the Division of Wildlife Resources (DWR) to become online license agents by December 1, 2005; and provides provisions for DWR to assist new and existing license agents in becoming online license agents.

SUMMARY OF THE RULE OR CHANGE: Section R657-27-2 is being amended to add the definition of "computer hardware," which may be provided by DWR to license agents when becoming online license agents. Section R657-27-3 is being amended to add that license agents for DWR must become online license agents by December 1, 2005. Section R657-27-4 is being amended to clarify the requirements for becoming a license agent for DWR and provide provisions for DWR to assist new and existing license agents in becoming online license agents. Subsection R657-27-6(1)(g) is being added to require license agents to retain agent copies of sold licenses and permits for 12 months following the month of sale. Other changes are made for consistency and clarity.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 23-19-15

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This amendment requires that all license agents sell licenses and permits through DWR's online sales system by December 1, 2005. The short term fiscal impact will be neutral because the division will be required to purchase approximately 400 printers for a for a cost of about $142,000 to provide to agents, but will save about $140,000 in data input costs that have previously been incurred. In approximately 18 months, the division will realize an ongoing annual savings of about $140,000.

❖ 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: The license agents that sell hunting and fishing licenses may have an initial financial impact of about $700 per site or $175,000 total for the 250 agents that have not already converted to this system without the requirements of this rule. There may also be ongoing costs of $15 to $100 per month for data connections for these agents. These amounts are based on an assumption that none of these retail stores have a computer or Internet connection. If these are in place the fiscal impact is reduced. There should be ongoing savings to the agents on the system since reporting time is reduced and documents can be processed more quickly. The fiscal savings cannot be easily determined. The agents may also increase revenue as they are permitted to sell more types of documents and thereby increase their agent commissions.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The license agents that sell hunting and fishing licenses may have an initial financial impact of about $700 per site or $175,000 total for the 250 agents that have not already converted to this system without the requirements of this rule. There may also be ongoing costs of $15 to $100 per month for data connections for these agents. These amounts are based on an assumption that none of these retail stores have a computer or Internet connection. If these are in place the fiscal impact is reduced. There should be ongoing savings to the agents on the system since reporting time is reduced and documents can be processed more quickly. The fiscal savings cannot be easily determined. The agents may also increase revenue as they are permitted to sell more types of documents and thereby increase their agent commissions.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule was prepared after consultation with the License Agent Advisory Committee that is represented by license agents from around the state. Further it was presented to Regional Advisory Councils and the Utah Wildlife Board. Comments were incorporated to minimize financial impacts to agents. DWR believes this change represents a positive opportunity for the majority of our sales agents.

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 07/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2004

AUTHORIZED BY: Kevin Conway, Director

R657. Natural Resources, Wildlife Resources.
R657-27. License Agent Procedures.
R657-27-1. Purpose and Authority.

Under Section 23-19-15, this rule provides the application procedures, standards, and requirements for wildlife license agents.

R657-27-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Agent hunting and fishing licenses online" means the web application that allows an online license agent to print wildlife documents on license paper.

(b) "Bond" means a surety bond to remain in full force and effect continuously and indefinitely, until canceled.

(c) "Computer hardware" means electronic equipment the division deems necessary to perform the minimum required functions of the division's online license sales application system that may include a central processing unit, cables, or router.

(d) "Deactivated license agent or deactivated" means a license agent that holds license agent status but is temporarily precluded from selling wildlife documents for failure to comply with this rule or any other laws or agreements regulating license agent activity.

[~~(d)~~](e) "License agent" means a person authorized by the division to sell wildlife documents.

[~~(e)~~](f) "License Agent Application" means a written request to be authorized by the division to sell wildlife documents.

[~~(f)~~](g) "License Agent Authorization" means an agreement between the division and a license agent, allowing a license agent to sell wildlife documents.

[~~(g)~~](h) "License paper" means designated paper issued by the division for the sole purpose of printing specified licenses or permits through the agent hunting and fishing licenses online sales system.

[~~(h)~~](i) "Location" means the building or structure from which a license agent is authorized to sell wildlife documents.

[~~(i)~~](j) "Online license agent" means a person authorized by the division to sell wildlife documents through the agent hunting and fishing licenses online sales system.

[~~(j)~~](k) "Presiding officer" means the hearing officer designated by the director of the division.

[~~(k)~~](l) "Remuneration" means money that a license agent receives for each wildlife document sold as provided in Section 23-19-15.

[~~(l)~~](m) "Wildlife documents" means licenses, permits and tags preprinted by the division or printed by the online license agent on license paper.

R657-27-3. License Agent Application.

(1) License agent applications may be obtained from the Licensing Section in the Salt Lake Office or downloaded from the division's website.

(2) License agent applications shall be considered from any person located within Utah or in close proximity to Utah.

(3) Applications shall be processed within 30 days.

(4) The applicant must:

(a) complete and return the application to the Licensing Section in the Salt Lake Office; and

(b) pay a non refundable application fee.

(5) A separate application and application fee must be submitted for each location where wildlife documents will be sold.

(6)(a) All new license agent applicants, and existing license agents must become online license agents by December 1, 2005.

(b) The division may provide assistance to new and existing license agents in becoming online license agents as provided in Subsection R657-27-4(1)(b),(1)(c) or (1)(d).

R657-27-4. License Agent Eligibility - Reasons for Application Denial - Term of Authorization.

(1) [~~The division may deny a license agent application for any of the following reasons:~~

~~(a) A sufficient number of license agents already exist in the area;~~

~~(b) The applicant does not have adequate security including a safe or locking cabinet in which to store wildlife documents or license paper;~~

~~(c) The applicant has previously been authorized to sell wildlife documents or possess license paper and the applicant:~~

~~(i) failed to comply with the license agent authorization or any provision of statute or rule governing license agents; or~~

~~(ii) was deactivated or revoked by the division as a license agent;~~

~~(d) The applicant provided false information on the license agent application;~~

~~(e) The applicant has been convicted of a wildlife related violation; or~~

~~(f) The applicant has been convicted, pleaded guilty, pleaded no contest, or entered into a plea in abeyance to a criminal offense that bears a reasonable relationship to the license agent's ability to competently and responsibly perform the functions of a license agent.~~

~~(2)~~]A new license agent must meet the criteria provided in Subsection (a), except as provided in Subsection (b) or (c).

(a) A license agent must:

(i) successfully complete a division-sponsored training session;

(ii) provide and maintain approved computer hardware capable of processing and printing licenses and permits in a permanent, clear, and a legible manner; and

(iii) sign a supplemental wildlife documents sales agreement as provided in Section R657-27-16.

(b) The division may provide a printer as required in Subsection (a)(ii) provided the license agent's projected sales is estimated to be at least one-thousand dollars per year.

(c) The division may provide assistance up to one-thousand dollars for computer hardware required in Subsection (a)(ii) provided:

(i) there is not a current, eligible license agent within 45 miles of the proposed license agent location; and

(ii) the estimated sales revenue from the proposed location will recover the cost of the computer hardware within six months of providing the computer hardware.

(d) The division may provide assistance for a data line connection and the associated ongoing expense of the data line connection provided:

(i) there is not a current, eligible license agent within 45 miles of the proposed license agent location; and

(ii) the division anticipates the monthly cost for the data line connection to be less than 20% of the estimated monthly collection from the license agent.

(e) The division shall annually review the ongoing expenses for a data line connection to ensure the license agent is eligible for the assistance allowed in Subsection (d).

(f) A license agent must remain a license agent for the division for at least six months to retain the computer hardware or printer as provided in Subsections (b) or (c).

(2) Use of the agent hunting and fishing licenses online system must be used in compliance with the users manual provided by the division.

(3) The division shall send the applicant a written notice stating the reason for denial.

[~~(3)~~](4) If the division approves the license agent application, a license agent authorization shall be sent to the applicant.

[~~(4)~~](5) The license agent authorization is not effective until:

(a) it is signed and notarized by the applicant; and

(b) signed by the director.

[~~(5)(a)~~](6)(a) The license agent authorization must be received by the Licensing Section in the Salt Lake Office within 30 days of being mailed to the applicant.

(b) A separate application, application fee, and license agent authorization is required for each location where wildlife documents will be sold.

[~~(6)~~](7) Each license agent authorization shall be established for a term of five years.

(8) The division may deny a license agent application for any of the following reasons:

(a) A sufficient number of license agents already exist in the area;

(b) The applicant does not have adequate security including a safe or locking cabinet in which to store wildlife documents or license paper;

(c) The applicant has previously been authorized to sell wildlife documents or possess license paper and the applicant:

(i) failed to comply with the license agent authorization or any provision of statute or rule governing license agents; or

(ii) was deactivated or revoked by the division as a license agent;

(d) The applicant provided false information on the license agent application;

(e) The applicant has been convicted of a wildlife related violation; or

(f) The applicant has been convicted, pleaded guilty, pleaded no contest, or entered into a plea in abeyance to a criminal offense that bears a reasonable relationship to the license agent's ability to competently and responsibly perform the functions of a license agent.

R657-27-6. License Agent Obligations.

(1) Each license agent must:

(a) comply with the requirement and provisions provided in Section 23-19-15;

(b) keep wildlife documents or license paper secure and out of the public view during business hours;

(c) keep wildlife documents or license paper in a safe or locked cabinet after business hours;

(d) display all signs and distribute proclamations provided by the division;

(e) have all sales clerks and management staff available for sales training;[~~and~~]

(f) maintain a License Agent Manual provided by the division and make it available to the license agent's staff, including supplemental manuals and addendums; and

(g) retain agent copies of licenses and permits for 12 months following the month of sale, at which time agent copies of licenses and permits must be destroyed by burning, shredding or submitting to the division.[~~.~~]

(2) If a license agent becomes delinquent on reporting or remission of proceeds Subsection (2)(a), (2)(b) or (2)(c) shall apply.

(a) The license agent must immediately submit all reports when due along with the remission of required proceeds.

(b) If the license sales report is submitted in accordance with Subsection (1)(a) but funds are not submitted with the report then the following applies:

(i) A repayment plan may be structured in an agreement that will allow repayment in equal monthly installments for up to six months at a payment level that will provide repayment of the principal along with an annual percentage interest rate (APR) of 12%. This APR shall be calculated back to the date that the payment should have been received in accordance with Subsection (1)(a);

(ii) If the ongoing monthly report and proceed submissions are not received for the future months, from the month of the agreement in accordance with Subsection (1)(a), then any agreement made in Subsection (2)(b)(i) may be terminated and all outstanding balances and accrued interest shall become due immediately, along with a penalty of 20% of the unpaid balance. Interest shall continue to accumulate on any unpaid balance, including the penalty, at the APR;

(iii) Activate the bond and collect all remaining funds in accordance with Section R657-27-5 and hold any remaining unpaid balances of penalty, ongoing interest, and principle amounts as a receivable from the license agent; or

(iv) If the license agent enters into an agreement with the division as provided in Subsection (2)(b)(i), and then violates the terms of that agreement, the division may begin the revocation process in accordance with Section R657-27-11.

(c) Nothing in this rule shall be construed as requiring the division to offer a repayment agreement to a license agent delinquent on report submissions or proceeds remissions before taking action to revoke license agent status.

(d) If the license agent does not submit a monthly report as provided in Subsection (1)(a), or if the license agent does not immediately pay the delinquent funds or fails to execute and abide by the terms of a repayment agreement as provided in Subsection (2)(b), the division may:

(i) change the license agent's status to deactivated;

(ii) withhold issuing additional wildlife document inventory;

(iii) withhold access to the agent hunting and fishing licenses online sales system;

(iv) collect the license agent's inventory of wildlife documents and license paper, and determine unaccounted inventory of wildlife documents and license paper;

(v) assess a monetary penalty for each wildlife document and piece of license paper unaccounted for as provided in Subsection R657-27-7(2);

(vi) take action to revoke license agent status;

(vii) create a receivable from the license agent that equals the amount due as determined in Subsection (1)(a) and charge a 20% late penalty on the entire balance, and accumulate the unpaid balance, included penalties, at a 12% APR from the due date of the earliest date in which a license agent failed to submit a report in accordance with Subsection (1)(a); or

(viii) activate the bond and collect all available funds remaining in accordance with Section R657-27-5 and hold any remaining unpaid balances of penalty, ongoing interest, and principle amounts as a receivable from the license agent.

(e) A deactivated license agent that has not been revoked may regain active status by paying all due balances in full, and providing a bond, provided the license agent is otherwise in compliance with this rule or any other laws or agreements regulating license agent activity.

R657-27-16[~~. Online License Agent.~~

~~(1) To become an online license agent, a license agent must:~~

~~(a) successfully complete a division-sponsored training session;~~

~~(b) provide and maintain approved hardware capable of printing in a permanent, clear, and legible manner;~~

~~(c) sign a supplemental wildlife documents sales agreement; and~~

~~(d) place the user manual provided by the division with the license agent manual.~~

~~(2) Use of the agent hunting and fishing licenses online system must be in compliance with the users manual provided by the division.~~

~~R657-27-17~~]. Supplemental Wildlife Document Sales Agreement.

(1) Upon approval of a license agent authorization, the division may enter into a supplemental wildlife document sales agreement with the license agent.

(2)(a) The license agent must:

(i) complete all information indicated in the agreement; and

(ii) sign and date the agreement.

(b) The agreement must be returned by mail or hand-delivery to any division office and must be received no later than the date indicated under the terms on the agreement form. Facsimiles will not be accepted.

(c) Agreements received after the date indicated on the agreement form may be returned.

(4)(a) The division may not enter into an agreement with any license agent who was given reasonable notice of the time period for entering into the agreement and fails to return a complete agreement to the division.

(b) The division may notify a license agent who has made an error in completing the agreement form and may afford an opportunity for correction. However, if the division is unable to contact the license agent within two weeks following the filing date indicated on the agreement and correct the error, the agreement shall be void and the license agent may not receive authorization to sell the wildlife documents covered by the supplemental agreement.

(5) By signing the agreement, the license agent agrees to abide by the terms of the agreement.

R657-27-[~~18~~]17. License Agent Authorization and Supplemental Agreements Subject to Change.

(1) A license agent authorization or supplemental agreement issued or renewed by the division under this rule is a privilege and not a right. The license agent authorization or supplemental agreement authorizes the license agent to sell wildlife documents subject to all present and future conditions, restrictions, and regulations imposed on such activities by the division, the Wildlife Board, or the State of Utah.

(2) A license agent authorization or supplemental agreement does not guarantee or otherwise legally entitle the license agent to any of the following:

(a) a minimum number of wildlife documents;

(b) a particular type or types of wildlife documents;

(c) access to any particular wildlife document distribution system; or

(d) any other right or opportunity advantageous to the license agent.

(3) The procedures, processes and opportunities outlined in this rule regulating license agents and the distribution of wildlife documents are all subject to future change, including discontinuation, by the division and the Wildlife Board.

KEY: licensing, wildlife, wildlife law, rules and procedures
[~~July 2, 2003~~] 2004
Notice of Continuation April 10, 2002
23-19-15

School and Institutional Trust Lands, Administration

R850-70

Sales of Forest Products from Trust Lands Administration Lands

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27178
FILED: 05/14/2004, 17:23

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended to improve the rule structure, provide greater protection of the resource, and to bring the rules into alignment with current practices.

SUMMARY OF THE RULE OR CHANGE: Changes to the structure of the rule have been made throughout in order to better clarify the process. The exclusion of sawlogs from the small forest product permit program, limits on the value of forest products sold to a person each year, and the removal of the maximum value for non-competitive forest product sales are being implemented in order to better protect the resource. Changes being made to align the rule with current practices include requiring the advertisement of timber sales to include bidder qualifications, requiring the submission of an application fee, requiring the submission of a timber harvest plan prior to the commencement of harvesting operations, defining the types and forms of bonds submitted for timber sales, authorization of timber contract extensions under certain conditions, and the clarification of long-term agreements (LTA).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 53C-1-302(1) and 53C-2-201(1)(a)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: New forms will be printed for small forest products. However, the existing supply was low so the new costs will be minimal. Having the ability to sell forest products non-competitively, regardless of value, will reduce agency cost in some timber sales by reducing processing steps. No new manpower will be needed.

❖ LOCAL GOVERNMENTS: This rule does not affect local government. Therefore, there is no anticipated cost or savings to local governments.
❖ OTHER PERSONS: The Division of Forestry, Fire and State Lands may incur some additional costs in processing the registrations of timber sale applicants. These costs are as yet undetermined.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There may be some minimal costs in time and effort incurred in getting registered with the Division of Forestry, Fire and State Lands. There may also be costs associated with getting an "Extension of Time" for a timber sale contract. These costs are currently not quantifiable.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: It is our anticipation that this rule will have little fiscal impact on business. Essentially, we are cleaning up ambiguities in the existing rule which should make the forest product sales and permitting process more smooth-flowing and predictable.

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

SCHOOL AND INSTITUTIONAL TRUST LANDS ADMINISTRATION
Room 500
675 E 500 S
SALT LAKE CITY UT 84102-2818, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Kim S. Christy at the above address, by phone at 801-538-5183, by FAX at 801-355-0922, or by Internet E-mail at kimchristy@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 07/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2004

AUTHORIZED BY: Kevin S. Carter, Director

R850. School and Institutional Trust Lands, Administration.
R850-70. Sales of Forest Products From Trust Lands Administration Lands.
R850-70-100. Authorities.

This rule implements Sections 6, 8, 10, and 12 of the Utah Enabling Act, Articles X, XVIII, and XX of the Utah Constitution, and Section 53C-1-302(1)(a)(ii) which authorize the [~~Director~~]director of the School and Institutional Trust Lands Administration to provide for the sale of forest products, desert products, and other vegetative material from Trust Lands Administration lands.

R850-70-150. Planning.

1. Pursuant to Section 53C-2-201(1)(a), the Trust Lands Administration shall [~~also undertake to~~]complete the following planning obligations[~~,~~] for all competitive and non-competitive forest product sales, in addition to the rule-based analysis and approval processes [~~that are prescribed~~]required by this rule:

(a) To the extent required by the Memorandum of Understanding between the State Planning Coordinator and the School and Institutional Trust Lands Administration, submit the proposal for review by the Resource Development Coordinating Committee (RDCC);

(b) Evaluation of and response to comments received through the RDCC process; and

(c) [~~Evaluation of~~]Evaluate and [~~response~~]respond to any comments received through the [~~solicitation process~~]advertising and notice processes described in [~~R850-70-800(1)(b)~~]R850-70-600(1).

2. All other forest product sales within this category of activity carry no planning obligations by the agency beyond existing rule-based analysis and approval processes.

R850-70-200. [~~Forest Products Defined~~]Definitions.

1. Sawlogs: portions of a tree stem that exceed seven feet in length and are at least six inches in diameter inside bark at the small end.

2. Poles: portions of a tree stem that are at least ten feet in length and do not exceed six inches in diameter at four and one-half feet above the ground.

3. Mine Props: portions of a tree stem that are between seven and ten feet in length, and six to nine inches diameter inside bark at the small end.

4. Posts: portions of a tree or tree stem, generally Utah juniper, which are no more than ten feet in length and are less than six inches in diameter at the top (small end).[~~ diameter.~~]

5. Fuelwood: any portion of a tree, including those portions defined as sawlogs[~~,~~], poles[~~,~~], mine props[~~,~~], or posts[~~,~~] that is harvested for use as fuel.[~~ Normally including deadwood sales.~~]

6. Christmas Tree: any coniferous tree, or part thereof, cut and removed from the place where grown without the foliage being removed.

7. Ornamental: any coniferous or deciduous tree, shrub, or bush less than 20' in height and no more than six inches diameter at four and one-half feet above the ground, which is removed from a natural setting, generally with roots attached, for transplant elsewhere.

8. Desert Plants: include any member of the Cactaceae Family or the Agavaceae Family.

9. Other Products: include boughs, branches, pinyon nuts, cones, Juniper berries, and native seed.

R850-70-300. Proof-of-Ownership.

Proof-of-ownership shall be issued with each sale of forest products in compliance with Section 78-38-4.5.

R850-70-400. Permit Sales.

The agency may make sales of forest products, with the exception of sawlogs, with a Small Forest Products Permit when the total sale value does not exceed [~~$300~~]$500.00. The permit shall be on a form prescribed by the agency. Persons purchasing Small Forest Product Permits shall be restricted to a total value of $500.00 per commodity per calendar year. A Small Forest Product Permit does not grant exclusive use of the permitted lands or the resources contained thereon.

R850-70-500. Noncompetitive Sales.

[~~At the discretion of~~]If the director [~~or designated representative(s),~~]finds it to be in the best interests of the trust, the agency may [~~make~~]sell forest [~~product~~]products [~~sales, not to exceed a value of $2,000,~~] at not less than an agency-established minimum value [~~the established base rate~~] without soliciting competitive bids.

R850-70-600. Competitive Sales.

[~~The agency must make sales of forest products through competitive bidding procedures when the total sale value exceeds $2,000.~~

~~R850-70-700. Advertising Forest Product Sales.~~

~~Reasonable notice must be given to potential purchasers and other interested parties prior to completion of any sale with a potential total value exceeding $2,000. The cost of the notice will be borne by the successful applicant.~~

~~R850-70-800. Competitive Bidding Procedure.~~

~~1. Sales of timber and large forest products resources shall be initiated by the agency and shall follow the procedures below:~~

~~(a) Initial bidding shall be conducted through sealed bids which must contain 10% of the bid amount. Those submitting the three highest sealed bids shall be allowed to enter into oral auction.~~

~~(b) All sales shall be advertised through publication at least once a week for at least two weeks in one or more newspapers of general circulation in the county in which the sale is located. This notice shall contain, but is not limited to:~~]1. Sales of forest products shall be initiated by the agency and shall follow the procedures below:

(a) All competitive sales shall be advertised through publication at least once a week for at least two weeks in one or more newspapers of general circulation in the county in which the sale is located. The cost of the notice will be borne by the successful applicant. This notice shall contain, but is not limited to:

i) the legal description of the affected lands;

ii) the species and estimated quantity of forest products;

iii) minimum sale price;

iv) bond amounts;

[~~iv)~~]v) advertising and processing costs, as far as is known;

[~~v)~~]vi) dates of bidding period;[~~ and~~]

[~~vi)~~]vii) date, time, and location of oral auction[~~-~~]; and

viii) bidder qualifications.

(b) Notice shall also be given to potential purchasers and other interested parties, whose names are on an agency maintained mailing list prior to any competitive sale.

(c) Initial bidding shall be conducted through sealed bids. Each sealed bid must contain 10% of the bid amount and the application fee. The bidders submitting the three highest sealed bids shall be allowed to enter into an oral auction.

(d) Sales shall be awarded to the highest qualified bidder unless a bidder has been previously disqualified, or is notified by the agency in writing within ten business days of the auction that the bid will be disqualified, on the grounds of previous poor performance or other good cause shown. The agency shall declare the successful bidder within ten business days of the bid opening. Failure of the successful bidder to execute a contract within 30 days of receipt may result in cancellation of the sale and forfeiture of all monies submitted.

2. The agency may [~~cancel~~]withdraw, at its sole discretion any [~~timber or large forest products sale prior to sale closing~~]forest products sale prior to contract execution. All fees associated with a withdrawn sale shall be returned to the purchaser.

[~~R850-70-900. Awarding Forest Product Sales.~~

~~Sales shall be awarded to the highest qualified bidder unless a bidder is disqualified, in writing, by the agency on the grounds of previous poor contract performance or other good cause shown. The agency shall award sales within ten business days of the bid opening.~~]

R850-70-700. Timber Sale Contracts.

1. Timber Sale Contracts must be used for all sales of sawlogs and any other forest product where the value exceeds $500.00.

2. Each Timber Sale Contract shall contain the provisions necessary to ensure the responsible harvest of forest products, including the applicable provisions of 53C-4-202.

[~~R850-70-1000. Bonding Requirements.~~]R850-70-800. Timber Harvesting.

1. Prior to commencement of harvest operations, the purchaser shall submit a timber harvest plan for agency review. Harvesting operations shall not commence until the purchaser is notified, in writing, that the timber harvest plan has been approved by the agency.

[~~1.~~]2. Prior to commencement of harvest operations, the purchaser shall post with the agency [~~a bond~~]bonds in the form and [~~amount~~]amounts as may be determined by the agency to assure compliance with all terms and conditions of the sale contract. Such bonds shall include the following:

[~~2.~~](a) A performance bond [~~will~~]shall be [~~posted for~~]submitted in an amount at least twice the estimated cost of rehabilitation.[~~ Unless the sale was paid for in advance, the bond will also include the full purchase price of the sale.~~]

(b) A payment bond shall be submitted in an amount equal to the full purchase price of the sale unless the sale has been paid for in advance, or, at the discretion of the agency, the full price of the largest cutting unit of the sale.

3. All bonds posted may be used for payment of all monies due to the Trust Lands Administration on the total purchase price, and also for the costs of compliance with all other performance terms and conditions of the sale as specified in the contract.

4. [~~Bonds~~]The purchaser's bonds shall be maintained in effect even if the purchaser conveys all or part of the sale interest to an assignee[~~,~~] or subsequent purchaser until such time as the purchaser fully satisfies sale contract obligations, or until such time as the bond is replaced with a new bond posted by the assignee.

5. Bonds may be increased in reasonable amounts, at any time as the agency may order, provided the agency first gives the purchaser 30 days written notice stating the increase and the reason(s) for the increase.

6. Bonds may be accepted in any of the following forms at the discretion of the agency:

(a) Surety bond with an approved corporate surety registered in Utah.

(b) Cash deposit. The Trust Lands Administration will not be responsible for any investment returns on cash deposits.

[~~(c) Certificate of deposit in the name of the "School and Institutional Trust Lands Administration" and purchaser with an approved state or federally insured banking institution registered in Utah. All certificates of deposit must be endorsed by the purchaser prior to acceptance by the agency.~~

~~Certificate of deposit must:~~

~~i) have a maturity date no greater than 12 months,~~
~~ii) be automatically renewable; and~~
~~iii) be deposited with the agency, the purchaser will be entitled to and receive the interest payments.~~
~~(d)~~](c) an irrevocable letter of credit for a period longer than the term of the sale.

7. Bonds shall remain in force until such time as all contract payments and performance provisions have been satisfied by the purchaser and so documented by the agency in writing.

[~~R850-70-1100. Assignments.~~]R850-70-900. Assignments.

1. Competitively let sales may be assigned, in accordance with procedures established by the agency, to any person, firm, association, or corporation qualified to execute the terms and conditions of the sale contract, with prior written approval from the agency, provided that the assignee agrees to be bound by the terms and conditions of the sale and to accept the obligations of the assignor.

2. Permits and non-competitive sales may not be assigned.

R850-70-1000. Extensions of Time.

Extensions of time to complete the harvesting operations authorized by a timber contract may be granted if the director finds it to be in the best interests of the trust. Prior to the approval of a request for an extension of time, the agency may require amendments to the contract, including, but not limited to:

(a) Increasing the amounts and extending the effective dates of bonds; and,

(b) Increasing the price of the forest products authorized by the contract.

[~~R850-70-1200. Forest Product Valuation.~~]R850-70-1100. Forest Product Valuation.

Forest products shall be offered for sale based on a methodology or price schedule to be determined by the agency pursuant to board policy.

[~~R850-70-1300. Long-Term Agreements.~~]R850-70-1200. Long-Term Agreements.

1. Long-term agreements (LTA) are those sales where the harvest of specified forest products will take place over a period of time exceeding two years. Upon approval of the director, the agency may enter into an LTA with a purchaser for a period not to exceed ten years provided that:

(a) Resource or other benefits can be demonstrated by the LTA.

(b) The LTA is advertised and competitively bid.

(c) The area included in the LTA is defined by legal or other tangible description.

(d) The LTA includes provisions for periodic reappraisal and adjustment of prices.

(e) The LTA may not preclude or prohibit forest product sales to other purchasers on trust lands adjacent to or within the area designated by the LTA.

(f) The LTA provides for amendment and cancellation during the term of the LTA.

(g) The LTA does not preclude or prohibit other concurrent resource management activities and uses adjacent to or within the area designated by the LTA.

(h) Each LTA states that access granted by the LTA is not exclusive.

(i) A due-diligence provision is included in each LTA.

[~~R850-70-1400. Fees and Procedures.~~]R850-70-1300. Fees and Procedures.

The agency may establish fees and develop [~~such~~]procedures [~~as may be~~]necessary to provide for the administration and sale of forest products pursuant to Section 53C-1-302(1)(b)[~~(iii)~~].

KEY: forest products, administrative procedures, timber
[~~November 1, 2002~~]July 2, 2004
Notice of Continuation December 4, 2002
53C-1-302(1)[~~(a)(ii)~~]
53C-2-201(1)(a)

Tax Commission, Administration
R861-1A-37
Provisions Relating to Disclosure of Commercial Information Pursuant to Utah Code Ann. Section 59-1-404

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27155
FILED: 05/14/2004, 13:27

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Section 59-1-404 indicates that certain property tax commercial information may be disclosed.

SUMMARY OF THE RULE OR CHANGE: The proposed section clarifies the term "assessed value of the property", and property tax commercial information that may be disclosed under Subsection 59-1-404(3). (DAR NOTES: The previous proposed new Section R861-1A-37 that was published in the March 1, 2004, issue of the Bulletin under DAR No. 26943 will be allowed to lapse as those provisions are no longer necessary because they have been codified in S.B. 163 (2004). S.B. 163 is found at UT L 2004 Ch 294, was effective 03/23/2004.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-1-404

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--Any impacts were considered in S.B. 163 (2004).
❖ LOCAL GOVERNMENTS: None--Any impacts were considered in S.B. 163 (2004).
❖ OTHER PERSONS: None--Any impacts were considered in S.B. 163 (2004).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The amendment clarifies the instances when particular commercial information meets the statutory criteria for disclosure.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on business as a result of this area.

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

TAX COMMISSION
ADMINISTRATION
210 N 1950 W
SALT LAKE CITY UT 84134-0002, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Cheryl Lee at the above address, by phone at 801-297-3900, by FAX at 801-297-3919, or by Internet E-mail at clee@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 07/15/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 07/16/2004

AUTHORIZED BY: Pam Hendrickson, Commissioner

R861. Tax Commission, Administration.
R861-1A. Administrative Procedures.
R861-1A-37. Provisions Relating to Disclosure of Commercial Information Pursuant to Utah Code Ann. Section 59-1-404.

A. The provisions of this rule apply to the disclosure of commercial information under Section 59-1-404. For disclosure of information other than commercial information, see rule R861-1A-12.

B. For purposes of Section 59-1-404, "assessed value of the property" includes any value proposed for a property.

C. Information that may be disclosed under Section 59-1-404(3) includes:

1. the following information related to the property's tax exempt status:

a) information provided on the application for property tax exempt status;

b) information used in the determination of whether a property tax exemption should be granted or revoked; and

c) any other information related to a property's property tax exemption;

2. the following information related to penalty or interest relating to property taxes that the county legislative body determines should be abated:

a) the amount of penalty or interest that is abated;

b) information provided on an application or request for abatement of penalty or interest;

c) information used in the determination of the abatement of penalty or interest; and

d) any other information related to the amount of penalty or interest that is abated; and

3. the following information related to the amount of property tax due on property:

a) the amount of taxes refunded or deducted as an erroneous or illegal assessment under Section 59-2-1321;

b) information provided on an application or request that property has been erroneously or illegally assessed under Section 59-2-1321; and

c) any other information related to the amount of taxes refunded or deducted under 3.a).

KEY: developmentally disabled, grievance procedures, taxation, disclosure requirements
[~~September 25, 2003~~]2004
Notice of Continuation April 22, 2002
59-1-404

▼ ▼

Transportation, Preconstruction
R930-3
Highway Noise Abatement

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 27156
FILED: 05/14/2004, 14:07

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment is needed to change the methodology by which the department decides when noise walls are needed and to eliminate what is called Type II noise walls.

SUMMARY OF THE RULE OR CHANGE: This amendment makes several clarifications to the process by which a decision to construct a noise wall is made. It also eliminates Type II noise walls, which are retrofits on existing highways. Some of the decibel level measurements that justify noise walls are also changed.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 72-1-201 and 72-6-111

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The amendment will neither increase or decrease costs. The actual cost of noise wall construction also will not change as a result of this amendment.
❖ LOCAL GOVERNMENTS: This change does not affect local governments; therefore, there will be no costs or savings to them.
❖ OTHER PERSONS: The current program does not require other persons to bear any cost and neither does this amendment.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be no compliance costs as a result of this rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact from this rule because it neither increases anyone's costs nor makes a saving in the budget.

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

TRANSPORTATION
PRECONSTRUCTION
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 07/01/2004.

THIS RULE MAY BECOME EFFECTIVE ON: 07/02/2004

AUTHORIZED BY: John R. Njord, Executive Director

R930. Transportation, Preconstruction.
R930-3. Highway Noise Abatement.
R930-3-0. Purpose.

The following is consistent with the Federal Highway Administration's Procedures for Abatement of Highway Traffic Noise, 23 CFR 772, which is hereby adopted and incorporated by reference, and in accordance with Utah Code Ann. Section 72-6-111. It is provided to address highway noise impacts and to determine the conditions under which noise abatement may be approved.

R930-3-1. Definitions.

(1) "Existing Noise Level" means the noise level, Leq, resulting from the natural and mechanical sources and human activity, considered to be usually present in a particular area.

(2) "Design Noise Level" means the noise level, Leq, calculated for the worst traffic noise conditions likely to occur on a regular basis during the future design year, using a method approved by FHWA.

(3) "Type I Project" means a highway construction project that is related to an increase in traffic noise - construction of a highway on new location or the physical alteration of an existing highway which significantly changes the alignment or increases the number of through-traffic lanes.

(4) "Type II Project" means a proposed highway project strictly for noise abatement on an existing highway.

(5) "UDOT" means Utah Department of Transportation.

(6) "FHWA" means Federal Highway Administration.[

~~(7) "Sensitive Land Use" means dwelling units or other fixed, developed sites of frequent human use not exceeding 300 m from the right-of-way line.~~]

([~~8~~]7) "dBA" means decibels of sound expressed or measured using the "A" weighting scale of a sound-pressure level meter.

([~~9~~]8) "AASHTO" means American Association of State Highway and Transportation Officials.

R930-3-2. Applicability.

(1) Type I Projects. Noise abatement shall be considered for Type I projects where noise impacts are identified. A new or proposed subdivision or other development must have obtained [~~approval~~]a formal building permit from the appropriate local government agency for final plans for development [~~prior~~]before the issuance of the final environmental decision document.[~~to either of the following dates, whichever comes first:~~

~~(a) the earliest environmental approval date of the highway improvement,~~

~~(b) the date the local government agency's general plan or master plan has designated the highway for major improvements.~~]

(2) Type II Projects. UDOT does not provide a noise retrofit (Type II) program to construct noise abatement measures along existing state transportation facilities[~~Noise abatement may be considered for Type II projects where noise impacts are identified and under the following conditions:~~

~~(a) As requests are received by the Department from local government agencies, noise studies shall be conducted and qualifying projects shall be prioritized.~~

~~(b) Type II projects apply only to freeways (high speed highways with full access control), and to expressways (high speed highways with limited access control).~~

~~(c) Noise abatement for developments that are approved after the earliest date as provided in R930-3-2(1) shall not be considered.~~

~~(d) Residences are the primary focus of Type II noise abatement.~~

~~(e) Type II projects shall be prioritized annually for funding purposes based upon the existing noise level for typical dwellings nearest the highway. The project with the highest existing noise level has the highest priority. In case of a tie, the project with the earliest agency request date is higher on the list.~~

~~(f) Projects from the prioritized list shall be designed and built as funding becomes available for Type II projects.~~

~~(g) Projects that are not high enough on the list to be funded shall be carried over to the next year's list and reprioritized along with new projects~~].

R930-3-3. Noise Impact Determination.

A traffic noise impact occurs, for purposes of this policy, when either of the following conditions exists at a sensitive land use:

(1) [~~both and Type II~~]The design noise level is greater than or equal to[~~approaches (is within two dBA of) or exceeds~~] the UDOT Noise Abatement Criterion (NAC) in Table 1 for each corresponding land use category.[~~Applies to Type I projects only.~~]

(2) The design noise level substantially exceeds (ten dBA or more) the existing noise level.[~~Applies to Type I projects only.~~

~~(3) The existing noise level approaches (is within two dBA of) or exceeds the Noise Abatement Criterion (NAC) in Table II. Applies to Type II projects only.~~]

R930-3-4. Noise Abatement Objective.

When noise abatement measures are being considered, every reasonable effort shall be made to obtain substantial noise reductions consistent with Department procedures.

R930-3-5. Noise Abatement Conditions.

In order to be considered for noise abatement, all of the following conditions must be met, if applicable:

(1) A noise abatement device shall not be installed where it will create a hazard or violate design standards. Specifically, noise abatement walls shall not be added within the highway clear zone as defined in the AASHTO Roadside Design Guide, unless a safety barrier already exists.

(2) At least five dBA of noise reduction must be achievable at typical impacted receivers nearest the highway.

[~~(3) The cost per dwelling in the formula shown in paragraph (c) below should not exceed either of the following limits. These limits are tied to a three year average bid price index published annually by the Department, and a standard noise barrier wall configuration of three meter high by seventy meter long wall per receptor. The Direct Cost Limit is calculated to be thirty percent greater than the Abatement Limit.~~

~~(a) Abatement Limit - A limit for fabrication and installation of noise abatement measures without appurtenances (other direct costs).~~

~~(b) Direct Cost Limit - A limit for noise abatement measures with appurtenances. Appurtenances are direct costs associated with the noise abatement and depends on the particular site. They may include earthwork, landscaping and associated irrigation, aesthetic or sound absorbing on walls, new right-of-way, easements for construction and/or maintenance and incidental construction costs.~~

~~(c) Cost per dwelling = C/SD.~~

~~(i) C = total cost of abatement.~~

~~(ii) D = total number of impacted dwellings that shall likely receive some noticeable benefit, three dBA or more, within 300 meters of the Department right-of-way.~~

~~(iii) S = Severity factor - an average weight applied to the number of affected dwellings, related to the amount of noise impact. For Type II projects, S = 1.~~

~~TABLE I - SEVERITY FACTORS, S~~
~~(Applicable Only to Type I Projects)~~

Does the Design Noise Level Approach or Exceed the NAC?	Increase in Noise, dBA (Design - Existing) 0-9	10-19	20-29	30+
Yes	1	2	3	4
No	*	1	2	3

~~* Impact severity = 0, so abatement is not considered~~

~~(d) Noise barriers shall not be planned for dwellings with access directly onto the highway. The reasons are poor barrier performance and poor sight distance.~~

~~(e) Noise abatement shall not be planned for Land Use Categories C and D shown in Table II.~~

~~(f) Other land use activities shall be analyzed on a case by case basis.~~](3) Residential Areas (Category B, Table 1):

(a) For residential areas, benefited receivers must be considered in determining a noise barrier's cost per receiver regardless of whether or not they were identified as impacted. A benefited receiver is any impacted or non-impacted receiver that gets a noise reduction of 5 dBA or more as a result of the noise barrier. The maximum cost used to determine reasonableness to provide noise abatement will be $25,000 per benefited receiver. This cost may be periodically reviewed by the Department for reasonableness and updating, as needed.

(b) In the event that the noise barrier cost is greater than $25,000 per receiver, the cost will be considered to be reasonable only if it can be demonstrated that a "severe" noise impact will occur. Severe traffic noise impacts are defined as traffic noise levels by 30 dBA or more, or results in absolute exterior nose levels of 80 dBA or greater. Based on severity, abatement will be considered on a case-by-case basis.

(c) For non-residential areas (Category A, B, or C, Table 1): The cost of noise abatement measures for schools, parks, churches and other non-residential developments including commercial and industrial areas will depend on height of noise wall required and corresponding length of frontage this type of development has exposed to the transportation facility. In any case, a reasonable cost for mitigation for noise abatement will not exceed $200 per linear foot of wall (for a 10-foot high wall) installed. The cost may be be periodically reviewed for reasonableness and updating, as needed.

R930-3-6. Other Considerations.

Noise abatement benefits shall be consistent with overall social, economic, and environmental conditions on both sides of the highway. Aesthetics shall be considered where appropriate' including graffiti deterrence and surrounding landscape. Other factors may be considered.

R930-3-7. Declaration of Intent.

Environmental documents shall indicate those areas where mitigation is "likely." "Likely" does not mean a firm commitment. A final decision on the installation of the abatement measures shall be made upon completion of the project design and the public involvement process and based upon what the department believes is reasonable and feasible.

R930-3-8. Public Involvement.

(1) Department representatives shall contact the local government agency[~~,~~]and impacted[~~affected~~] residents[~~, on both sides of the highway, and land owners~~]. This shall be done prior to completion of the final environmental decision document[~~design~~]. The concerns of the impacted [~~land owners,~~] residents[~~,~~] and local government agency shall be a major consideration in reaching a decision on the abatement measures to be provided.

(2) Noise abatement may not be planned after local government agency and impacted residents'[~~affected land owner~~] involvement if the majority of them[~~the affected people~~] are in opposition or indifferent to noise mitigation.

R930-3-9. Coordination with Local Officials.

[~~(1) Effective control of highway traffic noise requires land uses near highways to be controlled. Local authorities must have taken measures to exercise land use control over undeveloped lands adjacent to State highways in the local jurisdiction to:~~

~~(a) conduct a study to determine the noise levels along new development adjacent to an existing state highway or a dedicated right-of-way; and~~

~~(b) the construction of noise abatement measures at the expense of the developer if noise levels exceed values shown in Table II.~~

~~(2)~~]The Department shall coordinate in the local government review process with regard to aesthetics, height, and other design features of the proposed noise abatement measure. Effective control of highway traffic noise requires land uses near highways to be controlled, but land use planning and control belong to local government jurisdiction. UDOT shall, upon request, assist local agencies by giving information that shall help them to be aware of incompatible land uses near state highways.[~~- Developments that come into existence after the earliest date of public knowledge of the highway's approved alignment shall not be considered for Type II projects.~~]

R930-3-10. Local Government Participation.

In instances where abatement costs would exceed a limit in paragraph R930-3-5(3), the local government agency may be offered the option to share in the cost of abatement. In order for the Department to participate in shared abatement costs, the following conditions must be met:

(1) The Department's share of the cost shall not exceed the limits in paragraph R930-3-5(3). The participating local government agency shall pay the Department an amount equal to the estimated cost of the abatement measure and appurtenances proposed that exceeds the limits in paragraph R930-3-5(3). The settlement agreement shall be signed before design begins. Payment shall be made to the Department before construction begins.

(2) The participating local government agency's final share shall be based on actual construction costs.

R930-3-11. Projects Funded From Other Sources.

The Utah Code authorizes the Department to construct and maintain noise abatement measures along state highways in cases where the cost for the noise abatement is provided by citizens, adjacent property owners, developers, or local governments, and meeting other established criteria. These cases may be treated as a special application of Paragraph R930-3-10, in which the Department may design, build, and maintain the abatement measure, and the local government agency shall pay the Department for all preliminary engineering and construction costs.

R930-3-12. Construction Off Right-of-Way.

Normally, noise barriers (walls or berms) built pursuant to this policy shall be constructed within Department right-of-way and owned and maintained by the Department. There are cases in which Department right-of-way is not the most prudent location for noise barriers, yet noise abatement can be very feasible and reasonable if built on adjacent property or adjacent public right-of-way. In these cases:

(1) The Department's cost is limited to normal cost for abatement on Department right-of-way.

(2) In no case shall the Department construct a noise barrier unless the adjacent property owners allow access and easements as necessary in order to construct and maintain the barrier.

(3) Maintenance of noise walls and associated landscaping on the side facing the highway shall normally be the Department's responsibility. The opposite side shall be maintained by the property owner.

(4) When landscaping is included off the Department right-of-way, the Department and landowner shall sign an irrigation agreement. The Department shall not pay for irrigation off the right-of-way.

TABLE I[~~II~~] - UDOT NOISE ABATEMENT CRITERIA (NAC)
[~~Hourly A Weighted Sound Level - decibels (dBA)~~]

Land Use Activity Category	Leq(h), dba*	Description of Activity Category
A	[~~57~~]55 (Exterior)	Lands on which serenity and quiet are of extraordinary significance and serve an important public need and where the preservation of those qualities is essential if the area is to continue to serve its intended purpose.
B	[~~67~~]65 (Exterior)	Picnic areas, fixed recreation areas, active sports areas, parks, residences, motels, hotels, schools, churches, libraries, and hospitals.
C	[~~72~~]70 (Exterior)	Cemeteries, commercial areas, industrial areas, exterior office buildings, and other developed lands, properties or activities not included in Categories A or B above.
D	No limit	Undeveloped lands[~~, including roadside facilities and dispersed recreation~~].
E	52 (Interior)	Motels, hotels, public meeting rooms, schools churches, libraries, hospitals, and auditoriums. (The interior criterion only applies when there are no exterior activities affected by traffic noise.)

* Hourly A-weighed sound level in Decibels, Reflecting a zdBA "Approach" Value Below 23 CFR 772

KEY: [~~noise control, noise abatement*, noise wall*~~]transportation, barrier, traffic noise abatement, highways
[~~February 15, 1997~~]2004
Notice of Continuation January 22, 2002
72-1-201
72-7-101

End of the Notices of Proposed Rules Section

NOTICES OF
120-DAY (EMERGENCY) RULES

An agency may file a 120-DAY (EMERGENCY) RULE when it finds that the regular rulemaking procedures would:

(a) cause an imminent peril to the public health, safety, or welfare;
(b) cause an imminent budget reduction because of budget restraints or federal requirements; or
(c) place the agency in violation of federal or state law (*Utah Code* Subsection 63-46a-7(1) (2001)).

As with a PROPOSED RULE, a 120-DAY RULE is preceded by a RULE ANALYSIS. This analysis provides summary information about the 120-DAY RULE including the name of a contact person, justification for filing a 120-DAY RULE, anticipated cost impact of the rule, and legal cross-references. A row of dots in the text (· · · · ·) indicates that unaffected text was removed to conserve space.

A 120-DAY RULE is effective at the moment the Division of Administrative Rules receives the filing, or on a later date designated by the agency. A 120-DAY RULE is effective for 120 days or until it is superseded by a permanent rule.

Because 120-DAY RULES are effective immediately, the law does not require a public comment period. However, when an agency files a 120-DAY RULE, it usually files a PROPOSED RULE at the same time, to make the requirements permanent. Comment may be made on the proposed rule. Emergency or 120-DAY RULES are governed by *Utah Code* Section 63-46a-7 (2001); and *Utah Administrative Code* Section R15-4-8.

Public Safety, Driver License
R708-3
Driver License Point System Administration

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 27142
FILED: 05/05/2004, 17:12

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this emergency rule is to bring the Driver License Division in compliance with the changes made in the statute (Section 53-3-109) during the last legislative session (see S.B. 168) regarding the Driver License Division Record Reporting period for drug and alcohol related offenses. (DAR NOTE: S.B. 168 is found at UT L 2004 Ch 161, and was effective 05/03/2004.)

SUMMARY OF THE RULE OR CHANGE: We have changed the language in Subsection R708-3-4(3) so the division can provide the current and correct information to the public concerning point violations that may go onto their driving record and the length of time it stays on the record.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 53-3-221(4) and 53-3-209(2)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There will be no cost or savings in the state budget because the changes are procedural.
❖ LOCAL GOVERNMENTS: There are no cost or savings to local government because they are not involved in record keeping for the Driver license Division.
❖ OTHER PERSONS: There will be no extra cost or savings to the public because this is a procedural change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to the public for changing information on the Driver License Records because this is a procedural change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses due to this rule change.

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.
This emergency rule will allow the division to immediately come into compliance with the change made in the statute and make it legal for the division to continue to update its records for the public, courts, etc. as per the intent of the legislation.

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
PUBLIC SAFETY
DRIVER LICENSE
CALVIN L RAMPTON COMPLEX
4501 S 2700 W 3RD FL
SALT LAKE CITY UT 84119-5595, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Vinn Roos at the above address, by phone at 801-965-4456, by FAX at 801-964-4482, or by Internet E-mail at vroos@utah.gov

THIS RULE IS EFFECTIVE ON: 05/05/2004

AUTHORIZED BY: Judy Hamaker Mann, Director

R708. Public Safety, Driver License.
R708-3. Driver License Point System Administration.
R708-3-1. Purpose.

The purpose of this rule is to establish procedures for the administration of a point system for drivers age 21 and older as mandated by Subsection 53-3-221(4) and a point system for drivers age 20 and younger as mandated by Subsection 53-3-209(2).

R708-3-2. Authority.

This rule is authorized by Subsections 53-3-209(2), 53-3-221(4), and 63-46b-5(1).

R708-3-3. Definitions.

(1) "Defensive driving course" means a course sponsored and conducted by a certified designee of the Utah Safety Council or the National Safety Council which allows the division to grant a 50 point reduction from the driving records of drivers who successfully complete the course.

(2) "Division" means the Driver License Division of the Utah Department of Public Safety.

(3) "License" means the privilege to drive a motor vehicle.

(4) "Probation" means a division sanction whereby a driver is permitted to drive by complying with certain terms and conditions established by the division.

(5) "Provisional license" means a driving privilege issued by the division to a person younger than 21 years of age.

R708-3-4. Point Assignment.

(1) In compliance with Subsection 53-3-221(4), the division shall determine a number of points to be assigned to each moving traffic violation as a measure of the violation's seriousness.

(2) In compliance with Subsection 53-3-221(4)(c), the driving record of the driver will be assessed 35 points for minimum speeding violations, 55 points for intermediate speeding violations, and 75 points for maximum speeding violations. Since excessive speed has been demonstrated by the National Safety Council and the Department of Public Safety's Utah Traffic Accident Summary to be a leading contributing factor in causing vehicular accidents, the division has determined that the assessing of no points for minimum speeding violations would be detrimental to public safety.

(3) [~~This rule incorporates by reference "The Code Violation Table", dated February 01, 2001, published by the~~]The Driver License Division, Utah Department of Public Safety, [~~which is~~]shall make available for public review and inspection at the division office, reception desk, 4501 South 2700 West, Salt Lake City, Utah 84130-0560[~~. This~~] a [~~document lists~~]listing of the number of points assigned to moving traffic violations and the length of time that the violations remain on the record.

(4) Moving traffic violations which require mandatory sanction by law or rule are assigned 0 points.

R708-3-5. Point Increase or Decrease.

(1) Total points accumulated will be increased or decreased by the following means:

(a) a 10% increase or decrease in points assigned to any moving violation, except speed violations in accordance with Subsection 53-3-221(4)(b);

(b) a 50 point decrease once in a three year period after successfully completing a defensive driving course as defined in this rule;

(c) a 50% point decrease after one year of violation free driving in accordance with Subsection 53-3-221(4)(d); and

(d) a 100% point decrease after two years of violation free driving in accordance with Subsection 53-3-221(4)(d).

(2) The assigned points for any moving traffic violation will be dropped three years after the violation occurred in accordance with Subsection 53-3-221(4)(d).

(3) The point total after a sanction for drivers under age 21 will decrease to 35 points except when the point total is already below 35.

(4) The point total after a sanction for drivers age 21 and older will decrease to 125 points except when the point total is already below 125 in accordance with this rule.

R708-3-6. Point System Thresholds for Drivers Age 21 and Older.

(1) Upon receiving notice of a court conviction of a moving traffic violation, the division will post the violation to the driving record of the individual convicted, along with the points assigned to the violation, as designated in the code violation table.

(2) The division will use the following point thresholds to determine the severity of the sanction to be levied against the driver:

(a) 150 to 199 points: driver is sent a warning letter;

(b) 200 points: driver must appear for a hearing;

(c) 200 to 299 points: driver may be placed on probation or suspended for three months;

(d) 300 to 399 points: driver is suspended for 3 months;

(e) 400 to 599 points: driver is suspended for 6 months; and

(f) 600 or more points: driver is suspended for 1 year.

(3) A driver who is within a designated threshold may be considered for action at a lower threshold if completion of the defensive driving course has lowered the point total to that lower threshold.

(4) The suspension time is doubled, up to a maximum of one year, for a second or subsequent suspension within a three year period.

R708-3-7. Separate Point System for Provisional Licensed Drivers.

(1) In compliance with Subsection 53-3-209(2), a separate point system is established to facilitate behavioral influence upon drivers age 20 and younger. The point thresholds are designed to take remedial action earlier than is provided for drivers who are age 21 and older.

(2) In compliance with Subsection 53-3-209(2), and in conjunction with the consideration of point totals, the division may counsel a driver with regards to the development of safe driving attitudes, habits, and skills.

R708-3-8. Point System Thresholds for Provisional Licensed Drivers.

(1) Upon receiving notice of a court conviction of a moving traffic violation, the division will post the violation to the driving record of the individual convicted, along with the points assigned to the violation, as designated in the code violation table.

(2) The division will use the following point thresholds to determine the severity of the sanction to be levied against the driver:

(a) 35 to 69 points: driver is sent a warning letter;

(b) 70 points: driver must appear for a hearing;

(c) 70 to 139 points: driver may be placed on probation or denied for 30 days;

(d) 140 to 199 points, or violation of probation for the first time in a three year period: driver may be denied for 30 days;

(e) 140 to 199 points for a second time in a three year period or a second probation violation in a three year period: driver may be denied for 60 days;

(f) 140 to 199 points for a third time in a three year period or a third probation violation in a three year period: driver may be suspended for 90 days;

(g) 200 to 249 points: driver is suspended for 60 days;

(h) 250 to 349 points: driver is suspended for 90 days;

(i) 350 to 449 points: driver is suspended for 6 months; and

(j) 450 or more: driver is suspended for 1 year.

(3) A driver who is within a designated threshold may be considered for action at a lower threshold if completion of the defensive driving course has lowered the point total to that lower threshold.

(4) In accordance with Subsection 53-3-209(2)(b)(iii), the first two sanctions within a three year period will deny a driving privilege unless the point total is 200 or more. A third or additional sanction within a three year period will result in a suspension at the next highest threshold, which doubles in length for each succeeding sanction within the three year period up to a maximum of one year.

R708-3-9. Hearing.

Drivers who are sanctioned under the provisions of this point system rule are entitled to a hearing in accordance with Subsection 53-3-221(5)(a)(i) and R708-35.

KEY: traffic violations, point-system
[~~March 6, 2001~~]2004
Notice of Continuation July 25, 2002
53-3-209(2)
53-3-221(4)

End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by *Utah Code* Section 63-46a-9 (1998).

Natural Resources, Parks and Recreation

R651-633

Special Closures or Restrictions

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 27139
FILED: 05/03/2004, 12:23

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 63-11-17 authorizes the board to make rules governing the use and protection of state parks. In doing so, they may enact appropriate regulations to protect state parks and property from misuse, damage, and to preserve the peace in state parks.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: In order to keep safety within the state parks, certain dangerous activities are prohibited. Activities like access to motorized vehicles, alcoholic beverages, dogs on trails, cliff diving and hang gliding, para gliding and B.A.S.E. jumping, hiking, walking are prohibited or limited by this rule to maintain the safety of park visitors and the safety and preservation of certain wildlife and canyons. Continuation of this rule will assist the public to by informing them of areas or parks that have been closed or restricted for safety or other purposes.

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

NATURAL RESOURCES
PARKS AND RECREATION
Room 116
1594 W NORTH TEMPLE
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Dee Guess at the above address, by phone at 801-538-7320, by FAX at 801-537-3144, or by Internet E-mail at deeguess@utah.gov

AUTHORIZED BY: Gordon Topham, Deputy Director

EFFECTIVE: 05/03/2004

Professional Practices Advisory Commission, Administration

R686-103

Professional Practices and Conduct for Utah Educators

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 27141
FILED: 05/05/2004, 15:43

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: Subsection 53A-6-306(1)(a) directs the Utah Professional Practices Advisory Commission to adopt rules to carry out its responsibilities under the 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: No written comments 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 because it provides standards for competent practices and ethical conduct for Utah educators; and therefore, the rule should be continued.

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

PROFESSIONAL PRACTICES ADVISORY COMMISSION
ADMINISTRATION
250 E 500 S
SALT LAKE CITY UT 84111, 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: 05/05/2004

End of the Five-Year Notices of Review and Statements of Continuation Section

NOTICES OF FIVE-YEAR REVIEW EXTENSIONS

Rulewriting agencies are required by law to review each of their administrative rules within five years of the date of the rule's original enactment or the date of last review (*Utah Code* Section 63-46a-9 (1996)). If the agency finds that it will not meet the deadline for review of the rule (the five-year anniversary date), it may file an extension with the Division of Administrative Rules. The extension permits the agency to file the review up to 120 days beyond the anniversary date.

Agencies have filed extensions for the rules listed below. The "Extended Due Date" is 120 days after the anniversary date. The five-year review extension is governed by *Utah Code* Subsection 63-46a-9(4) and (5) (1996).

Environmental Quality

Air Quality

No. 27144 (filed 05/07/2004 at 2:20 p.m.): R307-343. Davis and Salt Lake Counties and Ozone Nonattainment Areas: Emissions Standards for Wood Furniture Manufacturing Operations.
Enacted or Last Five-Year Review: 06/02/99 (No. 21727, CPR, filed 04/12/99 at 2:21 p.m., published 05/01/99)
Extended Due Date: 09/30/2004

End of the Notices of Five-Year Review Extensions Section

NOTICES OF RULE EFFECTIVE DATES

These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. These effective dates are at least 31 days and not more than 120 days after the date the following rules were published.

Abbreviations
AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal and Reenact
REP = Repeal

Agriculture and Food
Animal Industry
No. 26989 (AMD): R58-20-5. Facilities.
Published: April 1, 2004
Effective: May 4, 2004

Commerce
Occupational and Professional Licensing
No. 26998 (AMD): R156-71-202. Naturopathic Physician Formulary.
Published: April 1, 2004
Effective: May 4, 2004

Education
Administration
No. 26999 (AMD): R277-469. Instructional Materials Commission Operating Procedures.
Published: April 1, 2004
Effective: May 5, 2004

No. 27000 (AMD): R277-518. Vocational-Technical Certificates.
Published: April 1, 2004
Effective: May 5, 2004

No. 27001 (REP): R277-734. Standards and Procedures for Adult Education Section 353 Funds.
Published: April 1, 2004
Effective: May 5, 2004

Health
Health Care Financing, Coverage and Reimbursement Policy
No. 26964 (AMD): R414-49. Dental Service.
Published: March 15, 2004
Effective: May 7, 2004

No. 26965 (AMD): R414-305-3. Spousal Impoverishment Resource Rules for Married Institutionalized Individuals.
Published: March 15, 2004
Effective: May 7, 2004

Insurance
Administration
No. 26791 (CPR): R590-153. Unfair Inducements and Marketing Practices in Obtaining Title Insurance Business.
Published: April 1, 2004
Effective: May 13, 2004

No. 26791 (AMD): R590-153. Unfair Inducements and Marketing Practices in Obtaining Title Insurance Business.
Published: December 1, 2003
Effective: May 13, 2004

Natural Resources
Water Rights
No. 26984 (AMD): R655-13. Stream Alteration.
Published: April 1, 2004
Effective: May 4, 2004

Public Safety
Fire Marshal
No. 27003 (AMD): R710-4. Buildings Under the Jurisdiction of the State Fire Prevention Board.
Published: April 1, 2004
Effective: May 5, 2004

No. 27002 (AMD): R710-9. Rules Pursuant to the Utah Fire Prevention Law.
Published: April 1, 2004
Effective: May 5, 2004

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, 2004, including notices of effective date received through May 14, 2004, the effective dates of which are no later than June 1, 2004. 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. 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
EXD = Expired
NSC = Nonsubstantive rule change
REP = Repeal
R&R = Repeal and reenact
5YR = Five-Year Review

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Administrative Services					
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R23-29	Across the Board Delegation	26991	5YR	03/10/2004	2004-7/35
Fleet Operations, Surplus Property					
R28-3	Utah State Agency for Surplus Property Adjudicative Proceedings	26843	AMD	02/12/2004	2004-1/4
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Animal Industry					
R58-20	Domesticated Elk Hunting Parks	26990	5YR	03/05/2004	2004-7/35
R58-20-5	Facilities	26989	AMD	05/04/2004	2004-7/3
R58-21	Trichomoniasis	26891	AMD	03/04/2004	2004-3/4
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R68-7-6	Categorization of Pesticide Applicators	26794	NSC	01/01/2004	Not Printed

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R156-1-106	Division - Duties, Functions, and Responsibilities	26805	AMD	01/20/2004	2003-24/4
R156-5a	Podiatric Physician Licensing Act Rules	26917	5YR	01/27/2004	2004-4/74
R156-17a-612	Operating Standards - Pharmaceutical Wholesaler/Distributor and Pharmaceutical Manufacturer located in Utah	26754	AMD	02/19/2004	2003-22/11
R156-17a-612	Operating Standards - Pharmaceutical Wholesaler/Distributor and Pharmaceutical Manufacturer located in Utah	26754	CPR	02/19/2004	2004-2/10
R156-22-503	Administrative Penalties	26859	NSC	01/01/2004	Not Printed
R156-26a-303b	Renewal and Reinstatement Requirements - Continuing Professional Education (CPE)	26786	AMD	01/06/2004	2003-23/7
R156-26a-303b	Renewal and Reinstatement Requirements - Continuing Professional Education (CPE)	27019	AMD	05/24/2004	2004-8/32
R156-37c	Utah Controlled Substance Precursor Act Rules	26916	5YR	01/27/2004	2004-4/74
R156-38	Residence Lien Restriction and Lien Recovery Fund Rules	26834	AMD	02/03/2004	2004-1/5
R156-39a	Alternative Dispute Resolution Providers Certification Act Rules	26915	5YR	01/27/2004	2004-4/75
R156-54-302b	Examination Requirements - Radiology Practical Technician	26580	AMD	01/20/2004	2003-18/4
R156-54-302b	Examination Requirements - Radiology Practical Technician	26580	CPR	01/20/2004	2003-24/70
R156-56	Utah Uniform Building Standard Act Rules	26693	AMD	01/01/2004	2003-21/7
R156-56	Utah Uniform Building Standard Act Rules	26866	NSC	01/01/2004	Not Printed
R156-56-707	Statewide Amendments to the IPC	26692	AMD	01/01/2004	2003-21/34
R156-63	Security Personnel Licensing Act Rules	26888	AMD	03/04/2004	2004-3/5
R156-68	Utah Osteopathic Medical Practice Act Rules	26956	AMD	04/15/2004	2004-6/2
R156-71-202	Naturopathic Physician Formulary	26998	AMD	05/04/2004	2004-7/3
R156-74	Certified Shorthand Reporters Licensing Act Rules	26927	5YR	02/02/2004	2004-4/75
R156-76-102	Definitions	26777	AMD	01/20/2004	2003-23/14
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R164-11-2	Hearings for Certain Exchanges of Securities	26481	AMD	01/05/2004	2003-15/17
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R277-486	Professional Staff Cost Program	26828	NEW	01/15/2004	2003-24/5
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R277-517	Athletic Coaching Certification	26852	AMD	02/05/2004	2004-1/18
R277-518	Vocational-Technical Certificates	27000	AMD	05/05/2004	2004-7/8
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R307-110-31	Section X, Vehicle Inspection and Maintenance Program, Part A, General Requirements	26898	CPR	05/18/2004	2004-8/87
R307-110-34	Section X, Vehicle Inspection and Maintenance Program, Part D, Utah County	26899	CPR	05/18/2004	2004-8/88
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R307-415	Permits: Operating Permit Requirements	26940	5YR	02/09/2004	2004-5/45
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R309-705	Financial Assistance: Federal Drinking Water Project Revolving Loan Program	26760	AMD	01/01/2004	2003-22/19
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R317-2	Standards of Quality for Waters of the State	26242	AMD	01/06/2004	2003-10/27
R317-8	Utah Pollutant Discharge Elimination System (UPDES)	26903	AMD	03/30/2004	2004-3/19
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R382-10	Eligibility	26757	AMD	01/05/2004	2003-22/21
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R414-1A	Medicaid Policy for Experimental, Investigational or Unproven Medical Practices	27023	AMD	05/25/2004	2004-8/68
R414-9	Federally Qualified Health Centers	26854	NEW	02/03/2004	2004-1/26
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R414-304	Income and Budgeting	26781	AMD	01/01/2004	2003-23/29
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R432-4	General Construction	26869	5YR	01/05/2004	2004-3/46
R432-5	Nursing Facility Construction	26877	5YR	01/05/2004	2004-3/46
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R432-150-6	Reserved	26993	AMD	05/26/2004	2004-7/13
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R590-102	Insurance Department Fee Payment Rule	26787	AMD	01/08/2004	2003-23/39
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R590-153	Unfair Inducements and Marketing Practices in Obtaining Title Insurance Business	26791	CPR	05/13/2004	2004-7/31
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R590-191	Unfair Life Insurance Claims Settlement Practices Rule	27115	5YR	04/26/2004	2004-10/40
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R590-225	Submission of Property and Casualty Rate and Form Filings	26821	NEW	03/24/2004	2003-24/38
R590-226	Submission of Life Insurance Filings	26951	NEW	04/08/2004	2004-5/14
R590-227	Submission of Annuity Filings	26952	NEW	04/08/2004	2004-5/20
R590-228	Submission of Credit Life and Credit Accident and Health Insurance Form and Rate Filings	26950	NEW	04/08/2004	2004-5/25
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R616-2-3	Safety Codes and Rules for Boilers and Pressure Vessels	26967	AMD	04/15/2004	2004-6/55
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R651-611	Fee Schedule	26948	AMD	04/01/2004	2004-5/29
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R653-5	Cloud Seeding	26784	AMD	01/07/2004	2003-23/59
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ABBREVIATIONS

AMD = Amendment
CPR = Change in proposed rule
EMR = Emergency rule (120 day)
NEW = New rule
EXD = Expired
NSC = Nonsubstantive rule change
REP = Repeal
R&R = Repeal and reenact
5YR = Five-Year Review

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	26993	R432-150-6	AMD	05/26/2004	2004-7/13
	26992	R432-270-29b	AMD	05/26/2004	2004-7/15
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	26799	R428-11	AMD	02/27/2004	2003-23/37
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	26949	R68-20-1	AMD	04/01/2004	2004-5/2
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	26882	R590-102-5	NSC	02/01/2004	Not Printed
	27126	R590-166	5YR	04/28/2004	2004-10/39
	26812	R590-170	NSC	01/01/2004	Not Printed
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	27121	R590-93	5YR	04/28/2004	2004-10/38
	27122	R590-98	5YR	04/28/2004	2004-10/39
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	26788	R710-9	AMD	01/02/2004	2003-23/72
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Education, Administration	26851	R277-520	R&R	02/05/2004	2004-1/20
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	26805	R156-1-106	AMD	01/20/2004	2003-24/4
	26917	R156-5a	5YR	01/27/2004	2004-4/74
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	26754	R156-17a-612	AMD	02/19/2004	2003-22/11
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	27019	R156-26a-303b	AMD	05/24/2004	2004-8/32
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	26866	R156-56	NSC	01/01/2004	Not Printed
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	26956	R156-68	AMD	04/15/2004	2004-6/2
	26998	R156-71-202	AMD	05/04/2004	2004-7/3
	26927	R156-74	5YR	02/02/2004	2004-4/75
	26777	R156-76-102	AMD	01/20/2004	2003-23/14
Human Services, Administration, Administrative Services, Licensing	26925	R501-2	AMD	03/17/2004	2004-4/16
	26804	R501-16	AMD	04/12/2004	2003-24/29
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Insurance, Administration	26951	R590-226	NEW	04/08/2004	2004-5/14

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Environmental Quality, Air Quality	26939	R307-214	5YR	02/09/2004	2004-5/44
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Commerce, Occupational and Professional Licensing	26915	R156-39a	5YR	01/27/2004	2004-4/75
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	26802	R414-50	AMD	01/28/2004	2003-24/13
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	26783	R414-53	AMD	01/28/2004	2003-23/28
	27012	R414-54	5YR	03/23/2004	2004-8/94
	26803	R414-54	AMD	01/28/2004	2003-24/14
	26809	R414-99	NEW	02/17/2004	2003-24/15
	26811	R414-300	NEW	02/10/2004	2003-24/17
	26781	R414-304	AMD	01/01/2004	2003-23/29
	26965	R414-305-3	AMD	05/07/2004	2004-6/50
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Natural Resources, Forestry, Fire and State Lands	26865	R652-40-1800	AMD	02/24/2004	2004-2/2
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Commerce, Occupational and Professional Licensing	26998	R156-71-202	AMD	05/04/2004	2004-7/3
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NCLB					
Education, Administration	26853	R277-524	NEW	02/05/2004	2004-1/25
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orthodontia					
Health, Health Care Financing, Coverage and Reimbursement Policy	26782	R414-51	AMD	01/28/2004	2003-23/25
osteopathic physician					
Commerce, Occupational and Professional Licensing	26956	R156-68	AMD	04/15/2004	2004-6/2
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Commerce, Occupational and Professional Licensing	26956	R156-68	AMD	04/15/2004	2004-6/2
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Workforce Services, Workforce Information and Payment Services	26924	R994-406	AMD	04/04/2004	2004-4/45
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Environmental Quality, Air Quality	26896	R307-110-12	CPR	05/18/2004	2004-8/87
	26898	R307-110-31	CPR	05/18/2004	2004-8/87
	26899	R307-110-34	CPR	05/18/2004	2004-8/88
	26897	R307-301	AMD	05/18/2004	2004-3/15
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Regents (Board Of), University of Utah, Museum of Natural History (Utah)	26913	R807-1	5YR	01/26/2004	2004-4/77
paraprofessional qualifications					
Education, Administration	26853	R277-524	NEW	02/05/2004	2004-1/25
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Natural Resources, Parks and Recreation	26776	R651-611	AMD	01/06/2004	2003-23/52
	26948	R651-611	AMD	04/01/2004	2004-5/29
	27139	R651-633	5YR	05/03/2004	2004-11/92
particulate matter					
Environmental Quality, Air Quality	26896	R307-110-12	CPR	05/18/2004	2004-8/87
	26898	R307-110-31	CPR	05/18/2004	2004-8/87
	26899	R307-110-34	CPR	05/18/2004	2004-8/88
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	26786	R156-26a-303b	AMD	01/06/2004	2003-23/7
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Natural Resources, Wildlife Resources	26820	R657-42	AMD	01/21/2004	2003-24/61
Transportation, Motor Carrier, Ports of Entry	26881	R912-14	5YR	01/05/2004	2004-3/51
permitting authority					
Environmental Quality, Air Quality	26941	R307-417	5YR	02/09/2004	2004-5/45
personal property					
Tax Commission, Property Tax	26910	R884-24P-24	NSC	01/27/2004	Not Printed
pharmacies					
Commerce, Occupational and Professional Licensing	26754	R156-17a-612	CPR	02/19/2004	2004-2/10
	26754	R156-17a-612	AMD	02/19/2004	2003-22/11
pharmacists					
Commerce, Occupational and Professional Licensing	26754	R156-17a-612	AMD	02/19/2004	2003-22/11
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podiatric physician					
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podiatrists					
Commerce, Occupational and Professional Licensing	26917	R156-5a	5YR	01/27/2004	2004-4/74
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postsecondary school					
Commerce, Consumer Protection	26905	R152-34	AMD	05/20/2004	2004-4/2
precursor					
Commerce, Occupational and Professional Licensing	26916	R156-37c	5YR	01/27/2004	2004-4/74
primary care					
Health, Health Care Financing, Coverage and Reimbursement Policy	26810	R414-310	AMD	02/10/2004	2003-24/18
primary care network					
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Commerce, Occupational and Professional Licensing	26888	R156-63	AMD	03/04/2004	2004-3/5
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professional geologists Commerce, Occupational and Professional Licensing	26777	R156-76-102	AMD	01/20/2004	2003-23/14
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professional staff Education, Administration	26828	R277-486	NEW	01/15/2004	2003-24/5
property casualty insurance filing Insurance, Administration	26821	R590-225	CPR	03/24/2004	2004-4/64
	26821	R590-225	NEW	03/24/2004	2003-24/38
property tax Tax Commission, Property Tax	26910	R884-24P-24	NSC	01/27/2004	Not Printed
prosecution Workforce Services, Workforce Information and Payment Services	26923	R994-104	REP	04/04/2004	2004-4/41
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	26793	R710-4	AMD	01/02/2004	2003-23/67
	27003	R710-4	AMD	05/05/2004	2004-7/19
public education Education, Administration	26871	R277-437	5YR	01/05/2004	2004-3/42
	26850	R277-462	AMD	02/05/2004	2004-1/16
	26870	R277-735	5YR	01/05/2004	2004-3/43
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	26676	R628-19	CPR	02/10/2004	2004-1/38
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	26774	R512-3	NSC	03/04/2004	Not Printed
public utilities Public Service Commission, Administration	26849	R746-100	CPR	04/01/2004	2004-5/36
	26849	R746-100	AMD	04/01/2004	2004-1/28
	26883	R746-365	5YR	01/06/2004	2004-3/49

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radiology technologist Commerce, Occupational and Professional Licensing	26580	R156-54-302b	AMD	01/20/2004	2003-18/4
radiology technologists Commerce, Occupational and Professional Licensing	26580	R156-54-302b	CPR	01/20/2004	2003-24/70
rates Labor Commission, Industrial Accidents	26697	R612-4-2	AMD	01/01/2004	2003-21/64
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real estate brokers Commerce, Real Estate	26835	R162-7-3	AMD	02/18/2004	2004-1/9
real estate business Commerce, Real Estate	27026	R162-3	AMD	05/20/2004	2004-8/44
	26944	R162-6-2	AMD	04/21/2004	2004-5/6
reclamation Natural Resources, Oil, Gas and Mining; Coal	26710	R645-301-100	AMD	02/06/2004	2003-22/34
	26711	R645-301-500	AMD	02/06/2004	2003-22/35
	26712	R645-303-200	AMD	02/06/2004	2003-22/36
	26713	R645-401	AMD	02/06/2004	2003-22/38
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replacement providers Public Service Commission, Administration	26785	R746-350	NEW	01/15/2004	2003-23/79
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	26907	R162-205	AMD	04/12/2004	2004-4/9
	26840	R162-206	NEW	02/03/2004	2004-1/12
	26839	R162-207	NEW	02/03/2004	2004-1/13
	26836	R162-208	NEW	02/03/2004	2004-1/14
	26906	R162-209	AMD	04/12/2004	2004-4/10
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Education, Administration	26958	R277-102	5YR	02/26/2004	2004-6/58
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Public Service Commission, Administration	26849	R746-100	AMD	04/01/2004	2004-1/28
	26849	R746-100	CPR	04/01/2004	2004-5/36
	26780	R746-200-6	AMD	01/07/2004	2003-23/76
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Labor Commission, Safety	26967	R616-2-3	AMD	04/15/2004	2004-6/55
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	26966	R616-3-3	AMD	04/15/2004	2004-6/56
Transportation, Motor Carrier	26880	R909-3	5YR	01/05/2004	2004-3/50
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Education, Administration	26961	R277-601	5YR	02/26/2004	2004-6/59
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Transportation, Motor Carrier	26880	R909-3	5YR	01/05/2004	2004-3/50
school lunch program					
Education, Administration	26830	R277-720	AMD	01/15/2004	2003-24/10
school transportation					
Education, Administration	26961	R277-601	5YR	02/26/2004	2004-6/59
schools					
Public Safety, Driver License	26894	R708-2	AMD	03/04/2004	2004-3/27
science					
Education, Administration	26979	R277-444	AMD	04/15/2004	2004-6/4
SDWA					
Environmental Quality, Drinking Water	26760	R309-705	AMD	01/01/2004	2003-22/19
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security guards					
Commerce, Occupational and Professional Licensing	26888	R156-63	AMD	03/04/2004	2004-3/5
services					
Public Service Commission, Administration	26785	R746-350	NEW	01/15/2004	2003-23/79
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Labor Commission, Adjudication	26773	R602-2-1	AMD	01/02/2004	2003-23/47
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Commerce, Occupational and Professional Licensing	26927	R156-74	5YR	02/02/2004	2004-4/75
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Transportation, Preconstruction, Right-of-Way Acquisition	26892	R933-2-3	EMR	01/14/2004	2004-3/39
	26893	R933-2-3	AMD	03/23/2004	2004-3/37
SLCC					
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	26899	R307-110-34	CPR	05/18/2004	2004-8/88
	26897	R307-301	AMD	05/18/2004	2004-3/15
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Environmental Quality, Solid and Hazardous Waste	26972	R315-320	5YR	03/01/2004	2004-6/61
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Environmental Quality, Drinking Water	26971	R309-204	AMD	04/21/2004	2004-6/23
source maintenance					
Environmental Quality, Drinking Water	26971	R309-204	AMD	04/21/2004	2004-6/23
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Commerce, Occupational and Professional Licensing	26859	R156-22-503	NSC	01/01/2004	Not Printed

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