UTAH STATE BULLETIN

OFFICIAL NOTICES OF UTAH STATE GOVERNMENT
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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 63G-3-402, *Utah Code Annotated* 1953.

Inquiries concerning administrative rules or other contents of the *Bulletin* may be addressed to the responsible agency or to: Division of Administrative Rules, 4120 State Office Building, Salt Lake City, Utah 84114, telephone (801) 538-3218, FAX (801) 538-1773. To view rules information, and on-line versions of the division's publications, visit: http://www.rules.utah.gov/

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

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SPECIAL NOTICES

Commerce
Administration

Public Hearing on Proposed Modified Fee Schedule for Services Provided and Costs Incurred by the Department of Commerce during Fiscal Year 2009

The Department of Commerce will hold a hearing on Monday, May 19, 2008, at 9:00 a.m. in the Heber M. Wells Building, 160 East 300 South, Room 210, Salt Lake City, Utah.

The purpose of the hearing is to obtain public comment on a proposed modified schedule for fees which could be assessed for services provided by the Department and costs which would be incurred for new programs created by the Legislature during the 2008 General Session. The proposed modified fee schedule supplements the Department's fee schedule approved by the Legislature during its 2008 General Session.

Subsection 63J-1-303(5)(a) of the Budgetary Procedures Act provides an agency may establish and assess regulatory fees for new programs created by the Legislature if the new program's effective date is before the Legislature's next annual general session. That statute governs the process for the interim assessment of such fees prior to subsequent legislative approval.

Background: Various divisions of the Department assess fees for licensure, registration, or certification of individuals and businesses to engage in certain occupations and professions. Copies of the proposed modified fee schedule will be distribute at the May 19, 2008, hearing.

For further information, please contact: Peter Anjewierden at (801) 530-6293.

Governor's Executive Order 2008-0003: Wildland Fire Management

EXECUTIVE ORDER

Wildland Fire Management

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

WHEREAS, wildland fires are burning and continue to burn in various areas statewide and present a serious threat to public safety, property, natural resources and the environment;

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

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

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

NOW THEREFORE, I, Jon M. Huntsman, Jr., 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, 2008 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 this 10th day of May 2008.

(State Seal)

Jon M. Huntsman, Jr.
Governor

ATTEST:

Gary R. Herbert
Lieutenant Governor

2008/0003

End of the Special Notices Section

NOTICES OF
PROPOSED RULES

A state agency may file a PROPOSED RULE when it determines the need for a new rule, a substantive change to an existing rule, or a repeal of an existing rule. Filings received between April 16, 2008, 12:00 a.m., and May 1, 2008, 11:59 p.m. are included in this, the May 15, 2008, issue of the *Utah State Bulletin*.

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

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

The law requires that an agency accept public comment on PROPOSED RULES published in this issue of the *Utah State Bulletin* until at least June 16, 2008. 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 63G-3-302 requires that a hearing request be received "in writing not more than 15 days after the publication date of the PROPOSED RULE."

From the end of the public comment period through September 12, 2008, the agency may notify the Division of Administrative Rules that it wants to make the PROPOSED RULE effective. The agency sets the effective date. The date may be no fewer than seven calendar days after the close of the public comment period nor more than 120 days after the publication date of this issue of the *Utah State Bulletin*. Alternatively, the agency may file a CHANGE IN PROPOSED RULE in response to comments received. If the Division of Administrative Rules does not receive a NOTICE OF EFFECTIVE DATE 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 Section 63G-3-301; and Rule R15-2, and Sections R15-4-3, R15-4-4, R15-4-5, R15-4-9, and R15-4-10.

The Proposed Rules Begin on the Following Page.

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

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31320
FILED: 04/29/2008, 16:23

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The rule is amended to: 1) increase per diem rates for meals because of increased consumer prices; 2) increase the base lodging rate and the rates of premium cities based on market conditions; 3) modify the list of premium cities; 4) change the reimbursement rate for private vehicles to match federal reimbursement rates; 5) increase the reimbursement rate for employees traveling by private plane; and 6) increase the reimbursement rate for employees traveling by motorcycle.

SUMMARY OF THE RULE OR CHANGE: The rule is being revised as the result of a division review of current reimbursement rates and practices. The review showed the following: 1) because the Division of Finance adopts the federal mileage rates as the state reimbursement rate for a private vehicle, if a fleet vehicle is not available to the employee, Finance needs to increase the state mileage reimbursement rate. The federal government changed its rate in October 2007; therefore, the Division of Finance is changing the state rate to comply effective 07/01/2008; 2) because the costs of operating a private vehicle have increased, the Division of Finance is increasing the reimbursement rate for an employee who is approved to drive a private vehicle when a state fleet vehicle is unavailable; 3) because the current standard lodging maximum reimbursement rate is no longer sufficient, the Division of Finance has increased both the base lodging per diem rate and the lodging rates for per diem cities. Rates for the following cities were increased: Layton from $65 to $70; Logan from $70 to $75; Moab from $70 to $80; Ogden from $65 to $70; Panguitch from $65 to $70; Park City from $80 to $90; Heber City/Midway from $80 to $90; Provo/Orem from $65 to $75; Metropolitan Salt Lake City (Draper to Centerville, Tooele) from $80 to $90 and Vernal/Roosevelt from $75 to $90. Altamont, Boulder, Bryce, Green River, Kanab, Mexican Hat, Washington, and Springdale were added to the list of premium cities with a reimbursement rate of $70 and Springville and Lehi were added to the list with a reimbursement rate of $75; Cedar City was removed from the list of premium cities; 4) meal allowances have been raised to adjust to higher consumer prices. The following rates will now apply: in-state meal allowance for breakfast will increase from $8 to $9 for a total of $36 total allowable daily meal reimbursement. The out-of-state meal allowance for lunch will increase from $13 to $14; the dinner allowance will increase from $20 to $21 for a total daily meal allowance increase from $43 to $45. The total meal allowance in premium cities will increase from $57 to $59; and 5) all meal allowances for non-overnight travel are now taxable per IRS regulations.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Amending this rule will result in a cost to the state budget. State agencies will spend more to reimburse some travel expenses. The Division of Finance does not know how many total miles agencies will reimburse, how many nights lodging agencies will be required to reimburse nor how many employees will use the rule for premium cities.

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

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The amendments to this rule may result in additional reimbursement to persons acting on behalf of the state but not employed directly by the state. The Division of Finance does not know how many individuals in this category will be reimbursed.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with revisions to Rule R25-7. If an agency chooses to permit employees to travel, any other costs resulting from compliance with these amendments will be paid by the agency, not by employees (the affected persons). In fact, employees who are allowed to travel will actually receive additional reimbursement as a result of the amendments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Amendments to Rule R25-7 apply only to state agencies and state employees and have no impact on businesses. Kimberly Hood, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Marilee Richins at the above address, by phone at 801-538-3450, by FAX at 801-538-3244, or by Internet E-mail at MPRICHINS@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2008

AUTHORIZED BY: Kimberly K Hood, Executive 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 [~~$35.00~~]$36.00 and is computed according to the rates listed in the following table.

TABLE 1

In-State Travel Meal Allowances

Meals	Rate
Breakfast	[~~$8.00~~]$9.00
Lunch	$11.00
Dinner	$16.00
Total	[~~$35.00~~]$36.00

(b) The daily travel meal allowance for out-of-state travel is [~~$43.00~~]$45.00 and is computed according to the rates listed in the following table.

TABLE 2

Out-of-State Travel Meal Allowances

Meals	Rate
Breakfast	$10.00
Lunch	[~~$13.00~~]$14.00
Dinner	[~~$20.00~~]$21.00
Total	[~~$43.00~~]$45.00

(4) When traveling to premium cities (New York, Los Angeles, Chicago, San Francisco, Washington DC, Boston, San Diego, Orlando, Atlanta, Baltimore, and Arlington), the traveler may choose to accept the per diem rate for out-of-state travel or to be reimbursed at the actual meal cost, with original receipts, up to [~~$57~~]$59 per day.

(a) The traveler will qualify for premium rates on the day the travel begins and/or the day the travel ends only if the trip is of sufficient duration to qualify for all meals on that day.

(b) Complimentary meals of a hotel, motel and/or association and meals included in registration costs are deducted from the [~~$57~~]$59 premium allowance as follows:

(i) If breakfast is provided deduct $14, leaving a premium allowance for lunch and dinner of actual up to [~~$43~~]$45.

(ii) If lunch is provided deduct [~~$17~~]$18, leaving a premium allowance for breakfast and dinner of actual up to [~~$40~~]$42.

(iii) If dinner is provided deduct [~~$26~~]$27, leaving a premium allowance for breakfast and lunch of actual up to [~~$31~~]$33.

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

(d) Actual meal cost includes tips.

(e) Alcoholic beverages are not reimbursable.

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

(a) The traveler may combine the reimbursement methods during a trip; however, 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 a.m. 12:01-6:00	2nd Quarter a.m. 6:01-noon	3rd Quarter p.m. 12:01-6:00	4th Quarter p.m. 6:01-midnight
*B, L, D	*L, D	*D	*no meals
In-State			
[~~$35.00~~]$36.00	$27.00	$16.00	$0
Out-of-State			
[~~$43.00~~]$45.00	[~~$33.00~~]$35.00	[~~$20.00~~]$21.00	$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 a.m. 12:01-6:00	2nd Quarter a.m. 6:01-noon	3rd Quarter p.m. 12:01-7:00	4th Quarter p.m. 7:01-midnight
*no meals	*B	*B, L	*B, L, D
In-State			
$0	[~~$8.00~~]$9.00	[~~$19.00~~]$20.00	[~~$35.00~~]$36.00
Out-of-State			
$0	$10.00	[~~$23.00~~]$24.00	[~~$43.00~~]$45.00

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

(7) An employee may be authorized by his Department Director or designee to receive a taxable 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.

R25-7-8. Reimbursement for Lodging.

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

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

(2) For in-state lodging at a non-conference hotel, the state will reimburse the actual cost up to [~~$60~~]$65 per night for single occupancy plus tax except as noted in the table below:

TABLE 5

Cities with Differing Rates

[~~Cedar City~~	~~$65 plus tax~~
~~Layton~~	~~$65 plus tax~~
~~Logan~~	~~$70 plus tax~~
~~Moab~~	~~$70 plus tax~~
~~Ogden~~	~~$65 plus tax~~
~~Panguitch~~	~~$65 plus tax~~
~~Park City~~	~~$80 plus tax~~
~~Heber City, Midway~~	~~$80 plus tax~~
~~Price~~	~~$70 plus tax~~
~~Provo, Orem~~	~~$65 plus tax~~
~~Roosevelt~~	~~$75 plus tax~~
~~Metropolitan Salt Lake City (Draper to Centerville), Tooele~~	~~$80 plus tax~~
~~St. George~~	~~$70 plus tax~~
~~Vernal~~	~~$75 plus tax~~]
Altamont	$70 plus tax
Boulder	$70 plus tax
Bryce	$70 plus tax
Green River	$70 plus tax
Kanab	$75 plus tax
Layton	$70 plus tax
Logan	$75 plus tax
Mexican Hat	$70 plus tax
Moab	$80 plus tax
Ogden	$70 plus tax
Panguitch	$70 plus tax
Park City	$90 plus tax
Heber City/Midway	$90 plus tax
Price	$70 plus tax
Provo/Orem/Springville/Lehi	$75 plus tax
Metropolitan Salt Lake City (Draper to Centerville), Tooele	$90 plus tax
St. George/Washington/Springdale	$70 plus tax
Vernal/Roosevelt	$90 plus tax

(3) For out-of-state travel stays at a non-conference hotel, the state will reimburse the actual cost per night plus tax, not to exceed the federal lodging rate for the location.

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

(5) Lodging is reimbursed at the rates listed in Table 5 for single occupancy only. For double state employee occupancy, add $20, for triple state employee occupancy, add $40, for quadruple state employee occupancy, add $60.

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

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

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

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

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

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

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

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

(i) $25 per night with no receipts required or

(ii) Actual cost up to $40 per night with a signed receipt from a facility such as a campground or trailer park, not from a private residence.

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

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

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

R25-7-10. Reimbursement for Transportation.

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

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

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

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

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

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

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

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

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

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

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

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

(b) Reimbursement for a private vehicle will be at the rate of 36 cents per mile or [~~48.5~~]50.5 cents per mile if a state vehicle is not available to the employee.

(i) To determine which rate to use, the traveler must first determine if their department has an agency vehicle (long-term leased vehicle from Fleet Operations) that meets their needs and is reasonably available for the trip (does not apply to special purpose vehicles). If reasonably available, the employee should use an agency vehicle. If an agency vehicle that meets their needs is not reasonably available, the agency may approve the traveler to use either a daily pool fleet vehicle or a private vehicle. If a daily pool fleet vehicle is not reasonably available, the traveler may be reimbursed at [~~48.5~~]50.5 cents per mile.

(ii) If a trip is estimated to average 100 miles or more per day, the agency should approve the traveler to rent a daily pool fleet vehicle if

one is reasonably available. Doing so will cost less than if the traveler takes a private vehicle. If the agency approves the traveler to take a private vehicle, the employee will be reimbursed at the lower rate of 36 cents per mile.

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

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

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

(f) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

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

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

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

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

(b) If the traveler drives a privately-owned vehicle, reimbursement will be at the rate of 36 cents per mile or the airplane fare, whichever is less, unless otherwise approved by the Department Director.

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

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

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

(iv) If the traveler uses a private vehicle on official state business and is reimbursed for mileage, parking charges may be reimbursed as an incidental expense.

(c) When submitting the reimbursement form, attach a schedule comparing the cost of driving with the cost of flying. The schedule should show that the total cost of the trip driving was less than or equal to the total cost of the trip flying.

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

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

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

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

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

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

(ii) Rental vehicle reservations not made through the State Travel Office must be approved in advance by the Department Director.

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

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

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

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

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

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

(d) Reimbursement will be made at [~~50~~]75 cents per mile.

(e) Mileage calculation is based on air mileage and is limited to the most economical, usually-traveled route.

(7) Travel by private motorcycle must be approved prior to the trip by the Department Director or designee. Travel will be reimbursed at [~~16~~]20 cents per mile.

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

KEY: air travel, per diem allowances, state employees, transportation
Date of Enactment or Last Substantive Amendment: [~~August 20, 2007~~]2008
Notice of Continuation: May 1, 2003
Authorizing, and Implemented or Interpreted Law: 63A-3-107; 63A-3-106

♦ ♦

Administrative Services, Finance
R25-8
Meal Allowance

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31321
FILED: 04/29/2008, 16:27

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to raise the allowance for overtime meals. These meals are now taxable per IRS regulations therefore this increase will help offset the tax impact.

SUMMARY OF THE RULE OR CHANGE: Meals received by employees required to work hours in excess of regularly

scheduled hours are now taxable. Allowance for such meals is raised from $7 to $10.

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

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Amending this rule will result in a slight increase expenses for meals when employees are working overtime. The Division of Finance does not know how many employees will be requiring meals during overtime hours.
❖ LOCAL GOVERNMENTS: This rule applies only to state agencies and state employees and, therefore, will have no impact on local government.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This rule only applies to employees on the state payroll, therefore, it will have no impact on small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Minimal compliance costs may be required as agencies will be required to track and report the amount of dollars spent on meals for employees working overtime hours for tax purposes.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The amendment to Rule R25-8 applies only to state agencies and state employees and will have no impact on businesses. Kimberly Hood, Executive Director

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Marilee Richins at the above address, by phone at 801-538-3450, by FAX at 801-538-3244, or by Internet E-mail at MPRICHINS@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 07/01/2008

AUTHORIZED BY: Kimberly K Hood, Executive Director

R25. Administrative Services, Finance.
R25-8. Overtime Meal Allowance.
R25-8-3. Definitions.

(1) "Overtime Meal allowance" means a sum of money given to state employees to pay for meals which may be authorized when work hours are in excess of regularly scheduled hours during a 24-hour period.

(2) "Department" means all executive departments of state government.

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

(4) "Policy" means the policies and procedures of the Division of Finance, as published in the "Accounting Policies and Procedures."

(5) "Rate" means an amount of money.

(6) "State employee" means any person who is paid on the state payroll system.

R25-8-4. Allowance.

(1) A state employee required to work in excess of regularly scheduled hours may be authorized by his department to receive a [~~non~~]taxable meal allowance up to [~~$7~~]$10 during a 24-hour period[~~-~~]if:

(a) The employee is not on travel status.

(b) The total hours worked during the 24-hour period shall be three hours or more in excess of the regularly scheduled hours.

(c) The allowance is not considered an absolute right of the employee, and is authorized at the discretion of the department head or his designee.

(d) The allowance may not be given in addition to any other meal allowance or per diem.

(e) The Employee Reimbursement/Earnings Request, form FI 48, should be completed and approved for the payment of the meal allowance.

KEY: finance, rates, state employees, allowance[~~*~~]
Date of Enactment or Last Substantive Amendment: [~~December 29, 1998~~]2008
Notice of Continuation: October 22, 2003
Authorizing, and Implemented or Interpreted Law: 63A-3-103

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Administrative Services, Risk Management
R37-2
Risk Management State Workers' Compensation Insurance Administration

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31347
FILED: 05/01/2008, 11:38

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment is necessary to reduce the costs and associated premium costs for workers' compensation coverage to covered entities.

SUMMARY OF THE RULE OR CHANGE: This amendment reinforces existing rules that require covered entities to participate in the preferred provider program designated by the risk manager by making that participation part of the workers' compensation premium cost allocation assessment. This amendment reiterates the existing requirement for covered entities to develop and participate in temporary transitional duty

procedures to return injured employees to work at the earliest appropriate date.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 63A-4-101 and Subsection 63A-4-101(2)(a)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is an anticipated annual savings to the Risk Management Fund of $1,026,488. Using an occupational medicine preferred provider will enhance communication between the physician, Workers' Compensation Fund, and the covered entity to effectively coordinate care and expedite the return to work for the injured employee. Any savings to the risk management fund will be returned to covered entities through reduced rates in proportion to their contribution to the risk management fund based on total payroll costs.

❖ LOCAL GOVERNMENTS: There is no anticipated actual impact to local government because local governments do not fund or provide workers' compensation coverage or treatment to state covered entities or state employees. There may be a minimal indirect impact to local government if medical services are provided outside the city or county where the employee would have sought initial treatment, if service through a preferred occupational provider approved by the risk manager was not required.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There is an indeterminable impact to small businesses as services previously provided by an employee selected health care provider will now be provided by an occupational medicine preferred provider approved by the risk manager. As many covered entities already require use of an occupational medicine provider, there may be a slight increase in revenue to occupational medicine providers approved by the risk manager.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is generally no anticipated compliance cost to any person. An employee of a covered entity who intentionally chooses not seek initial treatment for an on-the-job injury through the designated preferred provider program may bear the full cost for that treatment. Costs will vary based on the health care provider selected by the employee and the services necessary for the injury.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Occupational medicine providers approved by the risk manager may see a slight increase in revenue. Kimberly Hood, Executive Director

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

ADMINISTRATIVE SERVICES
RISK MANAGEMENT
Room 5120 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:
Melissa Frost at the above address, by phone at 801-538-3589, by FAX at 801-538-9597, or by Internet E-mail at mlfrost@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Roger Livingston, Director

R37. Administrative Services, Risk Management.
R37-2. Risk Management State Workers' Compensation Insurance Administration.
R37-2-2. Authority.

This rule is established pursuant to Sections 63A-4-101[~~and 63A-1-110,~~] which authorize the State's Risk Manager to recommend rules to the Department Director who is authorized to enact rules; and Subsection 63A-4-101(2)(a) which authorizes the State's Risk Manager to acquire and administer workers' compensation insurance for the state.

R37-2-3. Workers' Compensation Costs Allocation.

The State's Risk Manager shall allocate workers' compensation insurance costs to state entities on the basis of an equitable and actuarially sound distribution of costs. The Risk Manager shall collect these funds through the state's payroll process. The following factors may be considered in developing this allocation:

(1). Covered entity injured workers' compensation claims and accident history and trends.

(2). Covered entity participation in preferred provider programs designated by the Risk Manager.

(3) Covered entity safety, loss prevention and loss control programs.

[~~(3)~~](4). Covered entity disability prevention efforts.

[~~(4)~~](5). Covered entity injured worker temporary transitional duty, and return to work programs.

[~~(5)~~](6). Covered entity case consultation and cooperation with Risk Management.

[~~(6)~~](7). Covered entity payroll by rate classification.

R37-2-6. Temporary Transitional Duty.

Covered entities shall develop return to work and temporary transitional duty procedures. Entities shall ensure that these procedures are in accordance with the requirements of the "American With Disabilities Act", and other applicable laws and rules. The procedures shall provide for the return of injured employees to work at the earliest appropriate date.

R37-2-[~~6~~]7. Agency Notice and Other Requirements.

All state entities shall do the following with respect to any employee or volunteer injury:

(1). Provide immediate notification to Risk Management through a phone call, E-mail, or facsimile, when any of the following conditions occur:

(a). Serious injury.
(b). An injury which is questionable or appears to be fraudulent.
(c). An accident involving the death of an employee.
(d). An accident where a third party action caused the accident, death or injury.
(2). Notify the Division of Industrial Accidents of the Utah State Labor Commission of incidents, as required by Subsection 34a-2-407(4).
(3). Within seven days of an employee injury, complete a "First Report of Injury Form" provided by Risk Management.
(4). Distribute copies of the "First Report of Injury Form", as indicated on the form, to the Division of Industrial Accidents of the Labor Commission, the state's Workers' Compensation insurer, Risk Management, and the injured employee.

KEY: risk management, workers' compensation
Date of Enactment or Last Substantive Amendment: [~~1993~~]2008
Notice of Continuation: June 8, 2007
Authorizing, and Implemented or Interpreted Law: 63A-4-201

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Alcoholic Beverage Control, Administration
R81-1-2
Definitions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31254
FILED: 04/28/2008, 09:30

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: S.B. 211, passed by the 2008 legislature, amended the Utah Liquor Act to allow for 1.5 ounces of primary liquor in a drink. This rule is proposed to implement the new laws that will become effective on 05/05/2008. (DAR NOTE: S.B. 211 (2008) is found at Chapter 391, Laws of Utah 2008, and was effective 05/05/2008.)

SUMMARY OF THE RULE OR CHANGE: The definition of "dispensing system" will be amended to identify the amount of primary liquor in a drink to not exceed 1.5 ounces rather than the 1 ounce that was previously allowed.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--This amendment has no anticipated cost or savings to the state's budget since it merely redefines the amount of primary liquor allowed in drink served in a licensed establishment.
❖ LOCAL GOVERNMENTS: None--The state's Department of Alcoholic Beverage Control, not local governments, regulates the amount of primary liquor allowed in drinks in licensed establishments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--This rule amendment merely redefines the term "dispensing system" and does not directly mandate any procedural changes to small businesses or others.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--This proposed amendment merely redefines the term "dispensing system" and does not directly mandate any procedural changes to any affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Since this proposed rule amendment only changes the definition of the term "dispensing system", it is anticipated that it will have no fiscal impact on businesses. Dennis R. Kellen, Director

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Sharon Mackay at the above address, by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-1. Scope, Definitions, and General Provisions.
R81-1-2. Definitions.

Definitions of terms in the Act are used in these rules, except where the context of the terms in these rules clearly indicates a different meaning.

(1) "ACT" means the Alcoholic Beverage Control Act, Title 32A.

(2) "BAR" means a service structure maintained on a licensed premises to furnish glasses, ice and setups and to mix and serve liquor and to serve beer.

(3) "COMMISSION" means the Utah Alcoholic Beverage Control Commission.

(4) "COUNTER" means a level surface on which patrons consume food.

(5) "DECISION OFFICER" means a person who has been appointed by the commission or the director of the Department of Alcoholic Beverage Control to preside over the prehearing phase of all disciplinary actions, and, in all cases not requiring an evidentiary hearing.

(6) "DEPARTMENT" or "DABC" means the Utah Department of Alcoholic Beverage Control.

(7) "DIRECTOR" means the director of the Department of Alcoholic Beverage Control.

(8) "DISCIPLINARY ACTION" means the process by which violations of the Act and these rules are charged and adjudicated, and by which administrative penalties are imposed.

(9) "DISPENSING SYSTEM" means a dispensing system or device which dispenses liquor in controlled quantities not exceeding [~~one ounce~~]1.5 ounces and has a meter which counts the number of pours served.

(10) "GUEST ROOM" means a space normally utilized by a natural person for occupancy, usually a traveler who lodges at an inn.

(11) "HEARING OFFICER" or "PRESIDING OFFICER" means a person who has been appointed by the commission or the director to preside over evidentiary hearings in disciplinary actions, and who is authorized to issue written findings of fact, conclusions of law, and recommendations to the commission for final action.

(12) "LETTER OF ADMONISHMENT" is a written warning issued by a decision officer to a respondent who is alleged to have violated the Act or these rules.

(13) "MANAGER" means a person chosen or appointed to manage, direct, or administer the affairs of another person, corporation, or company.

(14) "MEMBER" means an individual who regularly pays dues to a private club. Member does not include any corporation or other business enterprise or association, or any other group or association.

(15) "POINT OF SALE" means that portion of a package agency, restaurant, limited restaurant, airport lounge, on-premise banquet premises, private club, on-premise beer retailer, single event permitted area, temporary special event beer permitted area, or public service special use permitted area that has been designated by the department as an alcoholic beverage selling area. It also means that portion of an establishment that sells beer for off-premise consumption where the beer is displayed or offered for sale.

(16) "REASONABLE" means ordinary and usual thinking, speaking, or acting, which is fit and appropriate to the end in view.

(17) "RESPONDENT" means a department licensee, or permittee, or employee or agent of a licensee or permittee, or other entity against whom a letter of admonishment or notice of agency action is directed.

(18) "STAFF" or "authorized staff member" means a person duly authorized by the director of the department to perform a particular act.

(19) "UTAH ALCOHOLIC BEVERAGE CONTROL LAWS" means any Utah statutes, commission rules and municipal and county ordinances relating to the manufacture, possession, transportation, distribution, sale, supply, wholesale, warehousing, and furnishing of alcoholic beverages.

(20) "VIOLATION REPORT" means a written report from any law enforcement agency or authorized department staff member alleging a violation of the Utah Alcoholic Beverage Control Act or rules of the commission by a department licensee, or permittee, or employee or agent of a licensee or permittee or other entity.

(21) "WARNING SIGN" means a sign no smaller than six inches high by twelve inches wide, with print no smaller than one half inch bold letters and clearly readable, stating: "Warning: Driving under the influence of alcohol or drugs is a serious crime that is prosecuted aggressively in Utah."

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~August 27, 2007~~]2008
Notice of Continuation: August 31, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-107; 32A-1-119(5)(c); 32A-3-103(1)(a); 32A-4-103(1)(a); 32A-4-106(22); 32A-4-203(1)(a); 32A-4-304(1)(a); 32A-4-307(22); 32A-4-401(1)(a); 32A-4-403(1)(a); 32A-5-103(1)(a); 32A-5-107(40); 32A-6-103(2)(a); 32A-7-103(2)(a); 32A-7-106(5); 32A-8-103(1)(a); 32A-8-503(1)(a); 32A-9-103(1)(a); 32A-10-203(1)(a); 32A-10-206(14); 32A-10-303(1)(a); 32A-10-306(5); 32A-11-103(1)(a)

♦ ♦

Alcoholic Beverage Control, Administration
R81-1-9
Liquor Dispensing Systems

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31273
FILED: 04/28/2008, 12:14

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: S.B. 211, passed by the 2008 legislature, amended the Utah Liquor Act to allow for 1.5 ounces of primary liquor and a total of 2.5 total ounces of liquor in a drink sold in licensed establishments. This proposed rule not only makes amendments to implement the new statutes, it also makes some housekeeping changes that update liquor dispensing record-keeping procedures and make them easier for licensees' to manage. (DAR NOTE: S.B. 211 (2008) is found at Chapter 391, Laws of Utah 2008, and was effective 05/05/2008.)

SUMMARY OF THE RULE OR CHANGE: S.B. 211 (2008) changed the amount of primary liquor in drinks to up to 1.5 ounces and the total alcohol in drinks to 2.5 ounces. This proposed rule amendment brings the rule in line with the new statute. The amendment also removes unnecessary language and better adapts the liquor dispensing record-keeping requirements to the types of dispensing systems used by licensed clubs and restaurants.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--Changing the amount of primary liquor or total liquor in a drink does not necessarily reflect on costs or revenues to the Department of Alcoholic Beverage Control (DABC) or the state. DABC staff members already monitor licensee dispensing records, and changing the amount of liquor in a drink or how liquor dispensing is recorded will neither add to nor take away from the duties of DABC staff.

❖ LOCAL GOVERNMENTS: None--Local governments do not regulate the dispensing requirements imposed on licensed clubs and restaurants.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Many liquor licensees operate businesses with fewer than 50 employees. It is difficult to know for certain what impact the new laws will have on their operations. The new laws passed by the 2008 legislature allow the primary pour of liquor in a drink to be increased by 1/2 an ounce, but the law does not require that licensees increase the primary pour of alcohol. Since the primary pour of liquor in a drink must be dispensed through a metered dispensing system, and since there may be some cost involved in having dispensing systems recalibrated, it stands to reason there may be a cost to many licensees. But, the cost will vary for each dispensing system and it is a business decision to be made by the operator of the club or restaurant.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Though S.B. 211 permits licensees to increase the amount of primary liquor in a drink from up to 1 ounce to up to 1.5 ounces, the law does not require that licensees make that adjustment. Primary liquor in a drink must be dispensed through a metered dispensing system so it stands to reason that there may be some costs to licensees who choose to increase the primary pour in their drinks since their dispensing systems will require recalibration. It is, however, difficult to say what the costs will be because of the number of different systems approved for use by licensed clubs and restaurants. The new language in the record keeping requirements should, in most cases, make it easier for licensees to comply with the law.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The legislature has passed a new law that increases the amount of primary liquor in a drink while decreasing the amount of overall liquor in the drink. There may be some costs for licensees to implement this new law. The legislature hoped that increasing the primary pour of liquor in a drink would bring Utah more in line with how liquor is dispensed across the United States, and ultimately improve Utah's image. It was also hoped the law changes would make it easier for licensees to serve their customers. Dennis R. Kellen, Director

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

ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY UT 84104-1630, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Sharon Mackay at the above address, by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-1. Scope, Definitions, and General Provisions.
R81-1-9. Liquor Dispensing Systems.

A licensee may not install or use any system for the automated mixing or dispensing of spirituous liquor unless the dispensing system has been approved by the department.

(1) Minimum requirements. The department will only approve a dispensing system which:

(a) dispenses spirituous liquor in calibrated quantities not to exceed [~~one ounce~~]1.5 ounces; and

(b) has a meter which counts the number of pours dispensed.

The margin of error of the system for a one ounce pour size cannot exceed 1/16 of an ounce or two milliliters.

(2) Types of systems. Dispensing systems may be of various types including: gun, stationary head, tower, insertable spout, ring activator or similar method.

(3) Method of approval.

(a) Suppliers. Companies which manufacture, distribute, sell, or supply dispensing systems must first have their product approved by the department prior to use by any liquor licensee in the state. They shall complete the "Supplier Application for Dispensing System Approval" form provided by the department, which includes: the name, model number, manufacturer and supplier of the product; the type and method of dispensing, calibrating, and metering; the degree or tolerance of error, and a verification of compliance with federal and state laws, rules, and regulations.

(b) Licensees. Before any dispensing system is put into use by a licensee, the licensee shall complete the "Licensee Application for Dispensing System Approval" form provided by the department. The department shall maintain a list of approved products and shall only authorize installation of a product previously approved by the department as provided in subsection (a). The licensee is thereafter responsible for verifying that the system, when initially installed, meets the specifications which have been supplied to the department by the manufacturer. Once installed, the licensee shall maintain the dispensing system to ensure that it continues to meet the manufacturer's specifications. Failure to maintain the system may be grounds for suspension or revocation of the licensee's liquor license.

(c) Removal from approved list. In the event the system does not meet the specifications as represented by the manufacturer, the licensee shall immediately notify the department. The department shall investigate the situation to determine whether the product should be deleted from the approved list.

(4) Operational restrictions.

(a) The system must be calibrated to pour a quantity of spirituous liquor not to exceed [~~one ounce~~]1.5 ounces.

(b) Voluntary consent is given that representatives of the department, State Bureau of Investigation, or any law enforcement officer shall have access to any system for inspection or testing purposes. A licensee shall furnish to the representatives, upon request, samples of the alcoholic products dispensed through any system for verification and analysis.

(c) Spirituous liquor bottles in use with a dispensing system at the dispensing location must be affixed to the dispensing system by the licensee. Spirituous liquor bottles in use with a remote dispensing system must be in a locked storage area. Any other primary spirituous liquor not in service must remain unopened. There shall be no opened

primary spirituous liquor bottles at a dispensing location that are not affixed to an approved dispensing device.[~~This rule does not prohibit the presence of opened containers of wine for use as provided by law.~~]

(d) The dispensing system and spirituous liquor bottles attached to the system must be locked or secured in such a place and manner as to preclude the dispensing of spirituous liquor at times when liquor sales are not authorized by law.

(e) All dispensing systems and devices must

(i) avoid an in-series hookup which would permit the contents of liquor bottles to flow from bottle to bottle before reaching the dispensing spigot or nozzle;

(ii) not dispense from or utilize containers other than original liquor bottles; and

(iii) prohibit the intermixing of different kinds of products or brands in the liquor bottles from which they are being dispensed.

(f) Pursuant to federal law, all liquor dispensed through a dispensing system shall be from its original container, and there shall be no re-use or refilling of liquor bottles with any substance whatsoever. The commission adopts federal regulations 27 CFR [~~194~~]31.261-31.262 and 26 USC[~~A~~] Section 5301 and incorporates them by reference.

(g) Each licensee shall keep daily records for each dispensing outlet as follows:

(i) a list of brands of liquor dispensed through the dispensing system;

(ii) [~~beginning and ending meter readings by brand or sales price level and~~]the number of portions of liquor dispensed through the dispensing system determined by the calculated difference between the beginning and ending meter readings and/or as electronically generated by the recording software of the dispensing system;

(iii) number of portions of liquor sold[~~by brand or sales price level~~]; and

(iv) a comparison of the number of portions dispensed to the number of portions sold including an explanation of any variances[~~by brand or sales price level~~].

(v) These records must be made available for inspection and audit by the department or law enforcement.

(h) This rule does not prohibit the sale of pitchers of mixed drinks as long as the pitcher contains no more than [~~one ounce~~]1.5 ounces of primary spirituous liquor and no more than a total of 2.5 ounces of spirituous liquor per person to which the pitcher is served.

(i) Licensees shall display in a prominent place on the premises a list of the types and brand names of spirituous liquor being served through its dispensing system. This requirement may be satisfied either by printing the list on an alcoholic beverage menu or by wall posting or both.

(j) A licensee or his employee shall not:

(i) sell or serve any brand of spirituous liquor not identical to that ordered by the patron; or

(ii) misrepresent the brand of any spirituous liquor contained in any drink sold or offered for sale.

(k) All dispensing systems and devices must conform to federal, state, and local health and sanitation requirements. Where considered necessary, the department may:

(i) require the alteration or removal of any system,

(ii) require the licensee to clean, disinfect, or otherwise improve the sanitary conditions of any system.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~August 27, 2007~~]2008
Notice of Continuation: August 31, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-107; 32A-1-119(5)(c); 32A-3-103(1)(a); 32A-4-103(1)(a); 32A-4-106(22); 32A-4-203(1)(a); 32A-4-304(1)(a); 32A-4-307(22); 32A-4-401(1)(a); 32A-4-403(1)(a); 32A-5-103(1)(a); 32A-5-107(40); 32A-6-103(2)(a); 32A-7-103(2)(a); 32A-7-106(5); 32A-8-103(1)(a); 32A-8-503(1)(a); 32A-9-103(1)(a); 32A-10-203(1)(a); 32A-10-206(14); 32A-10-303(1)(a); 32A-10-306(5); 32A-11-103(1)(a)

Alcoholic Beverage Control, Administration
R81-1-10
Wine Dispensing

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31275
FILED: 04/28/2008, 14:28

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In reviewing this 18-year-old rule, the Department of Alcoholic Beverage Control (DABC) staff is proposing it be removed because there is no statutory requirement that wine dispensing records be kept. The ABC Commission concurs.

SUMMARY OF THE RULE OR CHANGE: The ABC Commission has recommended that since the statute does not require licensees to keep wine dispensing records, this section should be removed.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There will be no costs to state government in removing this section. If there are savings, they will be in time saved by DABC staff members who check dispensing records during their annual licensee audits. An actual dollar figure is unavailable.

❖ LOCAL GOVERNMENTS: None--Local governments do not regulate the dispensing of wine in licensed establishments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Many licensed clubs and restaurants have fewer than 50 employees. Though it is difficult to calculate an exact cost of time spent maintaining wine dispensing records, the repeal of this requirement should save man-hours in these establishments. There is no apparent cost or savings to others.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Many licensed clubs and restaurants sell wine. Though it is difficult to calculate an exact cost of time spent maintaining wine dispensing records, the repeal of this requirement should save man-hours in these establishments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This section has been on the books for many years. It was originally written at the end of the mini bottle era to create a control on wine sales. DABC staff and the ABC Commission have determined that since maintaining wine dispensing records is not mandated by statute and since wine is not dispensed through a metered dispensing system, there is no longer a need to require licensees to maintain dispensing records. The removal of this section will save licensees time, effort, and money. Dennis R. Kellen, Director

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

ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY UT 84104-1630, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Sharon Mackay at the above address, by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-1. Scope, Definitions, and General Provisions.
[~~R81-1-10. Wine Dispensing.~~
~~(1) Each licensee shall keep daily records that compare the number of portions of wine by the glass dispensed to the number of portions sold. These records shall indicate:~~
~~(a) the brands of each wine dispensed by the glass;~~
~~(b) the portion size, not to exceed five ounces per portion, and the number of portions dispensed by the glass of each wine by brand and sales price level;~~
~~(c) the portion size and number of portions sold by the glass of each wine by brand and sales price level; and~~
~~(d) a comparison of the number of portions dispensed to the number of portions sold including an explanation of any variances.~~
~~These records must be made available for inspection and audit by the department or law enforcement.~~]

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~August 27, 2007~~]2008
Notice of Continuation: August 31, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-107; 32A-1-119(5)(c); 32A-3-103(1)(a); 32A-4-103(1)(a); 32A-4-106(22); 32A-4-203(1)(a); 32A-4-304(1)(a); 32A-4-307(22); 32A-4-401(1)(a); 32A-4-403(1)(a); 32A-5-103(1)(a); 32A-5-107(40); 32A-6-103(2)(a); 32A-7-103(2)(a); 32A-7-106(5); 32A-8-103(1)(a); 32A-8-503(1)(a); 32A-9-103(1)(a); 32A-10-203(1)(a); 32A-10-206(14); 32A-10-303(1)(a); 32A-10-306(5); 32A-11-103(1)(a)

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Alcoholic Beverage Control, Administration
R81-1-11
Multiple-Licensed Facility Storage and Service

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31279
FILED: 04/28/2008, 16:31

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule has been reassessed and amendments are being proposed to more closely align the rule with statutory requirements.

SUMMARY OF THE RULE OR CHANGE: When mini bottles were outlawed in 1990, the Alcoholic Beverage Control (ABC) Commission wrote rules to guarantee that liquor would continue to be dispensed in a controlled manner. At that time, the commission recognized that some club and restaurant owners maintained two licensed establishments in the same building and conceded that it was reasonable to allow these operators to dispense liquor to the two licensed facilities from one central location. The Multiple-Licensed Facility Storage and Service rule was written to establish regulations for keeping the sales records in each adjoining facility separate. Upon recent assessment, the ABC Commission determined that some parts of this rule overreach what the statute requires and fulfill no legitimate purpose. For instance, though the statute requires isolating the sales of the two facilities, it does not require isolating the metered dispensing records of each facility. Also, the statute does not require that the owner of the two adjoining facilities file a separate application seeking permission to dispense from a central location. The commission proposes that these regulations be removed from the rule as now written.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--Licensees operating adjoining facilities are not charged additional fees for the opportunity to dispense liquor from a central location, nor is there a cost to the state for permitting this practice.

❖ LOCAL GOVERNMENTS: None--Local governments do not regulate the liquor dispensing procedures of licensees.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--The amendments to this rule are of a housekeeping nature and actually make compliance with dispensing requirements easier for licensees. Persons other than businesses are not affected by this rule since they do not dispense alcoholic beverages.

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Those entities who take advantage of the Multiple-Licensed Dispensing Storage and Service rule will find the proposed amendments to this rule will make it easier to comply with record keeping requirements. In fact, the amendments may well save man hours and, consequently, save the licensee money.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department feels this proposed rule amendment will have a positive fiscal impact on participating licensees since it will simplify record keeping requirements. Dennis R. Kellen, Director

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

ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY UT 84104-1630, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Sharon Mackay at the above address, by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-1. Scope, Definitions, and General Provisions.
R81-1-11. Multiple-Licensed Facility Storage and Service.

(1) For the purposes of this rule:

(a) "premises" as defined in Section 32A-1-105[~~(37)~~](41) shall include the location of any licensed restaurant, limited restaurant, club, or on-premise beer retailer facility or facilities operated or managed by the same person or entity that are located within the same building or complex. Multiple licensed facilities shall be termed "qualified premises" as used in this rule.

(b) the terms "sell", "sale", "to sell" as defined in Section 32A-1-105[~~(48)~~](52) shall not apply to a cost allocation of alcoholic beverages as used in this rule.

(c) "cost allocation" means an apportionment of the as purchased cost of the alcoholic beverage product based on the amount [~~dispensed~~]sold in each outlet[~~- as reconciled by the record keeping requirements of this rule~~].

(d) "remote storage alcoholic beverage dispensing system" means a dispensing system where the alcoholic product is stored in a single centralized location, and may have separate dispensing heads at different locations, and is capable of accounting for the amount of alcoholic product dispensed to each location.

(2) Where qualified premises have consumption areas in reasonable proximity to each other, the dispensing of alcoholic beverages may be made from the alcoholic beverage inventory of an outlet in one licensed location to patrons in either consumption area of the qualified premises subject to the following requirements:

[~~(a) for liquor and wine dispensing, daily dispensing records as required in R81-1-9 and R81-1-10 must also show the amount of alcoholic beverage products dispensed to each licensed location;~~

~~(b) for beer dispensing, daily records must be kept in a form acceptable to the department that show the amount of beer dispensed to each outlet;~~

~~(c)~~](a) point of sale control systems must be implemented that will record the amounts of each alcoholic beverage product sold in each location[~~. Sales records and dispensing records must be balanced daily~~];

[~~(d)~~](b) cost allocation of the alcoholic beverage product cost must be made for each location on at least a monthly or quarterly basis[~~-~~] pursuant to[~~Allocations must be able to be supported by~~] the record keeping requirements of Section 32A-4-106, 32A-4-307, 32A-5-107, or 32A-10-206;

[~~(e)~~](c) dispensing of alcoholic beverages to a licensed location may not be made on prohibited days or at prohibited hours pertinent to that license type;

[~~(f)~~](d) if separate inventories of liquor are maintained in one dispensing location, the storage area of each licensee's liquor must remain locked during the prohibited hours and days of sale for each license type;

[~~(g)~~](e) dispensing of alcoholic beverages to a licensed location may not be made in any manner prohibited by the statutory or regulatory operational restrictions of that license type;

[~~(h) a licensee must obtain department approval before dispensing alcoholic beverages as described in this section. Applications for approval shall be in a form prescribed by the department and shall include a floor plan of all storage, dispensing, sales, service, and consumption areas involved.~~

~~(i)~~](f) alcoholic beverages dispensed under this section may be delivered by servers from one outlet to the various approved consumption areas, or dispensed to each outlet through the use of a remote storage alcoholic beverage dispensing system.

(3) On qualified premises where each licensee maintains an inventory of alcoholic beverage products, the alcoholic beverages owned by each licensee may be stored in a common location in the building subject to the following guidelines:

(a) each licensee shall identify the common storage location when applying for or renewing their license, and shall receive department approval of the location;

(b) each licensee must be able to account for its ownership of the alcoholic beverages stored in the common storage location by keeping records, balanced monthly, of expenditures for alcoholic beverages supported by items such as delivery tickets, invoices, receipted bills, canceled checks, petty cash vouchers; and

(c) the common storage area may be located on the premises of one of the licensed liquor establishments.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~August 27, 2007~~]2008
Notice of Continuation: August 31, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-107; 32A-1-119(5)(c); 32A-3-103(1)(a); 32A-4-103(1)(a); 32A-4-106(22); 32A-4-203(1)(a); 32A-4-304(1)(a); 32A-4-307(22); 32A-4-401(1)(a); 32A-4-403(1)(a); 32A-5-103(1)(a); 32A-5-107(40); 32A-6-103(2)(a); 32A-7-103(2)(a); 32A-7-106(5); 32A-8-103(1)(a); 32A-8-503(1)(a); 32A-9-103(1)(a); 32A-10-203(1)(a); 32A-10-206(14); 32A-10-303(1)(a); 32A-10-306(5); 32A-11-103(1)(a)

Alcoholic Beverage Control, Administration
R81-1-26
Criminal History Background Checks

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31289
FILED: 04/29/2008, 10:48

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is proposed to implement new laws passed by S.B. 211 (2008). (DAR NOTE: S.B. 211 (2008) is found at Chapter 391, Laws of Utah 2008, and was effective 05/05/2008.)

SUMMARY OF THE RULE OR CHANGE: New statues require that those applying for package agency contracts and those being offered an employment position with the Department of Alcoholic Beverage Control (DABC) must now submit and pass a criminal background history check. This proposed amendment outlines guidelines for implementing the new laws. The amendment also requires that a person who may obtain the criminal background check from the Utah Bureau of Criminal Investigation (BCI) (rather than the FBI) must be a Utah resident for two years rather than for one year as previously required.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The new law states that DABC will pay the cost of background checks for individuals who have been offered employment with the department. The cost for an FBI criminal background check is currently $18 and the cost for a BCI background check is currently $10. The actual cost cannot be calculated because the number of new employees fluctuates from year to year.
❖ LOCAL GOVERNMENTS: None--Local governments conduct their own criminal history background checks and are not affected by the requirements of state law.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The passage of the new criminal background history laws created by S.B. 211 will require that package agency applicants and their agents, managers, officers, directors, partners, and 20% stockholders submit fingerprint cards and receive a favorable criminal history background report from either the FBI or the Utah BCI. The cost for an FBI background check is currently $18 and the cost for a BCI background check is currently $10. These costs will be paid by the package agency applicant. The cost of the criminal history background check required for persons being offered employment with DABC will be paid by DABC. No other persons will be affected.

COMPLIANCE COSTS FOR AFFECTED PERSONS: An applicant for a package agency contract will be required to pay the cost for the criminal history background check before the package agency contract may be granted.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: It has become increasingly important for the DABC to ensure that its employees and package agents have no criminal background history. This, in part, helps ensure the safety of other staff members as well as the fiscal management of the department. DABC is happy to pay the cost of background checks for those individuals being offered an employment position with the department. Dennis R. Kellen, Director

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ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY UT 84104-1630, or
at the Division of Administrative Rules.

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Sharon Mackay at the above address, by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at smackay@utah.gov

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THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-1. Scope, Definitions, and General Provisions.
R81-1-26. Criminal History Background Checks.

(1) Authority. This rule is pursuant to:

(a) the commission's powers and duties under 32A-1-107 to set policy by written rules that establish criteria and procedures for granting, denying, suspending, or revoking permits, licenses, and package agencies;[~~ and~~]

(b) 32A-1-111, 32A-2-101(1)(b), 32A-3-103, 32A-4-103, 32A-4-203, 32A-4-304, 32A-4-403, 32A-5-103, 32A-6-103, 32A-7-103, 32A-8-103, 32A-8-503, 32A-9-103, 32A-10-203, 32A-10-303, and 32A-11-

103 that prohibit certain persons that have been convicted of certain criminal offenses from being employed by the department or from holding or being employed by the holder of an alcoholic beverage license, permit, or package agency[~~-~~]; and

(c) 32A-1-107 through 704 that allow for the department to require criminal history background check reports on certain individuals.

(2) Purpose. This rule:

(a) establishes the circumstances under which a person identified in the statutory sections enumerated in Subparagraph (1)(b), must provide the department with a criminal history background report that shows the person meets the qualifications of those statutory sections as a condition of employment with the department, or as a condition of the commission granting a license, permit, or package agency to an applicant for a license, permit, or package agency; and

(b) establishes the procedures for the filing and processing of criminal history background reports.

(3) Application of Rule.

(a)(i) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), [~~and~~](vi), and (vii) a person identified in Subparagraph (1)(b) who has been a resident of the state of Utah for at least [~~one year~~]two years, shall submit a [~~criminal history background report from the~~]fingerprint card to the department, and consent to a fingerprint criminal background check by Utah Bureau of Criminal Identification, Department of Public Safety.

(ii) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), [~~and~~](vi), and (vii), and (3)(b) through [~~(g)~~](h), a person identified in Subparagraph (1)(b) who has been a resident of the state of Utah for less than [~~one year~~]two years, shall submit a [~~criminal history background report from~~]fingerprint card to the department, and consent to a fingerprint criminal background check by the Federal Bureau of Investigation (hereafter "F.B.I.").

(iii) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), and (vi)[~~and~~], and (vii), (3)(b) through [~~(g)~~](h), a person identified in Subparagraph (1)(b) who currently resides outside the state of Utah shall submit a [~~criminal history background report from~~]fingerprint card to the department, and consent to a fingerprint criminal background check by the F.B.I.

(iv) A person identified in Subparagraph (1)(b) who previously submitted a criminal background check as part of the application process for a different license, permit, or package agency that was issued by the commission shall not be required to [~~file a~~]submit a fingerprint card with the department or provide a new criminal history background report as part of the application process for a new license, permit, or package agency if the person attests that he or she has not been convicted of any disqualifying criminal offense identified in Subparagraph (1)(b).

(v) An applicant for a single event permit under Title 32A, Chapter 7 shall not be required to submit a fingerprint card or provide a criminal history background report if the applicant attests that the persons identified in Subparagraph (1)(b) have not been convicted of any disqualifying criminal offense.

(vi) An applicant for a temporary special event beer permit under 32A-10-301 to -306 shall not be required to submit a fingerprint card or provide a criminal history background report if the applicant attests that the persons identified in Subparagraph (1)(b) have not been convicted of any disqualifying criminal offense identified in Subparagraph (1)(b).

(vii) An applicant for employment with the department shall be required to submit a fingerprint card and consent to a fingerprint criminal background check only if the department has made the decision to offer the applicant employment with the department.

(b) An application that requires F.B.I. criminal history background report(s) may be included on a commission meeting agenda, and may be considered by the commission for issuance of a license, permit, or package agency if:

(i) the applicant has completed all requirements to apply for the license, permit, or package agency other than [~~providing~~]the department receiving the required F.B.I. criminal history background report(s);

(ii) the applicant attests in writing that he or she is not aware of any criminal conviction of any person identified in Subparagraph (1)(b) that would disqualify the applicant from applying for and holding the license, permit, or package agency;

(iii) the applicant [~~attests in writing that all request(s) for any required F.B.I. criminal history background report(s) have been submitted to the F.B.I, and provides the following information and documentation:~~

~~(A) the date the request(s) were submitted to the F.B.I.~~

~~(B) a copy of the written request(s) submitted to the F.B.I.~~

~~(C) a copy of the fingerprint card(s) submitted to the F.B.I.;~~]has submitted to the department the necessary fingerprint card(s) required for the application, and consented to the fingerprint criminal background check(s) by the F.B.I.;

(iv) the applicant at the time of application supplies the department with a current criminal history background report conducted by a third-party background check reporting service on any person for which an F.B.I. background check is required; and

(v) the applicant stipulates in writing that if an F.B.I. report shows a criminal conviction that would disqualify the applicant from holding the license, permit, or package agency, the applicant shall immediately surrender the license, permit, or package agency to the department.

(c) The commission may issue a license, permit, or package agency to an applicant that has met the requirements of Subparagraph (3)(b), and the license, permit, or package agency shall be valid during the period the F.B.I. is processing the criminal history report(s).

(d) The department shall use a unique file tracking system for such licenses, permits, and package agencies.

(e) If the required F.B.I. report(s) are not received by the department within six (6) months of the date the license, permit, or package agency is issued by the commission, the licensee, permittee, or package agent shall appear at the next regular meeting of the commission for a status report, and the commission may either order the surrender of the license, permit, or package agency, or may extend the reporting period.

(f) Upon the department's receipt of the F.B.I. report(s):

(i) if there is no disqualifying criminal history, the license, permit, or package agency shall continue for the balance the license or permit period, or the package agency contract period; or

(ii) if there is a disqualifying criminal history, the license, permit, or package agency shall be immediately surrendered, and the commission may enter an order accepting the surrender, or an order revoking the license, permit, or package agency depending on the circumstances.

(g) In the case of a license or permit, if the statutory deadline for renewing the license or permit occurs before receipt of the F.B.I. report(s), the licensee or permittee may file for renewal of the license or permit subject to meeting all of the requirements in Subparagraphs (3)(b) through (f).

(h) An applicant for employment with the department that requires an F.B.I. criminal history background report may be conditionally hired by the department prior to receipt of the report if:

(i) the applicant attests in writing that he or she is not aware of any criminal conviction that would disqualify the applicant from employment with the department;

(ii) the applicant has submitted to the department the necessary fingerprint card(s) required for the application, and consented to the fingerprint criminal background check(s) by the F.B.I;

(iii) the applicant stipulates in writing that if an F.B.I. report shows a criminal conviction that would disqualify the applicant from employment with the department, the applicant shall terminate his or her employment with the department.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~August 27, 2007~~]2008
Notice of Continuation: August 31, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-107; 32A-1-119(5)(c); 32A-3-103(1)(a); 32A-4-103(1)(a); 32A-4-106(22); 32A-4-203(1)(a); 32A-4-304(1)(a); 32A-4-307(22); 32A-4-401(1)(a); 32A-4-403(1)(a); 32A-5-103(1)(a); 32A-5-107(40); 32A-6-103(2)(a); 32A-7-103(2)(a); 32A-7-106(5); 32A-8-103(1)(a); 32A-8-503(1)(a); 32A-9-103(1)(a); 32A-10-203(1)(a); 32A-10-206(14); 32A-10-303(1)(a); 32A-10-306(5); 32A-11-103(1)(a)

Alcoholic Beverage Control, Administration
R81-3-1
Definitions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31291
FILED: 04/29/2008, 11:33

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This is a housekeeping amendment to correct the oversight of not including distilleries and breweries in the definition of a Type 5 package agency.

SUMMARY OF THE RULE OR CHANGE: This proposed rule amendment adds distilleries and breweries to alcoholic beverage manufacturers who may have a Type 5 package agency of their premises.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--This proposed rule amendment merely includes distilleries and breweries to the list of manufacturers who may apply for a package agency on their premises. Changing the definition does not fiscally affect the state.

❖ LOCAL GOVERNMENTS: None--Package agency contracts are issued by the Department of Alcoholic Beverage Control (DABC) and changing the definition of who may qualify for the contract does not affect local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Most local manufacturers operate small businesses. Wineries have always been permitted to operate a package agency on the premises. With this amendment, distilleries and breweries who choose to apply for a Type 5 package agency contract will be assessed a $100 application fee and required to post a compliance bond. Other persons are not affected by this proposed rule amendment.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Wineries have always been permitted to operate a package agency on the premises. With this amendment, distilleries and breweries who choose to apply for a Type 5 package agency contract will be assessed a $100 application fee and required to post a compliance bond.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Utah has licensed breweries for a number of years, but has only recently licensed its first distillery. It is only fair for these manufacturers to be able to sell their products on the premises just as wineries have always been allowed to do. Dennis R. Kellen, Director

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
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THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-3. Package Agencies.
R81-3-1. Definition.

Package agencies are retail liquor outlets operated by private persons under contract with the department for the purpose of selling packaged liquor from facilities other than state liquor stores for off premise consumption. Package agencies are classified into five types:

Type 1 - A package agency under contract with the department which is operated in conjunction with a resort environment (e.g., hotel, ski lodge, summer recreation area).

Type 2 - A package agency under contract with the department which is in conjunction with another business where the primary source of income to the operator is not from the sale of liquor.

Type 3 - A package agency under contract with the department which is not in conjunction with another business, but is in existence for the sole purpose of selling liquor.

Type 4 - A package agency under contract with the department which is located within a facility approved by the commission for the purpose of selling and delivering liquor to tenants or occupants of specific rooms which have been leased, rented, or licensed within the same facility. A type 4 package agency shall not be open to the general public.

Type 5 - A package agency under contract with the department which is located within a winery, distillery, or brewery that has been granted a [~~winery~~]manufacturing license by the commission.

The commission may grant type 4 package agency privileges to a type 1 package agency.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~June 1, 2004~~]2008
Notice of Continuation: September 6, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-107

♦ ♦

Alcoholic Beverage Control, Administration
R81-3-9
Promotion and Listing of Products

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31328
FILED: 04/30/2008, 09:38

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This proposed rule amendment corrects an omission in the present rule.

SUMMARY OF THE RULE OR CHANGE: The current rule only permits wineries to post product price lists on their Type 5 package agency premises. This proposed amendments adds distilleries and breweries to the manufacturers that may post the price lists.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None. The proposed rule amendment only corrects an omission in the current rule and will have no fiscal impact on the state budget.

❖ LOCAL GOVERNMENTS: None--Implementation of this rule amendment will have no fiscal impact on local governments since local governments do not regulate operations of Type 5 package agencies.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--Most local alcoholic beverage manufacturing operations are small businesses. Though this rule amendment gives them the opportunity to improve their package agency operations, it is unlikely it will have an actual fiscal impact on the business since the product price list may be a simple typed list of products and prices. The rule amendment proposal will not fiscally affect other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The permission this proposed rule amendment gives to Type 5 package agencies to post product price lists is not mandated. If a Type 5 package agency decides to take advantage of the new rule, the price list posting can be as simple as a typed list of products and prices and should have no significant cost.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule is being proposed to correct an omission that only permitted wineries to post their product price lists in their Type 5 package agencies. Distilleries and breweries should be permitted to do the same. Hopefully, being permitted to post the price lists will help these small alcoholic beverage producers to better market their products to the public. Dennis R. Kellen, Director

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ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY UT 84104-1630, or
at the Division of Administrative Rules.

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THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-3. Package Agencies.
R81-3-9. Promotion and Listing of Products.

(1) An operator or employee of a Type 1, 2, or 3 package agency, as defined in R81-3-1, may not promote a particular brand or type of liquor product while on duty at the package agency. An operator or employee may inform a customer as to the characteristics of a particular brand or type of liquor, provided the information is linked to a comparison with other brands or types.

(2) A package agency may not advertise alcoholic beverages on billboards except:

(a) a Type 1 package agency, as defined in R81-3-1, may provide informational signs on the premises of the hotel or resort directing persons to the location of the hotel's or resort's Type 1 package agency;

(b) a Type 2 package agency, as defined in R81-3-1, may provide informational signs on the premises of its business directing persons to the location of the Type 2 package agency within the business; and

(c) a Type 5 package agency, as defined in R81-3-1, may advertise the location of the winery, distillery, or brewery and the Type 5 package agency, and may advertise the alcoholic beverage products produced by the winery, distillery, or brewery and sold at the Type 5 package agency under the guidelines of R81-1-17 for advertising alcoholic beverages.

(3) A package agency may not display price lists in windows or showcases visible to passersby except:

(a) a Type 1 package agency, as defined in R81-3-1, may provide a price list in each guest room of the hotel or resort containing the code, number, brand, size and price of each item it carries for sale at the Type 1 package agency;

(b) a Type 4 package agency, as defined in R81-3-1, may provide a price list of the code number, brand, size, and price of each item it carries for sale to the tenants or occupants of the specific leased, rented, or licensed rooms within the facility; and

(c) a Type 5 package agency, as defined in R81-3-1, may provide a price list on the premises of the winery, [~~winery tasting room,~~]distillery, or brewery, authorized tasting room, and at the entrance of the Type 5 package agency of the code, number, brand, size, and price of each liquor item it carries for sale at the Type 5 package agency.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~June 1, 2004~~]2008
Notice of Continuation: September 6, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-107

Alcoholic Beverage Control, Administration
R81-3-13
Operational Restrictions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31329
FILED: 04/30/2008, 10:09

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being proposed to implement changes in the statute as a result to the passage of S.B. 167 (2008). (DAR NOTE: S.B. 167 (2008) is found at Chapter 266, Laws of Utah 2008, and was effective 05/05/2008.)

SUMMARY OF THE RULE OR CHANGE: S.B. 167 which was passed by the 2008 Legislature, changed the law to permit package agencies that are not operated in a similar manner to a state liquor store to be open on election days. Package agencies that are operated in a similar manner to state liquor stores must continue to close on elections days. This proposed rule amendment brings the rule in line with the new law.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Package agencies operated throughout the state are contracted through the Department of Alcoholic Beverage Control (DABC) to individual operators. The state realizes revenues from all liquor sold in Utah, including revenues generated by package agencies since all liquor must be purchased from DABC. Though it is difficult to calculate the exact dollar figure, it stands to reason that staying open on election days will increase revenues since these package agencies will enjoy more open-for-business days.

❖ LOCAL GOVERNMENTS: Local governments receive varying allotments from the state on revenues from liquor sold in Utah. Though difficult to calculate an exact dollar amount, it is reasonable to surmise that additional sales days will increase these allotments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Virtually all package agencies in Utah are operated as small businesses. Package agencies that may now be open on election days will likely have increased man-hour and other expenses. They should also have increased revenues to offset the costs. The passage of this rule amendment should have no fiscal impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Package agencies that may now be open on election days will likely have increased man-hour and other expenses. It is difficult to calculate the exact dollar amount of these costs since operating expenses vary from one package agency to another.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Many businesses purchase liquor from package agencies located through out the state. Most, however, do not make purchases from the package agency types that are affected by the new law. That being the case, it is not anticipated that the new law or this proposed rule amendment will have a significant fiscal impact on Utah's businesses. Dennis R. Kellen, Director

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

ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY UT 84104-1630, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Sharon Mackay at the above address, by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-3. Package Agencies.
R81-3-13. Operational Restrictions.

(1) Hours of Operation.

(a) Type 1, 2, and 5 package agencies may operate from 10:00 a.m. until 12:00 midnight, Monday through Saturday. However, the actual operating hours may be less in the discretion of the package agent with the approval of the department. Type 2 agencies shall be open for business at least seven hours a day, five days a week, except where closure is otherwise required by law.

(b) Type 3 package agencies may operate from 10:00 a.m. until 10:00 p.m., Monday through Saturday, but may remain closed on Mondays in the discretion of the package agent. However, the actual operating hours may be less in the discretion of the package agent with the approval of the department, provided the agency operates at least seven hours a day.

(c) Type 4 package agencies may operate from 10:00 a.m. until 1:00 a.m., Monday through Friday, and 10:00 a.m. until 12:00 midnight on Saturday. However, the actual operating hours may be less in the discretion of the package agent with the approval of the department.

(d) Any change in the hours of operation of any package agency requires prior department approval, and shall be submitted in writing by the package agent to the department.

(e) A package agency, regardless of type, shall not operate on Sundays[~~,~~] or legal holidays[~~, and election days where the sale of alcoholic beverages is prohibited by law until the polls have closed~~] except to the extent authorized by 32A-3-106(10) for package agencies located in certain wineries. If a legal holiday falls on a Sunday, the following Monday will be observed as the holiday by Type 2 and 3 package agencies.

(f) Because Type 2 and 3 package agencies operate in manner similar to a state store, they may not be open to sell liquor on election days until after the polls have closed. Type 1,4, and 5 package agencies do not operate in a manner similar to a state store and may remain open to sell liquor on elections days.

(2) Size of Outlet. The retail selling space devoted to liquor sales in a type 2 or 3 package agency must be at least one hundred square feet.

(3) Inventory Size. Type 2 and 3 package agencies must maintain at least fifty code numbers of inventory at a retail value of at least five thousand dollars and must maintain a representative inventory by brand, code, and size.

(4) Access to General Public. Type 1, 2, and 3 package agencies must be easily accessible to the general consuming public.

(5) Purchase of Inventory. All new package agencies, at the discretion of the department, will purchase and maintain their inventory of liquor.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~June 1, 2004~~]2008
Notice of Continuation: September 6, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-107

♦ ♦

Alcoholic Beverage Control, Administration
R81-3-14
Type 5 Package Agencies

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31330
FILED: 04/30/2008, 10:37

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is proposed to correct an omission in the Type 5 package agency rule.

SUMMARY OF THE RULE OR CHANGE: Wineries have aways been permitted to operate a package agency on their premises for the purpose of selling their products to persons touring the winery. This proposed rule amendment gives distilleries and breweries in the state the same privilege.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--The state does not require that alcoholic beverage manufacturers operate a package agency on their premises. There is no cost or savings to the state's budget by including distilleries and breweries to the list of those manufacturers that may operate a package agency.

❖ LOCAL GOVERNMENTS: None--Local governments do not regulate the day-to-day operations of package agencies. The passage of this proposed amendment will have no fiscal impact on local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Local alcoholic beverage manufacturers in the State of Utah are virtually all operated as small businesses. The ability for distilleries and breweries to operate package agencies on their premises should bring in revenues that help their bottom line. Patrons touring these facilities will save time by having the convenience of being able to purchase the the spirits and heavy beers without having to make a trip to a liquor store.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no actual compliance costs to this proposed rule amendment since manufacturers are not required to maintain a package agency on the premises. If the manufacturer chooses to apply for the package agency privilege, there may be some logistical costs in placing the package agency within their establishment. These costs will likely be offset by the revenues from the sale of their products.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Utah's wineries have always enjoyed the privilege to sell their products to individuals who tour their production facilities. It is only fair that distilleries and breweries have the same opportunity. It is hoped that this rule will have a positive fiscal impact on the small alcoholic beverage manufacturers who choose to take advantage of it, and that it will add convenience for the citizens who tour these facilities. Dennis R. Kellen, Director

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

ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY UT 84104-1630, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Sharon Mackay at the above address, by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-3. Package Agencies.
R81-3-14. Type 5 Package Agencies.

(1) Purpose. A type 5 package agency is for the limited purpose of allowing a winery, distillery, or brewery to sell at its [~~winery~~]manufacturing location the packaged [~~wine~~]liquor product it actually produces to the general public for off-premise consumption. This rule establishes guidelines and procedures for type 5 package agencies.

(2) Application of Rule.

(a) The package agency must be located on the winery, distillery, or brewery premises at a location approved by the commission.

(b) The package agency may only sell products produced at the winery, distillery, or brewery, and may not carry the products of other alcoholic beverage manufacturers.

(c) The product produced by the winery, distillery, or brewery and sold in the type 5 package agency need not be shipped from the winery, distillery, or brewery to the department warehouse and then back to the package agency. The bottles for sale may be moved directly from the [~~winery~~]manufacturer's storage area to the package agency provided that proper record-keeping is maintained on forms provided by the department. Records required by the department shall be kept current and available to the department for auditing purposes. Records must be maintained for at least three years. The package agency shall submit to the department a completed monthly sales report form which specifies the variety and number of bottles sold from the package agency. This report must be submitted to the department within the first five working days of the month. A club or restaurant purchases form must be filled out for every licensee purchase.

(d) Direct deliveries to licensees are prohibited. [~~Wines~~]Products must be purchased and picked up by the licensees or their designated agents at the Type 5 package agency.

(e) The type 5 package agency shall follow the same laws, rules, policies, and procedures applicable to other package agencies as to the retail price of products.

(f) The days and hours of sale of the type 5 package agency shall be in accordance with 32A-3-106(10).

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~June 1, 2004~~]2008
Notice of Continuation: September 6, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-107

Alcoholic Beverage Control, Administration
R81-4D-1
Licensing

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31336
FILED: 04/30/2008, 13:55

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Gathering Place in West Jordan asked the Alcoholic Beverage Control (ABC) Commission to amend its current rule regarding eligibility to hold an On-Premise Banquet License. The ABC Commission voted to direct the proposal of this rule amendment.

SUMMARY OF THE RULE OR CHANGE: There are four types of entities that qualify for an On-Premise Banquet license to store, sell, and serve alcoholic beverages on the premises. The convention center venue is the only one of the four with a minimum square footage requirement. The Gathering Place qualifies for the license except for meeting the minimum square footage requirement. The proposed rule amendment simply deletes the language regarding minimum square footage for convention centers.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--Implementation of this proposed amendment does not change how On-Premise Banquet Licenses applications are considered or granted. There will be no increase in application fees and no additional staff man-hours required.

❖ LOCAL GOVERNMENTS: None--Local governments are not involved in the issuance of On-Premise Banquet licenses.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This proposed rule amendment primarily affects small convention or conference centers. If passed, the rule will allow small businesses who were not previously eligible to hold an On-Premise Banquet license to apply for and hold the license. For those who decide to take advantage of this opportunity, there will be application and compliance costs involved. Persons other than businesses will not be fiscally affected by this rule amendment.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Small convention centers that opt to take advantage of holding an On-Premise Banquet license will be required to file an application with the Department of Alcoholic Beverage Control (DABC), pay a $250 application fee and an annual $500 license fee, and post a $10,000 compliance bond They will also be required to comply with storage and sales regulation.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: DABC recognizes the need for many small convention centers to have alcoholic beverages available for contracted events on their premises. Applying for an On-Premise Banquet license is a business decision that will involve a fiscal impact on these businesses. The business must determine whether alcoholic beverage sales revenues will offset the cost of the license and compliance. Dennis R. Kellen, Director

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ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY UT 84104-1630, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Sharon Mackay at the above address, by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-4D. On-Premise Banquet License.
R81-4D-1. Licensing.

(1) An on-premise banquet license may be issued only to a hotel, resort facility, sports center or convention center as defined in this rule.

(a) "Hotel" is a commercial lodging establishment:

(i) that offers temporary sleeping accommodations for compensation;

(ii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;

(iii) that has adequate kitchen or culinary facilities on the premises of the hotel to provide complete meals; and

(iv) that has at least 1000 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 75 people, provided that in cities of the third, fourth or fifth class, unincorporated areas of a county, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(b) "Resort facility" is a publicly or privately owned or operated commercial recreational facility or area:

(i) that is designed primarily to attract and accommodate people to a recreational or sporting environment;

(ii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;

(iii) that has adequate kitchen or culinary facilities on the premises of the resort to provide complete meals; and

(iv) that has at least 1500 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated areas of a county, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(c) "Sports center" is a publicly or privately owned or operated facility:

(i) that is designed primarily to attract people to and accommodate people at sporting events;

(ii) that has a fixed seating capacity for more than 2,000 persons;

(iii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;

(iv) that has adequate kitchen or culinary facilities on the premises of the sports center to provide complete meals; and

(v) that has at least 2500 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated areas of a county, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(d) "Convention center" is a publicly or privately owned or operated facility:

(i) the primary business or function of which is to host conventions, conferences, and food and beverage functions under a banquet contract;

[~~(ii) that is a total of at least 30,000 square feet;~~

~~(iii)~~](ii) that has adequate kitchen or culinary facilities on the premises of the convention center to provide complete meals; and

[~~(iv)~~](iii) that has at least 3000 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated counties, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(2)(a) A "banquet contract" as used in this rule means an agreement between an on-premise banquet licensee and a host of a banquet to provide alcoholic beverage services at a meal, reception, or other private banquet function at a defined location on a specific date and time for a pre-arranged, guaranteed number of attendees at a negotiated price.

(b) Each "banquet contract" shall:

(i) clearly define the location of the private banquet function;

(ii) require that the private banquet function be separate from other areas of the facility that are open to the general public; and

(iii) require signage at or near the entrance to the private banquet function to indicate that the location has been reserved for a specific group.

(3) On-premise banquet licenses are issued to persons as defined in Section 32A-1-105(36). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32A-4-402(4), 32A-4-403, and 32A-4-406(26).

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~August 26, 2005~~]2008
Authorizing, and Implemented or Interpreted Law: 32A-1-107

♦ ♦

Alcoholic Beverage Control, Administration
R81-4D-2
Application

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31338
FILED: 04/30/2008, 14:18

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment proposes that the Department of Alcoholic Beverage Control (DABC), not the Alcoholic Beverage Control (ABC) Commission, be authorized to approve additional locations within a licensed facility for On-Premise Banquet alcoholic beverage services.

SUMMARY OF THE RULE OR CHANGE: This rule amendment proposes that the DABC, not the ABC Commission, be authorized to approve additional locations within a licensed facility for On-Premise Banquet alcoholic beverage services. The proposal includes guidelines for the department to follow when granting the additional locations.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Granting the additional location for alcohol service on the premises of an On-Premise Banquet licensee will require consideration of department staff. It may require that staff visit the facility to determine if all criteria will be met. This will result in some staff man-hour costs, but it is not possible to determine an exact dollar amount of those costs as it is unknown how many requests for additional locations will be received by the department. There will be no charge to the licensee for these services.

❖ LOCAL GOVERNMENTS: None--DABC regulates the operations of On-Premise Banquet licensees. Requests for additional locations for On-Premise Banquet facilities will not be directed to local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--Granting an additional location within a licensed On-Premise Banquet facility, small or large, will not require additional fees and should not fiscally impact these businesses. Persons other than businesses will not be fiscally impacted.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is anticipated that compliance requirements for additional alcohol service locations within a licensed On-Premise Banquet facility will be minimal. Most of these facilities are already set up for alcoholic beverage service that can be easily adapted to additional locations on the premises.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: DABC does not anticipate there will be any significant fiscal impact when implementing this proposed rule amendment. Dennis R. Kellen, Director

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ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY UT 84104-1630, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Sharon Mackay at the above address, by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-4D. On-Premise Banquet License.
R81-4D-2. Application.

(1) A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of an on-premise banquet license when the requirements of Sections 32A-4-402, -403, and -405 have been met, a completed application has been received by the department, and the on-premise banquet premises have been inspected by the department.

(2)(a) The application shall include a floor plan showing the locations of function space in or on the applicant's business premises that may be reserved for private banquet functions where alcoholic beverages may be stored, sold or served, and consumed. Hotels shall also indicate the number of sleeping rooms where room service will be provided and include a sample floor plan of a guest room level. No application will be accepted that merely designates the entire hotel,

resort, sports center or convention center facility as the proposed licensed premises.

(b) [~~After~~]Pursuant to 32A-4-402(2) and 32A-4-406(4) an on-premise banquet license has been issued, the licensee may apply to the [~~commission~~]department for approval of additional locations in or on the premises of the hotel, resort, sports center or convention center that were not included in the licensee's original application. The additional locations must:

(i) be clearly defined;

(ii) be configured to ensure separation between any private banquet function and other areas of the facility that are open to the general public; and

(iii) be configured to ensure compliance with all operational restrictions with respect to the sale, storage, and consumption of alcoholic beverages required by 32A-4-406.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~August 26, 2005~~]2008
Authorizing, and Implemented or Interpreted Law: 32A-1-107

♦ ♦

Alcoholic Beverage Control, Administration
R81-5-11
Price Lists

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31287
FILED: 04/29/2008, 09:56

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is being proposed to implement law changes made by passage of S.B. 211 (2008). (DAR NOTE: S.B. 211 (2008) is found at Chapter 391, Laws of Utah 2008, and was effective 05/05/2008.)

SUMMARY OF THE RULE OR CHANGE: The statute no longer requires that a private club's liquor price list be included in the club's house rules. This proposed amendment also removes that requirement from the private club rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: None--Removing the requirement for clubs to include their liquor price list in their house rules in no way affects the state budget.

❖ LOCAL GOVERNMENTS: None--Removing the requirement for clubs to include their liquor price list in their house rules in no way affects local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--This proposed rule amendment only relieves clubs from having to include their liquor price list in their house rules and will have no fiscal impact on private clubs no matter the size. The amendment will not have a fiscal impact on others.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Private clubs are not required to remove their liquor price list from their house rules, they are just no longer required to include the price list in their house rules. This being the case, there should be no significant compliance costs in implementing this rule amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The department staff members feel that removing the requirement for private clubs to include their liquor price list in their house rules is a step toward more reasonable liquor laws. The department is in favor of this change. Dennis R. Kellen, Director

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ALCOHOLIC BEVERAGE CONTROL
ADMINISTRATION
1625 S 900 W
SALT LAKE CITY UT 84104-1630, or
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THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-5. Private Clubs.
R81-5-11. Price Lists.

(1) Each licensee shall have available for its patrons a printed price list containing current prices of all mixed drinks, wine, beer, and heavy beer. This list shall include any amounts charged by the licensee for the service of packaged liquor, wine or heavy beer[~~, and shall be made a part of the house rules of the club, a copy of which~~]. A copy shall be kept on the club premises and available at all times for examination by the members, guests, and visitors to the club.

(2) Any printed menu, master beverage price list or other printed list is sufficient as long as the prices are current and the list is readily available to the patron.

(3) Customers shall be notified of the price charged for any packaged liquor, wine or heavy beer and any service charges for the supply of glasses, chilling, or wine service.

(4) A licensee or his employee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~May 1, 2005~~]2008
Notice of Continuation: September 7, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-107; 32A-5-107(18); 32A-5-107(23)

Alcoholic Beverage Control, Administration
R81-7-1
Application Guidelines

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31332
FILED: 04/30/2008, 12:13

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule amendment is proposed to implement changes in the laws resulting from the passage of S.B. 165 (2008). (DAR NOTE: S.B. 165 (2008) is found at Chapter 108, Laws of Utah 2008, and was effective 05/05/2008.)

SUMMARY OF THE RULE OR CHANGE: S.B. 165 created a new type of Single Event Permit that allows for the granting of more permits for events of shorter duration in addition to the permits already authorized. This proposed rule amendment merely makes the application guidelines for applying for these permits less specific to accommodate for the new permit type.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--The fee for the new Single Event Permit type will be the same as the fee for the permits currently being issued. It is anticipated that the new permit type will not expend more or fewer Department of Alcoholic Beverage Control (DABC) staff man-hours and, therefore, will not affect the state's budget.
❖ LOCAL GOVERNMENTS: None--Single Event permits are issued by DABC and not local governments.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Many applicants of Single Event Permits operate small businesses. Since the application fee for the new type of permit is the same as for the original type of permit, these small businesses should experience no additional fiscal impact. Other persons will not be fiscally impacted by this amendment.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Since the application fee for the new type of Single Event Permit is the same as for the original type of permit, businesses should experience no additional compliance costs.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The department is happy to comply with the new law. There is obviously a need for two types of Single Event Permit. The Department is pleased that this accommodation will not add to the cost of the permit. Dennis R. Kellen, Director

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1625 S 900 W
SALT LAKE CITY UT 84104-1630, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Sharon Mackay at the above address, by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-7. Single Event Permits.
R81-7-1. Application Guidelines.

(1) A single event permit application for the purpose of conducting a convention, civic or community enterprise, shall be included in the agenda of the monthly commission meeting for consideration for issuance of a single event permit, when the requirements of Section 32A-7 have been met, and a completed application has been received by the department. "Conducting" as used herein means the conduct, management, control or direction of an event. The organization directly benefiting from the event, monetarily or otherwise, shall be deemed to be conducting the event.

(2) Pursuant to Section 32A-7-101[~~(1) and (3)~~], the commission may grant [~~four~~]single event permits [~~within a calendar year~~]to [~~each~~]a bona fide partnership, corporation, limited liability company, church, political organization, or incorporated association[~~. The commission may also grant four single event permits within a calendar year~~], and to each bona fide and recognized subordinate lodge, chapter or local unit of any qualifying parent entity. To be a "bona fide" and "recognized" subordinate or local entity, the applicant must have been in existence for at least one year prior to the date of the application and must furnish proof thereof.

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

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

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

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

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

(8) The single event permit bond, as required by Section 32A-7-105, shall not be released back to the single event permittee until the permittee provides to the department the required data regarding liquor purchases, sales, prices charged, and net profit generated at the event for which the single event permit was issued.

(9) If an organization or individual other than the one applying for the single event permit posts the $1,000 bond required by Section 32A-7-105, an affidavit must be submitted attesting that the $1,000 bond is for the permittee's compliance with the provisions of the Act and the commission rules, and that if a violation occurs at the single event, the bond may be forfeited.

(10) The commission may authorize multiple sales outlets on different properties under one single event permit, provided that each site conforms to location requirements of Section 32A-7. The commission may authorize simultaneous sale and consumption hours at multiple sales outlets.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: [~~August 1, 2003~~]2008
Notice of Continuation: August 24, 2006
Authorizing, and Implemented or Interpreted Law: 32A-1-107

♦ ♦

Alcoholic Beverage Control, Administration

R81-10

Off-Premise Beer Retailers

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 31334
FILED: 04/30/2008, 13:20

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This new rule is being proposed to implement law changes passed in S.B. 211 (2008). (DAR NOTE: S.B. 211 (2008) is found at Chapter 391, Laws of Utah 2008, and was effective 05/05/2008.)

SUMMARY OF THE RULE OR CHANGE: S.B. 211 requires that there be clear and specific separation of alcoholic beverages from nonalcoholic beverages in off-premise retail outlets. This rule proposes guidelines for outlets to follow when placing these products on their premises. It also addresses specific language to be used in alcoholic beverage signage in retail outlets.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 32A-1-107

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--Nothing in this proposed rule requires state involvement that would significantly affect the state budget with the possible exception of law enforcement involvement. The law, however, does not mandate specific monitoring regulations for law enforcement officers or others.
❖ LOCAL GOVERNMENTS: There may conceivably be some costs if local law enforcement agencies conduct compliance checks of off-premise outlets. But, the statute does not mandate such law enforcement monitoring and, if it is done, it is likely it would be done during routine premise checks.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Many off-premise outlets such as grocery and convenience stores are operated as small businesses. It is very likely that these outlets will need to invest money and man-hours to bring their alcoholic beverage storage areas and signage in line with the new laws. The exact cost cannot be calculated because compliance is so variable from one outlet to another. Other persons will not be directly impacted by this new rule.

COMPLIANCE COSTS FOR AFFECTED PERSONS: It is very likely that these outlets will need to invest money and manhours to bring their alcoholic beverage storage areas and signage in line with the new laws and rules. The exact cost cannot be calculated because compliance is so variable from one outlet to another and is directly affected by store size and alcoholic beverage inventory.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The ABC Commission and Department of Alcoholic Beverage Control (DABC) are acutely aware of problems related to underage alcohol consumption. Though this new law and rule will have compliance costs, DABC feels that it is worth the effort and money if it curtails the sale of alcohol to minors. Dennis R. Kellen, Director

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Sharon Mackay at the above address, by phone at 801-977-6800, by FAX at 801-977-6889, or by Internet E-mail at smackay@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Dennis R. Kellen, Director

R81. Alcoholic Beverage Control, Administration.
R81-10. Off-Premise Beer Retailers.
R81-10-1. Separation of Alcoholic Beverages from Non-Alcoholic Beverages and Required Signage.

(1) Authority and General Purpose. This rule is pursuant to 32A-10-102(5) that requires:

(a) an off-premise beer retailer to display beer sold by the retailer in an area that is visibly separate and distinct from the area where a nonalcoholic beverage is displayed, and requires the commission to define by rule what constitutes an "area that is visibly separate and distinct from the area where a nonalcoholic beverage is displayed"; and

(b) an off-premise beer retailer to prominently post in the separate and distinct area where beer is sold, an easily readable sign that reads in print that is no smaller than .5 inches, bold type, "These beverages contain alcohol. Please read the label carefully," and requires the commission to define by rule the format of the sign.

(2) Application of the Rule.

(a) Display requirements.

(i) Pursuant to 32A-10-102(5), an off-premise beer retailer must display beer products in an "area that is visibly separate and distinct from the area where a non-alcoholic beverage is displayed."

(ii) This requires that under no circumstances may there be a co-mingling or interspersing of beer products with non-alcoholic beverages, except that non-alcoholic beers may be displayed with beer products.

(iii) The separation must clearly and unambiguously convey to a consumer those beverage products that contain alcohol and those that do not. This may be satisfied by any of the following means:

(A) An entire display cabinet, cooler, shelf, aisle, end-cap, side-stack, or stand alone floor display, or room where the only beverages displayed are beer products, accompanied by the prominent and unambiguous posting of the sign required by 32A-10-102(5); or

(B) A shared display cabinet, cooler, shelf, aisle, or room where beer products are displayed separately from non-alcoholic beverages by way of a physical barrier or visible divider of sufficient prominence to create a clear divide between the beer products and the non-alcoholic beverages. The area where beer products are displayed must have a prominent and unambiguous posting of the sign required by 32A-10-102(5). End-cap, side-stack, or stand-alone floor displays may not contain both beer products and non-alcoholic beverages other than non-alcoholic beers.

(b) Sign requirements.

(i) The sign required by 32A-10-102(5) must be:

(A) prominently posted in the area where beer is sold;

(B) easily readable;

(C) in print that is no smaller than .5 inches, bold type.

(ii) The print on the sign must be clearly readable and on a solid, contrasting background.

(iii) The size of the sign, and the size of the print must be sufficiently large so as to be readable, and clearly and unambiguously convey to a consumer that the beverage products displayed in that area contain alcohol. In no instance may the sign be smaller than 8.5 inches x 3.5 inches.

(iv) Additional signs may be necessary depending on the size and type of display area. For example, an entire aisle devoted to beer products may require more than one sign to adequately inform the consumer.

KEY: alcoholic beverages
Date of Enactment or Last Substantive Amendment: 2008
Authorizing, and Implemented or Interpreted Law: 32A-1-107

Capitol Preservation Board (State), Administration
R131-14
Parking on Capitol Hill

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 31366
FILED: 05/01/2008, 18:58

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is necessary to carry out the duties required by Section 63C-9-301 regarding the State Capitol Hill facilities and grounds.

SUMMARY OF THE RULE OR CHANGE: Section 63C-9-301 provides for and authorizes the State Capitol Preservation Board (CPB) to adopt rules governing, administering, and regulating the State Capitol Hill facilities and grounds. This rule was written to define and implement the State Capitol Preservation Board's policy regarding parking at the Utah State Capitol Hill Complex and meet the statutory requirements as set forth in H.B. 317 (2007) Capitol Hill Complex -- Legislative Space or any subsequent applicable law. (DAR NOTE: H.B. 317 (2007) is found at Chapter 317, Laws of Utah 2007, and was effective 04/30/2007.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Title 63C, Chapter 9

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The initial assignment of parking stalls requires staff time but falls within the normal duties of the office. Beyond the initial assignment, further time will only be required as turnover occurs in affected agencies requiring new stall assignments. This will also require staff time but will also fall within the normal duties of the office. Enforcement of the parking assignments may require time but will also fall under normal duties. No fees are assessed by the board to executive or judicial agency employees who park on Capitol Hill.

❖ LOCAL GOVERNMENTS: This rule pertains only to the assignment of parking spaces for state employees and should not affect local governments. If a local government representative visits Capitol Hill and parks inappropriately, there may be a cost if this person is issued a ticket. The CPB cannot reasonably foresee how may parking violations may occur.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This rule pertains only to the assignment of parking spaces for

state employees and should not affect small businesses or other persons. If a small business representative or other person visits Capitol Hill and parks inappropriately, there may be a cost if this person is issued a ticket. The CPB cannot reasonably foresee how may parking violations may occur.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The only compliance cost would result from inappropriate parking and the associated fine. The CPB cannot reasonably foresee how may parking violations may occur.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The action of the Capitol Preservation Board does not affect businesses. David Hart, AIA, Executive Director

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

CAPITOL PRESERVATION BOARD (STATE)
ADMINISTRATION
Room E110 EAST BUILDING
420 N STATE ST
SALT LAKE CITY UT 84114-2110, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Sarah Whitney at the above address, by phone at 801-538-3074, by FAX at 801-538-3221, or by Internet E-mail at swhitney@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: David H. Hart, AIA, Executive Director

R131. Capitol Preservation Board (State), Administration.
R131-14. Parking on Capitol Hill.
R131-14-1. Purpose and Authority.

(1) The purpose of this rule is to define and implement the State Capitol Preservation Board's policy regarding parking at the Utah State Capitol Hill Complex.

(2) This rule is promulgated pursuant to Section 63C-9-301.

R131-14-2. Parking Assignments.

(1) Parking assignments on Capitol Hill are the responsibility of the Board's executive director or designee.

(2) The identification and assignment of reserved parking stalls shall follow the following process:

(a) Shall meet the statutory requirements as set forth in H.B. 317 (2007) Capitol Hill Complex - Legislative Space or any subsequent applicable law. Any delegation by the Legislative Management Committee as called for in H.B. 317 (2007) or any subsequent statute shall be included in the parking assignments.

(b) All remaining parking shall be distributed between all other elected officials, their staff and departments with preference going to the elected officials and their staff.

R131-14-3. Disabled Parking Assignments.

(1) The Board maintains accessible parking stalls as specified by the American with Disabilities Act (ADA) and the ADA Accessibility Guidelines (ADAAG). These parking stalls are divided between non-reserved and reserved parking in agreement with the Utah State Building Official. All provisions of this rule shall be interpreted to be consistent with the ADA and applicable federal law, and in case of conflict, the provisions of the ADA and applicable federal law shall supersede the provisions of this rule.

(2) The assignments of the reserved ADA stalls are as follows:

(a) Due to limitations, the first priority in the assignment of reserved accessible parking stalls are assigned to individuals having a permanent ADA placard which has been issued by the Utah Department of Motor Vehicles. These assignments shall be on a request basis and shall be assigned the appropriate assigned parking space as such assigned spaces become available. Prior to the availability of an assigned parking space, the individual with the permanent ADA placard may park in a non-assigned ADA parking stall located on the Capitol Hill grounds.

(b) Those individuals with temporary ADA placards will be assigned an appropriate reserved accessible parking space as such assigned spaces become available, for the length of their disability as determined by their doctor. Prior to the availability of an assigned parking space, the individual with the temporary ADA placard may park in a non-assigned ADA parking stall located on the Capitol Hill grounds.

(c) Those individuals who received parking placards and do not receive a reserved accessible parking stall are welcome to park in available non-assigned accessible parking stalls located on the Capitol Hill grounds.

(d) Unassigned, reserved accessible stalls in the underground parking plaza may be assigned to non-disabled elected officials or employees. However, when a request for an accessible stall is made by an elected official or employee with an accessible parking placard, any available accessible parking stall shall be relinquished to the elected official or employee with an accessible parking placard in accordance with the above-described priorities.

(e) In the event an accessible stall is not available, employees with disabilities may request individualized accommodations through the ADA coordinator within the Utah Division of Risk Management who will conduct a confidential individualized assessment with the employee and/or elected official and work with the Board to implement reasonable accommodations where appropriate.

R131-14-4. Assignment Process and Procedures.

(1) The executive director will oversee and approve the number of parking stalls assigned to Legislative, Executive and Judicial Branches of government. The executive director may designate areas of parking by departments, divisions or agencies. The executive director shall assign stall numbers, issue parking tags, personal data sheets and written agreements for each assigned individual to fill out and return to the executive director. The executive director may require those assigned a parking stall to execute a legal agreement protecting the state of Utah and the Board, in accordance with a form reviewed by the Utah Attorney General's Office and the Utah Division of Risk Management. The identification of persons with particular stalls shall be kept confidential by the Board, the Department of Public Safety and any other state officials that receive such information in the course of

state business, as the release of such information creates security and property risks.

(2) Upon the completion and signature of the personal data sheet and the written agreement, the stall will be assigned and parking privileges will be added to the employee or official's access card. Those with disabilities assigned to an ADA stall will need to provide a copy of the placard to the executive director.

(3) Because of a limited number of parking stalls on the Capitol Hill Complex, it is necessary to transition parking for Legislative Sessions and Interim Legislative Sessions. Notices to employees may be sent out from the Board as a courtesy. However, it is the responsibility of the individual to know which days they may and may not have a reserved parking stall as identified in their signed agreement.

(4) Any individual that intentionally violates their signed parking agreement may lose the privilege to park in the space identified in the parking agreement, as well as have any entrance card or device deactivated, as determined by the executive director. Any determination by the executive director may be appealed to the chair of the Board Operations and Budget Development Subcommittee. However, such determination by the chair shall be final. The designation of a parking space in the Capitol Hill Complex is a privilege and not a right.

(5) Any violation of this rule may also be prosecuted under Section 63C-901(3).

KEY: parking, ADA parking
Date of Enactment or Last Substantive Amendment: 2008
Authorizing, and Implemented or Interpreted Law: 63C-9

Commerce, Occupational and Professional Licensing

R156-1

General Rules of the Division of Occupational and Professional Licensing

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 31288
FILED: 04/29/2008, 10:48

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The division needs to update statute citations in the rule as a result of H.B. 63 (2008) amending Title 63. An amendment also deletes a reference to professional employer organization since the regulation of those companies is being moved to the Insurance Department in May 2008 as a result of H.B. 159. Both house bills were passed during the 2008 General Session of the Legislature. (DAR NOTE: H.B. 63 (2008) is found at Chapter 382, Laws of Utah 2008, and was effective 05/05/2008. H.B. 159 (2008) is found at Chapter 318, Laws of Utah 2008, and was effective 05/05/2008.)

SUMMARY OF THE RULE OR CHANGE: Statutory citations referencing Title 63 have been updated throughout the rule. In Subsection R156-1-308a(2)(e), the reference to professional employer organization is being deleted.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-1-308 and Subsections 58-1-106(1)(a) and 58-1-501(4)

ANTICIPATED COST OR SAVINGS TO:

- THE STATE BUDGET: The division will incur minimal costs of approximately $100 to reprint this rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the division's current budget.
- LOCAL GOVERNMENTS: Proposed amendments do not apply to local governments. The proposed amendments only apply to occupations and professions regulated by the division.
- SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The division does not anticipate any costs or savings as a result of these proposed amendments to small businesses or other persons since the majority of the changes are only statutory citation updates. Any costs or savings with respect to professional employer organizations, which may qualify as a small business, were considered in the passage of H.B. 159.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The division does not anticipate any costs or savings as a result of these proposed amendments since the majority of the changes are only statute citation updates. Any costs or savings with respect to professional employer organizations were considered in the passage of H.B. 159.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no anticipated fiscal impact to businesses with this rule filing, which updates statutory references based upon recent statutory amendments. Francine A. Giani, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
W. Ray Walker at the above address, by phone at 801-530-6256, by FAX at 801-530-6511, or by Internet E-mail at raywalker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: F. David Stanley, Director

R156. Commerce, Occupational and Professional Licensing.
R156-1. General Rules of the Division of Occupational and Professional Licensing.
R156-1-109. Presiding Officers.

In accordance with Subsection [~~63-46b-2~~]63G-4-103(1)(h), Sections 58-1-104, 58-1-106, 58-1-109, 58-1-202, 58-1-203, 58-55-103, and 58-55-201, except as otherwise specified in writing by the director, or for Title 58, Chapter 55, the Construction Services Commission, the designation of presiding officers is clarified or established as follows:

(1) The division regulatory and compliance officer is designated as the presiding officer for issuance of notices of agency action and for issuance of notices of hearing issued concurrently with a notice of agency action or issued in response to a request for agency action, provided that if the division regulatory and compliance officer is unable to so serve for any reason, a bureau manager designated by the regulatory and compliance officer is designated as the alternate presiding officer.

(2) Subsections 58-1-109(2) and 58-1-109(4) are clarified with regard to defaults as follows. Unless otherwise specified in writing by the director, or with regard to Title 58, Chapter 55, by the Construction Services Commission, the department administrative law judge is designated as the presiding officer for entering an order of default against a party, for conducting any further proceedings necessary to complete the adjudicative proceeding, and for issuing a recommended order to the director or commission, respectively, determining the discipline to be imposed, licensure action to be taken, relief to be granted, etc.

(3) Except as provided in Subsection (4) or otherwise specified in writing by the director, the presiding officer for adjudicative proceedings before the division are as follows:

(a) Director. The director shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsections R156-46b-201(1)(f) through (g), and R156-46b-201(2)(a) through (b), however resolved, including stipulated settlements and hearings; and

(ii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(d), (h),(j), (m), (n), (p), and (q), and R156-46b-202(2)(a) through (d), however resolved, including memorandums of understanding and stipulated settlements.

(b) Bureau managers or program coordinators. Except for Title 58, Chapter 55, the bureau manager or program coordinator over the occupation or profession or program involved shall be the presiding officer for:

(i) formal adjudicative proceedings described in Subsections R156-46b-201(1)(a) through (c), provided that any evidentiary hearing requested shall be conducted by the appropriate board who shall be designated as the presiding officer to act as the fact finder at any evidentiary hearing and shall issue a recommended order to the division based upon the record developed at the hearing determining all issues pending before the division to the director for a final order, and R156-46b-201(1)(e). The authority of the presiding officer in formal adjudicative proceedings described in R156-46b-201(1)(e) shall be limited to approval of claims, conditional denial of claims, and final denial of claims based upon jurisdictional defects;

(ii) formal adjudicative proceedings described in Subsection R156-46b-201(1)(h), for purposes of determining whether a request for a board of appeal is properly filed as set forth in Subsections R156-56-105(1) through (4); and

(iii) informal adjudicative proceedings described in Subsections R156-46b-202(1)(a) through (c), (e), (g), (i), (k), and (o).

(iv) At the direction of a bureau manager or program coordinator, a licensing technician or program technician may sign an informal order in the name of the licensing technician or program technician provided the wording of the order has been approved in advance by the bureau manager or program coordinator and provided the caption "FOR THE BUREAU MANAGER" or "FOR THE PROGRAM COORDINATOR" immediately precedes the licensing technician's or program technician's signature.

(c) Contested Citation Hearing Officer. The regulatory and compliance officer or other contested citation hearing officer designated in writing by the director shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-202(1)(l).

(d) Uniform Building Code Commission. The Uniform Building Code Commission shall be the presiding officer for the adjudicative proceeding described in Subsection R156-46b-20[~~1~~]2(1)(f) for convening a board of appeal under Subsection 58-56-8(3), for serving as fact finder at any evidentiary hearing associated with a board of appeal, and for entering the final order associated with a board of appeal. An administrative law judge shall perform the role specified in Subsection 58-1-109(2).

(e) Residence Lien Recovery Fund Advisory Board. The Residence Lien Recovery Fund Advisory Board shall be the presiding officer for adjudicative proceedings described in Subsection R156-46b-201(1)(e) and R156-46b-202(1)(g) that exceed the authority of the program coordinator, as delegated by the board, or are otherwise referred by the program coordinator to the board for action.

(4) Unless otherwise specified in writing by the Construction Services Commission, the presiding officers and process for adjudicative proceedings under Title 58, Chapter 55, are established or clarified as follows:

(a) Commission.

(i) The commission shall be the presiding officer for all adjudicative proceedings under Title 58, Chapter 55, except as otherwise delegated by the commission in writing or as otherwise provided in these rules; provided, however, that all orders adopted by the commission as a presiding officer shall require the concurrence of the director.

(ii) Unless otherwise specified in writing by the commission, the commission is designated as the presiding officer:

(A) for formal adjudicative proceedings described in Subsections R156-46b-201(1)(g) and R156-46b-201(2)(a) through (b), however resolved, including stipulated settlements and hearings;

(B) informal adjudicative proceedings described in Subsections R156-46b-202(1)(d), (m), (n), (p), and (q), and R156-46b-202(2)(a) and (c), however resolved, including memorandums of understanding and stipulated settlements;

(C) to serve as fact finder and adopt orders in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed under Title 58, Chapter 55; and

(D) to review recommended orders of a board, an administrative law judge, or other designated presiding officer who acted as the fact finder in an evidentiary hearing involving a person licensed or required to be licensed under Title 58, Chapter 55, and to

adopt an order of its own. In adopting its order, the commission may accept, modify or reject the recommended order.

(iii) If the commission is unable for any reason to act as the presiding officer as specified, it shall designate another presiding officer in writing to so act.

(iv) Orders of the commission shall address all issues before the commission and shall be based upon the record developed in an adjudicative proceeding conducted by the commission. In cases in which the commission has designated another presiding officer to conduct an adjudicative proceeding and submit a recommended order, the record to be reviewed by the commission shall consist of the findings of fact, conclusions of law, and recommended order submitted to the commission by the presiding officer based upon the evidence presented in the adjudicative proceeding before the presiding officer.

(v) The commission or its designee shall submit adopted orders to the director for the director's concurrence or rejection within 30 days after it receives a recommended order or adopts an order, whichever is earlier. An adopted order shall be deemed issued and constitute a final order upon the concurrence of the director.

(vi) If the director or his designee refuses to concur in an adopted order of the commission or its designee, the director or his designee shall return the order to the commission or its designee with the reasons set forth in writing for the nonconcurrence therein. The commission or its designee shall reconsider and resubmit an adopted order, whether or not modified, within 30 days of the date of the initial or subsequent return, provided that unless the director or his designee and the commission or its designee agree to an extension, any final order must be issued within 90 days of the date of the initial recommended order, or the adjudicative proceeding shall be dismissed. Provided the time frames in this subsection are followed, this subsection shall not preclude an informal resolution such as an executive session of the commission or its designee and the director or his designee to resolve the reasons for the director's refusal to concur in an adopted order.

(vii) The record of the adjudicative proceeding shall include recommended orders, adopted orders, refusals to concur in adopted orders, and final orders.

(viii) The final order issued by the commission and concurred in by the director may be appealed by filing a request for agency review with the executive director or his designee within the department.

(ix) The content of all orders shall comply with the requirements of Subsection [~~63-46b-5~~]63G-4-203(1)(i) and Sections [~~63-46b-10~~]63G-4-208 and [~~63-46b-11~~]63G-4-209.

(b) Director. Unless otherwise specified in writing by the commission, the director is designated as the presiding officer for conducting informal adjudicative proceedings specified in R156-46b-202(2)(b).

(c) Administrative Law Judge. Unless otherwise specified in writing by the commission, the department administrative law judge is designated as the presiding officer to conduct formal adjudicative proceedings before the commission and its advisory boards, as specified in Subsection 58-1-109(2).

(d) Bureau Manager. Unless otherwise specified in writing by the commission, the responsible bureau manager is designated as the presiding officer for conducting:

(i) formal adjudicative proceedings specified in Subsections R156-46b-201(1)(a) through (c), provided that any evidentiary hearing requested shall be conducted by the appropriate board or commission who shall be designated as the presiding officer to act as the fact finder at any evidentiary hearing and to adopt orders as set forth in these rules; and

(ii) informal adjudicative proceedings specified in Subsections R156-46b-202(1)(a) through (c), (e), (i), and (o).

(iii) At the direction of a bureau manager, a licensing technician may sign an informal order in the name of the licensing technician provided the wording of the order has been approved in advance by the bureau manager and provided the caption "FOR THE BUREAU MANAGER" immediately precedes the licensing technician's signature.

(e) Plumbers Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Plumbers Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as plumbers.

(f) Electricians Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Electricians Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as electricians.

(g) Alarm System Security and Licensing Board. Except as set forth in Subsection (c) or as otherwise specified in writing by the commission, the Alarm System Security and Licensing Board is designated as the presiding officer to serve as the fact finder and to issue recommended orders to the commission in formal evidentiary hearings associated with adjudicative proceedings involving persons licensed as or required to be licensed as alarm companies or agents.

R156-1-205. Peer or Advisory Committees - Executive Director to Appoint - Terms of Office - Vacancies in Office - Removal from Office - Quorum Requirements - Appointment of Chairman - Division to Provide Secretary - Compliance with Open and Public Meetings Act - Compliance with Utah Administrative Procedures Act - No Provision for Per Diem and Expenses.

(1) The executive director shall appoint the members of peer or advisory committees established under Title 58 or Title R156.

(2) Except for ad hoc committees whose members shall be appointed on a case-by-case basis, the term of office of peer or advisory committee members shall be for four years. The executive director shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the terms of committee members are staggered so that approximately half of the peer or advisory committee is appointed every two years.

(3) No peer or advisory committee member may serve more than two full terms, and no member who ceases to serve may again serve on the peer or advisory committee until after the expiration of two years from the date of cessation of service.

(4) If a vacancy on a peer or advisory committee occurs, the executive director shall appoint a replacement to fill the unexpired term. After filling the unexpired term, the replacement may be appointed for only one additional full term.

(5) If a peer or advisory committee member fails or refuses to fulfill the responsibilities and duties of a peer or advisory committee member, including the attendance at peer committee meetings, the executive director may remove the peer or advisory committee member and replace the member in accordance with this section.

After filling the unexpired term, the replacement may be appointed for only one additional full term.

(6) Committee meetings shall only be convened with the approval of the appropriate board and the concurrence of the division.

(7) Unless otherwise approved by the division, peer or advisory committee meetings shall be held in the building occupied by the division.

(8) A majority of the peer or advisory committee members shall constitute a quorum and may act in behalf of the peer or advisory committee.

(9) Peer or advisory committees shall annually designate one of their members to serve as peer or advisory committee chairman. The division shall provide a division employee to act as committee secretary to take minutes of committee meetings and to prepare committee correspondence.

(10) Peer or advisory committees shall comply with the procedures and requirements of Title 52, Chapter 4, Open and Public Meetings, in their meetings.

(11) Peer or advisory committees shall comply with the procedures and requirements of Title 63G, Chapter 4[~~6b~~], Administrative Procedures Act, in their adjudicative proceedings.

(12) Peer or advisory committee members shall perform their duties and responsibilities as public service and shall not receive a per diem allowance, or traveling or accommodations expenses incurred in peer or advisory committees business, except as otherwise provided in Title 58 or Title R156.

R156-1-308a. Renewal Dates.

(1) The following standard two-year renewal cycle renewal dates are established by license classification in accordance with the Subsection 58-1-308(1):

TABLE
RENEWAL DATES

(1)	Acupuncturist	May 31	even years
(2)	Advanced Practice Registered Nurse	January 31	even years
(3)	Alternate Dispute Resolution Provdr	September 30	even years
(4)	Architect	May 31	even years
(5)	Athlete Agent	September 30	even years
(6)	Athletic Trainer	May 31	odd years
(7)	Audiologist	May 31	odd years
(8)	Building Inspector	November 30	odd years
(9)	Burglar Alarm Security	November 30	even years
(10)	C.P.A. Firm	September 30	even years
(11)	Certified Court Reporter	May 31	even years
(12)	Certified Dietitian	September 30	even years
(13)	Certified Nurse Midwife	January 31	even years
(14)	Certified Public Accountant	September 30	even years
(15)	Certified Registered Nurse Anesthetist	January 31	even years
(16)	Certified Social Worker	September 30	even years
(17)	Chiropractic Physician	May 31	even years
(18)	Clinical Social Worker	September 30	even years
(19)	Construction Trades Instructor	November 30	odd years
(20)	Contractor	November 30	odd years
(21)	Controlled Substance Precursor Distributor	May 31	odd years
(22)	Controlled Substance Precursor Purchaser	May 31	odd years
(23)	Controlled Substance Handler	May 31	odd years
(24)	Cosmetologist/Barber	September 30	odd years
(25)	Cosmetology/Barber School	September 30	odd years
(26)	Deception Detection	November 30	even years
(27)	Dental Hygienist	May 31	even years
(28)	Dentist	May 31	even years
(29)	Direct-entry Midwife	September 30	odd years
(30)	Electrician Apprentice, Journeyman, Master, Residential Journeyman, Residential Master	November 30	even years
(31)	Electrologist	September 30	odd years
(32)	Electrology School	September 30	odd years
(33)	Environmental Health Scientist	May 31	odd years
(34)	Esthetician	September 30	odd years
(35)	Esthetics School	September 30	odd years
(36)	Factory Built Housing Dealer	September 30	even years
(37)	Funeral Service Director	May 31	even years
(38)	Funeral Service Establishment	May 31	even years
(39)	Genetic Counselor	September 30	even years
(40)	Health Facility Administrator	May 31	odd years
(41)	Hearing Instrument Specialist	September 30	even years
(42)	Landscape Architect	May 31	even years
(43)	Licensed Practical Nurse	January 31	even years
(44)	Licensed Substance Abuse Counselor	May 31	odd years
(45)	Marriage and Family Therapist	September 30	even years
(46)	Massage Apprentice, Therapist	May 31	odd years
(47)	Master Esthetician	September 30	odd years
(48)	Medication Aide Certified	March 31	odd years
(49)	Nail Technologist	September 30	odd years
(50)	Nail Technology School	September 30	odd years
(51)	Naturopath/Naturopathic Physician	May 31	even years
(52)	Occupational Therapist	May 31	odd years
(53)	Occupational Therapy Assistant	May 31	odd years
(54)	Optometrist	September 30	even years
(55)	Osteopathic Physician and Surgeon	May 31	even years
(56)	Pharmacy (Class A-B-C-D-E)	September 30	odd years
(57)	Pharmacist	September 30	odd years
(58)	Pharmacy Technician	September 30	odd years
(59)	Physical Therapist	May 31	odd years
(60)	Physician Assistant	May 31	even years
(61)	Physician and Surgeon	January 31	even years
(62)	Plumber Apprentice, Journeyman, Residential Apprentice, Residential Journeyman	November 30	even years
(63)	Podiatric Physician	September 30	even years
(64)	Pre Need Funeral Arrangement Provider	May 31	even years
(65)	Pre Need Funeral Arrangement Sales Agent	May 31	even years
(66)	Private Probation Provider	May 31	odd years
(67)	Professional Counselor	September 30	even years
(68)	Professional Engineer	March 31	odd years
(69)	Professional Geologist	March 31	odd years
(70)	Professional Land Surveyor	March 31	odd years
(71)	Professional Structural Engineer	March 31	odd years
(72)	Psychologist	September 30	even years
(73)	Radiology Practical Technician	May 31	odd years
(74)	Radiology Technologist	May 31	odd years
(75)	Recreational Therapy Technician, Specialist, Master Specialist	May 31	odd years
(76)	Registered Nurse	January 31	odd years
(77)	Respiratory Care Practitioner	September 30	even years
(78)	Security Personnel	November 30	even years
(79)	Social Service Worker	September 30	even years
(80)	Speech-Language Pathologist	May 31	odd years
(81)	Veterinarian	September 30	even years

(2) The following non-standard renewal terms and renewal or extension cycles are established by license classification in accordance with Subsection 58-1-308(1) and in accordance with specific requirements of the license:

(a) Certified Marriage and Family Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(b) Certified Professional Counselor Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(c) Certified Social Worker Intern licenses shall be issued for a period of six months or until the examination is passed whichever occurs first. An intern license may be extended if the licensee presents satisfactory evidence to the Division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

(d) Funeral Service Apprentice licenses shall be issued for a two year term and may be extended for an additional two year term if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure.

(e) [~~Professional Employer Organization registrations expire every year on September 30.~~

~~(f)~~]Psychology Resident licenses shall be issued for a two year term and may be extended if the licensee presents satisfactory evidence to the division and the board that reasonable progress is being made toward passing the qualifying examinations or is otherwise on a course reasonably expected to lead to licensure; but the period of the extension may not exceed two years past the date the minimum supervised experience requirement has been completed.

([~~g~~]f) Hearing Instrument Intern licenses shall be issued for a three year term and may be extended if the licensee presents satisfactory evidence to the Division and the Board that reasonable progress is being made toward passing the qualifying examination, but a circumstance arose beyond the control of the licensee, to prevent the completion of the examination process.

R156-1-308f. Denial of Renewal of Licensure - Classification of Proceedings - Conditional Renewal of Licensure During Adjudicative Proceedings - Conditional Initial, Renewal, or Reinstatement Licensure During Audit or Investigation.

(1) Denial of renewal of licensure shall be classified as a formal adjudicative proceeding under Rule R156-46b.

(2) When a renewal application is denied and the applicant concerned requests a hearing to challenge the division's action as permitted by Subsection [~~63-46b-3~~]63G-4-201(3)(d)(ii), unless the requested hearing is convened and a final order is issued prior to the expiration date shown on the applicant's current license, the division shall conditionally renew the applicant's license during the pendency of the adjudicative proceeding as permitted by Subsection 58-1-106(1)(h).

(3)(a) When an initial, renewal or reinstatement applicant under Subsections 58-1-301(2) through (3) or 58-1-308(5) or (6)(b) is selected for audit or is under investigation, the division may conditionally issue an initial license to an applicant for initial licensure, or renew or reinstate the license of an applicant pending the completion of the audit or investigation.

(b) The undetermined completion of a referenced audit or investigation rather than the established expiration date shall be indicated as the expiration date of a conditionally issued, renewed, or reinstated license.

(c) A conditional issuance, renewal, or reinstatement shall not constitute an adverse licensure action.

(d) Upon completion of the audit or investigation, the division shall notify the initial license, renewal, or reinstatement applicant whether the applicant's license is unconditionally issued, renewed, reinstated, denied, or partially denied or reinstated.

(e) A notice of unconditional denial or partial denial of licensure to an applicant the division conditionally licensed, renewed, or reinstated shall include the following:

(i) that the applicant's unconditional initial issuance, renewal, or reinstatement of licensure is denied or partially denied and the basis for such action;

(ii) the division's file or other reference number of the audit or investigation;

(iii) that the denial or partial denial of unconditional initial licensure, renewal, or reinstatement of licensure is subject to review and a description of how and when such review may be requested;

(iv) that the applicant's conditional license automatically will or did expire on the expiration date shown on the conditional license, and that the applicant will not be issued, renewed, or reinstated unless or until the applicant timely requests review; and

(v) that if the applicant timely requests review, the applicant's conditionally issued, renewed, or reinstated license does not expire until an order is issued unconditionally issuing, renewing, reinstating, denying, or partially denying the initial issuance, renewal, or reinstatement of the applicant's license.

KEY: diversion programs, licensing, occupational licensing, supervision
Date of Enactment or Last Substantive Amendment: [~~January 8,~~]2008
Notice of Continuation: March 1, 2007
Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-308; 58-1-501(4)

♦ ♦

Commerce, Occupational and Professional Licensing

R156-31b

Nurse Practice Act Rules

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31156
FILED: 04/17/2008, 10:41

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The Division and Nursing Board are proposing amendments to the rule to address concerns of school nurses, parents of diabetic school children, and the Utah/American Diabetes Association regarding the administration of insulin and glucagon to students in a school setting by unlicensed individuals.

SUMMARY OF THE RULE OR CHANGE: Throughout the rule the term "rules" has been replaced with "rule" where applicable. In Section R156-31b-102, proposed amendments establish definitions of terms used in Sections R156-31b-701 and R156-31b-701a including delegate, delegator, diabetes medical management plan, individualized health care plan (IHP), medication, nurse, patient, practitioner, school, and supervision. In Subsection R156-31b-502(2), changes existing language of student health plan to the modern term IHP and adds a reference to the newly established Section R156-31b-701a. In Section R156-31b-701, the changes expand and clarify the delegation process a nurse must follow in order to delegate nursing tasks and moves language regarding the delegation of the administration of glucagon to Section R156-31b-701a. A new Section R156-31b-701a is added and specifically addresses the role of the school nurse in delegating the administration of medications to students in a school setting, with specific attention given to the administration of insulin and glucagon.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-31b-101 and Subsections 58-1-106(1)(a) and 58-1-202(1)(a)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The division will incur minimal costs of approximately $100 to reprint the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the division's current budget. Failure to address this issue in rule could lead to a request to the Legislature by the Office of Education to fund more school nurses to provide this service as required by federal law. Also, parents of diabetic school children who cannot get the necessary diabetic/medication administration services for their children could pursue legal action on either the local or state level.

❖ LOCAL GOVERNMENTS: Local school districts are required by federal law to provide for the health care needs of students. There are not enough school nurses employed or available to provide for the increasing numbers and demands of diabetic students. The proposed amendments allow a school nurse to provide training to unlicensed school personnel to administer medication to students including insulin and glucagon. Without the proposed rule amendments, the school/district would need to hire additional school nurses or contract with a nurse staffing/home health agency to provide those services. Assuming a nurse in the school setting makes $20 per hour and works six hours per day, the total cost would be $120 per day. Also, as indicated above, there is a legal risk if the services are not provided or are not provided in a competent manner by untrained individuals.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Small business: A charter school is included in the definition of a school and is required to provide for the health needs of students. Hence, the effect on a charter school would be the same as a local school district as delineated above. Persons: The number of students diagnosed with diabetes is increasing at alarming rates. In Utah there is approximately one nurse for every 6,000 students. It is physically impossible for the current number of school nurses to administer medications to all those students requiring medication during school hours, especially those who are diabetic and require insulin administration and may, in an emergency, require the administration of glucagon. As schools have a difficult time finding nurses and others to administer medications to students, parents have chosen to take time off from work to attend to their children. The loss of productivity and overall impact on the economy in this type of a scenario is unmeasurable.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance costs to implement the proposed rule amendments should be low. The rule does require the school nurse to train unlicensed school personnel to administer medications including insulin and glucagon. The National School Nurses Association has already developed a training program that can be used by school nurses. Although the exact cost to implement this training program is unknown, the American Diabetes Association has indicated a willingness to help fund or find funding for the program to be implemented.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule filing establishes procedures for the delegation of nursing tasks to address concerns regarding the administration of insulin and glucagon to students in a school setting by unlicensed individuals. As indicated in the rule summary, this filing could result in substantial savings to school districts and provide parents the confidence that their diabetic child will receive needed medication while at school. There is also the risk of lawsuit if medications are not provided in a competent manner, but it is impossible to quantify that risk. Francine A. Giani, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Laura Poe at the above address, by phone at 801-530-6789, by FAX at 801-530-6511, or by Internet E-mail at lpoe@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 6/06/2008 at 10:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474 (fourth floor), Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: F. David Stanley, Director

R156. Commerce, Occupational and Professional Licensing.
R156-31b. Nurse Practice Act Rule[~~s~~].
R156-31b-101. Title.

Th[~~ese~~]is rule[~~s are~~] is known as the "Nurse Practice Act Rule[~~s~~]".

R156-31b-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 31b, as defined or used in th[~~ese~~] rule[~~s~~]:

(1) "Affiliated with an institution of higher education", as used in Subsection 58-31b-601(1), means the general and science education courses required as part of a nursing education program are provided by an educational institution which is approved by the Board of Regents or an equivalent governmental agency in another state or a private educational institution which is regionally accredited by an accrediting board recognized by the Council for Higher Education Accreditation of the American Council on Education; and the nursing program and the institution of higher education are affiliated with each other as evidenced by a written contract or memorandum of understanding.

(2) "APRN" means an advanced practice registered nurse.

(3) "APRN-CRNA" means an advanced practice registered nurse specializing and certified as a certified registered nurse anesthetist.

(4) "Approved continuing education" in Subsection R156-31b-303(3) means:

(a) continuing education that has been approved by a professional nationally recognized approver of health related continuing education;

(b) nursing education courses taken from an approved education program as defined in Section R156-31b-601; and

(c) health related course work taken from an educational institution accredited by a regional institutional accrediting body identified in the "Accredited Institutions of Postsecondary Education", 2006-2007 edition, published by the American Council on Education.

(5) "Approved education program" as defined in Subsection 58-31b-102(3) is further defined to include any nursing education program published in the documents entitled "Directory of Accredited Nursing Programs", 2006-2007, published by the National League for Nursing Accrediting Commission, which are hereby adopted and incorporated by reference as a part of th[~~ese~~]is rule[~~s~~].

(6) "CCNE" means the Commission on Collegiate Nursing Education.

(7) "CGFNS" means the Commission on Graduates of Foreign Nursing Schools.

(8) "COA", as used in th[~~ese~~]is rule[~~s~~], means the Council of Accreditation of Nurse Anesthesia Education Programs.

(9) "Clinical mentor/preceptor", as used in Section R156-31b-607, means an individual who is employed by a clinical health care facility and is chosen by that agency, in collaboration with the Parent-Program, to provide direct, on-site supervision and direction to a nursing student who is engaged in a clinical rotation, and who is accountable to both the clinical agency and the supervisory clinical faculty member.

(10) "Comprehensive nursing assessment", as used in Section R156-31b-704, means an extensive data collection (initial and ongoing) for individuals, families, groups and communities addressing anticipated changes in patient[~~/client~~] conditions as well as emergent changes in patient's[~~/client's~~] health status; recognizing alterations to previous patient[~~/client~~] conditions; synthesizing the biological, psychological, spiritual and social aspects of the patient's[~~/client's~~] condition; evaluating the impact of nursing care; and using this broad and complete analysis to make independent decisions and identification of health care needs; plan nursing interventions, evaluate need for different interventions and the need to communicate and consult with other health team members.

(11) "Contact hour" means 60 minutes.

(12) "Delegatee", as used in Sections R156-31b-701 and 701a, means one or more competent persons receiving a delegation who acts in a complementary role to the delegating nurse, who has been trained appropriately for the task delegated, and whom the delegating nurse authorizes to perform a task that the delegates is not otherwise authorized to perform.

([~~12~~]13) "Delegation" means transferring to [~~an individual~~]delegates the authority to perform a selected nursing task in a selected situation. The delegating nurse retains accountability for the delegation.

(14) "Delegation", as used in Sections R156-31b-701 and 701a, means the nurse making the delegation.

(15) "Diabetes medical management plan (DAMP), as used in this rule, means an individualized plan that describes the health care services that the student is to receive at school. The plan is developed and signed by the student's parent or guardian and health care team. It provides the school with information regarding how the student will manage diabetes at school on a daily basis. The DAMP shall be incorporated into and shall become a part of the student's IHP.

([~~13~~]16) "Direct supervision" is the supervision required in Subsection 58-31b-306(1)(a)(iii) and means:

(a) the person providing supervision shall be available on the premises at which the supervisee is engaged in practice; or

(b) if the supervisee is specializing in psychiatric mental health nursing, the supervisor may be remote from the supervisee if there is personal direct voice communication between the two prior to prescribing a prescription drug.

([~~14~~]17) "Disruptive behavior", as used in th[~~ese~~]is rule[~~s~~], means conduct, whether verbal or physical, that is demeaning, outrageous, or malicious and that places at risk patient care or the process of delivering quality patient care. Disruptive behavior does not include criticism that is offered in good faith with the aim of improving patient care.

([~~15~~]18) "Focused nursing assessment", as used in Section R156-31b-703, means an appraisal of an individual's status and

situation at hand, contributing to the comprehensive assessment by the registered nurse, supporting ongoing data collection and deciding who needs to be informed of the information and when to inform.

(19) "Individualized healthcare plan (IHP), as used in Section R156-31b-701a, means a plan for managing the health needs of a specific student, written and reviewed at least annually by a school nurse. The IHP is developed by a nurse working in a school setting in conjunction with the student and the student's parent or guardian to guide school personnel in the care of a student with medical needs. The plan shall be based on the student's practitioner's orders for the administration of medications or treatments for the student, or the student's DMMP.

([~~16~~]20) "Licensure by equivalency" as used in th[~~ese~~]is rule[~~s~~] means licensure as a licensed practical nurse after successful completion of course work in a registered nurse program which meets the criteria established in Sections R156-31b-601 and R156-31b-603.

([~~17~~]21) "LPN" means a licensed practical nurse.

(22) "Medication", as used in Sections R156-31b-701 and 701a, means any prescription or nonprescription drug as defined in Subsections 58-17b-102(39) and (61) of the Pharmacy Practice Act.

([~~18~~]23) "NLNAC" means the National League for Nursing Accrediting Commission.

([~~19~~]24) "NCLEX" means the National Council Licensure Examination of the National Council of State Boards of Nursing.

([~~20~~]25) "Non-approved education program" means any foreign nurse education program.

(26) "Nurse", as used in this rule, means an individual licensed under Title 58, Chapter 31b as a licensed practical nurse, registered nurse, advanced practice registered nurse, or advanced practice registered nurse-certified registered nurse anesthetist, or a certified nurse midwife licensed under Title 58, Chapter 44a.

([~~21~~]27) "Other specified health care professionals", as used in Subsection 58-31b-102(15), who may direct the licensed practical nurse means:

(a) advanced practice registered nurse;

(b) certified nurse midwife;

(c) chiropractic physician;

(d) dentist;

(e) osteopathic physician;

(f) physician assistant;

(g) podiatric physician;

(h) optometrist;

(i) naturopathic physician; or

(j) mental health therapist as defined in Subsection 58-60-102(5).

([~~22~~]28) "Parent-program", as used in Section R156-31b-607, means a nationally accredited, Board of Nursing approved nursing education program that is providing nursing education (didactic, clinical or both) to a student and is responsible for the education program curriculum, and program and student policies.

(29) "Patient", as used in this rule, means a recipient of nursing care and includes students in a school setting or clients of a health care facility, clinic, or practitioner.

([~~23~~]30) "Patient surrogate", as used in Subsection R156-31b-502(4), means an individual who has legal authority to act on behalf of the patient when the patient is unable to act or decide for himself, including a parent, foster parent, legal guardian, or a person designated in a power of attorney.

([~~24~~]31) "Psychiatric mental health nursing specialty", as used in Subsection 58-31b-302(4)(g), includes psychiatric mental health nurse specialists and psychiatric mental health nurse practitioners.

(32) "Practitioner", as used in Sections R156-31b-701 and 701a, means a person authorized by law to prescribe treatment, medication, or medical devices, and who acts within the scope of such authority.

([~~25~~]33) "RN" means a registered nurse.

(34) "School", as used in Section R156-31b-701a, means any private or public institution of primary or secondary education, including charter schools, pre-school, kindergarten, and special education programs.

(35) "Supervision", as used in Sections R156-31b-701 and 701a, means the provision of guidance and review by a licensed nurse for the accomplishment of a nursing task or activity, including the provision for the initial direction of the task, periodic inspection of the actual act of accomplishing the task or activity, and evaluation of the outcome.

([~~26~~]36) "Supervision" in Section R156-31b-701 means the provision of guidance or direction, evaluation and follow up by the licensed nurse for accomplishment of a task delegated to unlicensed assistive personnel or other licensed individuals.

([~~27~~]37) "Supervisory clinical faculty", as used in Section R156-31b-607, means one or more individuals employed by an approved nursing education program who meet the accreditation and Board of Nursing specific requirements to be a faculty member and are responsible for the overall clinical experiences of nursing students and may supervise and coordinate clinical mentors/preceptors who provide the actual direct clinical experience.

([~~28~~]38) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 31b, is further defined in Section R156-31b-502.

R156-31b-103. Authority - Purpose.

Th[~~ese~~]is rule[~~s are~~] is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 31b.

R156-31b-502. Unprofessional Conduct.

(1) "Unprofessional conduct" includes:

(a) failing to destroy a license which has expired due to the issuance and receipt of an increased scope of practice license;

(b) a RN issuing a prescription for a prescription drug to a patient except in accordance with the provisions of Section 58-17b-620, or as may be otherwise provided by law;

(c) failing as the nurse accountable for directing nursing practice of an agency to verify any of the following:

(i) that standards of nursing practice are established and carried out so that safe and effective nursing care is provided to patients;

(ii) that guidelines exist for the organizational management and management of human resources needed for safe and effective nursing care to be provided to patients;

(iii) nurses' knowledge, skills and ability and determine current competence to carry out the requirements of their jobs;

(d) engaging in sexual contact with a patient surrogate concurrent with the nurse/patient relationship unless the nurse affirmatively shows by clear and convincing evidence that the contact:

(i) did not result in any form of abuse or exploitation of the surrogate or patient; and

(ii) did not adversely alter or affect in any way:

(A) the nurse's professional judgment in treating the patient;

(B) the nature of the nurse's relationship with the surrogate; or

(C) the nurse/patient relationship; and

(e) engaging in disruptive behavior in the practice of nursing.

(2) In accordance with a prescribing practitioner's order and an IHP[~~, student care plan~~], a nurse who follows the delegation rule as provided in Sections R156-31b-701 and R156-31b-701a and delegates or trains an unlicensed assistive personnel to administer medications under Sections 53A-11-601, R156-31b-701 and R156-31b-701a shall not be considered to have engaged in unprofessional conduct for inappropriate delegation.

R156-31b-602. Nursing Education Program Full Approval.

(1) Full approval of a nursing program shall be granted when it becomes accredited by the NLNAC or the CCNE.

(2) Programs which have been granted full approval as of the effective date of th[~~ese~~]is rule[~~s~~] and are not accredited, must become accredited by December 31, 2005, or be placed on probationary status.

R156-31b-603. Nursing Education Program Provisional Approval.

(1) The division may grant provisional approval to a nursing education program for a period not to exceed three years after the date of the first graduating class, provided the program:

(a) is located or available within the state;

(b) is newly organized;

(c) meets all standards for provisional approval as required in this section; and

(d) is progressing in a reasonable manner to qualify for full approval by obtaining accreditation.

(2) The general standards for provisional approval include:

(a) the purpose and outcomes of the nursing program shall be consistent with the Nurse Practice Act and Rule[~~s~~] and other relevant state statutes;

(b) the purpose and outcomes of the nursing program shall be consistent with generally accepted standards of nursing practice appropriate for graduates of the type of nursing program offered;

(c) the input of consumers shall be considered in developing and evaluating the purpose and outcomes of the program;

(d) the nursing program shall implement a comprehensive, systematic plan for ongoing evaluation that is based on program outcomes and incorporates continuous improvement;

(e) the curriculum shall provide diverse didactic and clinical learning experiences consistent with program outcomes;

(f) faculty and students shall participate in program planning, implementation, evaluation, and continuous improvement;

(g) the nursing program administrator shall be a professionally and academically qualified registered nurse with institutional authority and administrative responsibility for the program;

(h) professionally and academically qualified nurse faculty shall be sufficient in number and expertise to accomplish program outcomes and quality improvement;

(i) the fiscal, human, physical, clinical and technical learning resources shall be adequate to support program processes, security and outcomes;

(j) program information communicated by the nursing program shall be fair, accurate, complete, consistent, and readily available;

(k) the program must meet the criteria for nursing education programs established in Section R156-31b-601; and

(l) the nursing education program shall be an integral part of a governing academic institution accredited by an accrediting body that is recognized by the U.S. Secretary of Education.

(3) Programs which have been granted provisional approval status shall submit an annual report to the Division on the form prescribed by the Division.

(4) Programs which have been granted provisional approval prior to the effective date of th[~~ese~~]is rule[~~s~~] and are not accredited, must become accredited by December 31, 2005.

(5) A comprehensive nursing education program evaluation shall be performed annually for quality improvement and shall include but not be limited to:

(a) students' achievement of program outcomes;

(b) evidence of adequate program resources including fiscal, physical, human clinical and technical learning resources, and the availability of clinical sites and the viability of those sites to meet the objectives of the program;

(c) multiple measures of program outcomes for graduates such as NCLEX pass rate, student and employer survey, and successful completion of national certification programs;

(d) evidence that accurate program information for consumers is readily available;

(e) the head of the academic institution and the administration support meet program outcomes;

(f) the program administrator and program faculty meet board qualifications and are sufficient to achieve program outcomes; and

(g) evidence that the academic institution assures security of student information.

(6) The curriculum of the nursing education program shall enable the student to develop the nursing knowledge, skills and competencies necessary for the level, scope and standards of nursing practice consistent with the level of licensure. The curriculum shall include:

(a) content regarding legal and ethical issues, history and trends in nursing and health care, and professional responsibilities;

(b) experiences that promote the development of leadership and management skills and professional socialization consistent with the level of licensure, including the demonstration of the ability to supervise others and provide leadership of the profession;

(c) learning experiences and methods of instruction, including distance education methods are consistent with the written curriculum plan;

(d) coursework including, but not limited to:

(i) content in the biological, physical, social and behavioral sciences to provide a foundation for safe and effective nursing practice;

(ii) didactic content and supervised clinical experience in the prevention of illness and the promotion, restoration, and maintenance of health in clients across the life span and in a variety of clinical settings, to include:

(A) using informatics to communicate, manage knowledge, mitigate error and support decision making;

(B) employing evidence-based practice to integrate best research with clinical expertise and client values for optimal care, including skills to identify and apply best practices to nursing care;

(C) providing client-centered, culturally competent care:

(1) respecting client differences, values, preferences and expressed needs;

(2) involving clients in decision-making and care management;

(3) coordinating and managing continuous client care; and

(4) promoting healthy lifestyles for clients and populations;

(D) working in interdisciplinary teams to cooperate, collaborate, communicate and integrate client care and health promotion; and

(E) participating in quality improvement processes to measure client outcomes, identify hazards and errors, and develop changes in processes of client care; and

(e) supervised clinical practice which include development of skill in making clinical judgments, management and care of groups of clients, and delegation to and supervision of other health care providers;

(i) clinical experience shall be comprised of sufficient hours to meet these standards, shall be supervised by qualified faculty and ensure students' ability to practice at an entry level;

(ii) delivery of instruction by distance education methods must be consistent with the program curriculum plan and enable students to meet the goals, competencies and objectives of the educational program and standards of the division; and

(iii) all student clinical experiences, including those with preceptors, shall be directed by nursing faculty.

(7) Students rights and responsibilities:

(a) students shall be provided the opportunity to acquire and demonstrate the knowledge, skills and abilities for safe and effective nursing practice, in theory and clinical experience with faculty oversight;

(b) all policies relevant to applicants and students shall be available in writing;

(c) students shall be required to meet the health standards and criminal background checks as required in Utah;

(d) students shall receive faculty instruction, advisement and oversight; and

(e) students shall maintain the integrity of their work.

(8) The qualifications for the administrator of a nursing education program shall include:

(a) the qualifications for an administrator in a program preparing an individual for licensure as an LPN shall include:

(i) a current, active, unencumbered RN license or multistate privilege to practice nursing in Utah;

(ii) a minimum of a masters degree in nursing or a nursing doctorate;

(iii) educational preparation or experience in teaching and learning principles for adult education, including curriculum development and administration, and at least two years of clinical experience; and

(iv) a current knowledge of nursing practice at the practical nurse level;

(b) the qualifications for an administrator in a program preparing an individual for licensure as an RN shall include:

(i) a current, active unencumbered RN license or multistate privilege to practice nursing in Utah;

(ii)(A) associate degree program: a minimum of a masters degree in nursing or a nursing doctorate;

(B) baccalaureate degree program: a minimum of a masters degree in nursing and an earned doctorate or a nursing doctorate;

(iii) education preparation or experience in teaching and learning principles for adult education, including curriculum development and administration, and at least two years of clinical experience; and

(iv) a current knowledge of RN practice;

(c) the qualifications for an administrator/director in a graduate program preparing an individual for licensure as an APRN shall include:

(i) a current, active unencumbered APRN license or multistate privilege to practice as an APRN in Utah;

(ii) a minimum of a masters in nursing or a nursing doctorate in an APRN specialty;

(iii) educational preparation or experience in teaching and learning principles for adult education, including curriculum development and administration, and at least two years of clinical experience; and

(iv) a current knowledge of APRN practice.

(9) The qualifications for faculty in a nursing education program shall include:

(a) a sufficient number of qualified faculty to meet the objectives and purposes of the nursing education program;

(b) the nursing faculty shall hold a current, active, unencumbered RN license or multistate privilege, or APRN license or multistate privilege to practice in Utah; and

(c) clinical faculty shall hold a license or privilege to practice and meet requirements in the state of the student's clinical site.

(10) The qualifications for nursing faculty who teach in a program leading to licensure as a practical nurse include:

(a) a minimum of a baccalaureate degree with a major in nursing;

(b) two years of clinical experience; and

(c) preparation in teaching and learning principles for adult education, including curriculum development and implementation.

(11) The qualifications for nursing faculty who teach in a program leading to licensure as a RN include:

(a) a minimum of a masters degree with a major in nursing or a nursing doctorate degree;

(b) two years of clinical experience; and

(c) preparation in teaching and learning principles for adult education, including curriculum development and implementation.

(12) The qualifications for nursing faculty who teach in a program leading to licensure as an APRN include:

(a) a minimum of a masters degree with a major in nursing or a nursing doctorate degree;

(b) holding a license or multistate privilege to practice as an APRN;

(c) two years of clinical experience practicing as an APRN; and

(d) preparation in teaching and learning principles for adult education, including curriculum development and implementation.

(13) Adjunct clinical faculty employed solely to supervise clinical nursing experiences of students shall meet all the faculty qualifications for the program level they are teaching.

(14) Interdisciplinary faculty who teach non-clinical nursing courses shall have advanced preparation appropriate to the area of content.

(15) Clinical preceptors shall have demonstrated competencies related to the area of assigned clinical teaching responsibilities and will serve as a role model and educator to the student. Clinical preceptors may be used to enhance faculty-directed clinical learning experiences after a student has received clinical and didactic instruction in all basic areas for that course or specific learning experience. Clinical preceptors should be licensed as a nurse at or above the level for which the student is preparing.

(16) Additional required components of graduate education programs, including post-masters certificate programs, leading to APRN licensure include:

(a) Each student enrolled shall be licensed or have a multistate privilege to practice as an RN in Utah;

(b) The curriculum shall be consistent with nationally recognized APRN roles and specialties and shall include:

(i) graduate nursing program core courses;

(ii) advanced practice nursing core courses including legal, ethical and professional responsibilities of the APRN, advanced pathophysiology, advanced health assessment, pharmacotherapeutics, and management and treatment of health care status; and

(iii) coursework focusing on the APRN role and specialty.

(c) Dual track APRN graduate programs (preparing for two specialties) shall include content and clinical experience in both functional roles and specialties.

(d) Instructional track/major shall have a minimum of 500 hours of supervised clinical. The supervised experience shall be directly related to the knowledge and role of the specialty and category. Specialty tracks that provide care to multiple age groups and care settings will require additional hours distributed in a way that represents the populations served.

(e) There shall be provisions for the recognition of prior learning and advanced placement in the curriculum for individuals who hold a masters degree in nursing who are seeking preparation in a different role and specialty. Post-masters nursing students shall complete the requirements of the masters APRN program through a formal graduate level certificate or master level track in the desired role and specialty. A program offering a post-masters certificate in a specialty area must also offer a master degree course of study in the same specialty area. Post-master students must master the same APRN outcome criteria as the master level students and are required to complete a minimum of 500 supervised clinical hours.

(f) A lead faculty member who is educated and nationally certified in the same specialty area and licensed as an APRN or possessing a APRN multistate privilege shall coordinate the educational component for the role and specialty in the APRN program.

R156-31b-606. Nursing Education Program Surveys.

The division may conduct an annual survey of nursing education programs to monitor compliance with th[~~ese~~]is rule[~~s~~]. The survey may include the following:

(1) a copy of the program's annual report to a nurse accrediting body;

(2) a copy of any changes submitted to any nurse accrediting body; and

(3) a copy of any accreditation self study summary report.

R156-31b-701. Delegation of Nursing Tasks.

In accordance with Subsection 58-31b-102(14)(g), the delegation of nursing tasks is further defined, clarified, or established as follows:

(1) The nurse delegating tasks retains the accountability for the appropriate delegation of tasks and for the nursing care of the patient[~~/client~~]. The licensed nurse shall not delegate any task requiring the specialized knowledge, judgment and skill of a licensed nurse to an unlicensed assistive personnel. It is the licensed nurse who shall use professional judgment to decide whether or not a task is one that must be performed by a nurse or may be delegated to an unlicensed assistive personnel. This precludes a list of nursing tasks that can be routinely and uniformly delegated for all patients[~~/clients~~] in all situations. The decision to delegate must be based on careful analysis of the patient's[~~/client's~~] needs and circumstances.

(2) The licensed nurse who is delegating a nursing task shall:

(a) verify and evaluate the orders;

(b) perform a nursing assessment, including an assessment of:

(i) the patient's nursing care needs including, but not limited to, the complexity and frequency of the nursing care, stability of the patient, and degree of immediate risk to the patient if the task is not carried out;

(ii) the delegatee's knowledge, skills, and abilities after training has been provided;

(iii) the nature of the task being delegated including the degree of complexity, irreversibility, predictability of outcome, and potential for harm;

(iv) the availability and accessibility of resources, including appropriate equipment, adequate supplies, and other appropriate health care personnel to meet the patient's nursing care needs; and

(v) the availability of adequate supervision of the delegatee.

(c) act within the area of the nurse's responsibility;

(d) act within the nurse's knowledge, skills and ability;

([~~e~~]e) determine whether the task can be safely performed by a[~~n unlicensed assistive personnel~~] delegatee or whether it requires a licensed health care provider;

(f) determine that the task being delegated is a task that a reasonable and prudent nurse would find to be within generally accepted nursing practice;

(g) determine that the task being delegated is an act consistent with the health and safety of the patient;

([~~d~~]h) verify that the delegatee has the competence to perform the delegated task prior to performing it;

([~~e~~]i) provide instruction and direction necessary to safely perform the specific task; and

([~~f~~]j) provide ongoing supervision and evaluation of the delegatee who is performing the task;

(k) explain the delegation to the delegatee and that the delegated task is limited to the identified patient within the identified time frame;

(l) instruct the delegatee how to intervene in any foreseeable risks that may be associated with the delegated task; and

(m) if the delegated task is to be performed more than once, establish a system for ongoing monitoring of the delegatee.

(3) The delegator shall evaluate the situation to determine the degree of supervision required to ensure safe care.

(a) The following factors shall be evaluated to determine the level of supervision needed:

(i) the stability of the condition of the patient[~~/client~~];

(ii) the training, capability, and willingness[~~capability~~] of the delegatee to perform the delegated task;

(iii) the nature of the task being delegated; and

(iv) the proximity and availability of the delegator to the delegatee when the task will be performed.

(b) The delegating nurse or another qualified nurse shall be readily available either in person or by telecommunication. The delegator responsible for the care of the patient[~~/client~~] shall make supervisory visits at appropriate intervals to:

(i) evaluate the patient's[~~/client's~~] health status;

(ii) evaluate the performance of the delegated task;

(iii) determine whether goals are being met; and

(iv) determine the appropriateness of continuing delegation of the task.

(4) Nursing tasks, to be delegated, shall meet the following criteria as applied to each specific patient[~~/client~~] situation:

(a) be considered routine care for the specific patient/client;

(b) pose little potential hazard for the patient/client;

(c) be performed with a predictable outcome for the patient/client;

(d) be administered according to a previously developed plan of care; and

(e) not inherently involve nursing judgment which cannot be separated from the procedure.

(5) If the nurse, upon review of the patient's[~~/client's~~] condition, complexity of the task, ability of the [~~unlicensed assistive personnel~~]proposed delegatee and other criteria as deemed appropriate by the nurse, determines that the [~~unlicensed assistive personnel~~]proposed delegatee cannot safely provide the requisite care, the nurse shall not delegate the task to such proposed delegatee.

(a) A delegatee shall not further delegate to another person the tasks delegated b the delegator; and

(b) the delegated task may not be expanded by the delegatee without the express permission of the delegator.

[~~(6) In accordance with Section 53A-11-601 and a student care plan, it is appropriate for a nurse to provide training to an unlicensed assistive personnel which includes the administration of glucagon in an emergency situation provided any training regarding the administration of glucagon is updated at least annually.~~

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R156-31b-701a. Delegation of Nursing Tasks in a School Setting.

In addition to the delegation rule found in Section R156-31b-701, the delegation of nursing tasks in a school setting is further defined, clarified, or established as follows:

(1) Any task being delegated by the school nurse shall be identified within a current IHP. The IHP is limited to a specific delegate for a specific time frame.

(2) In accordance with Section 53A-11-601 and an IHP, it is appropriate for a nurse to provide training to unlicensed assistive personnel, which training includes the routine, scheduled or correction injection of insulin (via actual injection or pump) or the administration of glucagon in an emergency situation, provided that any training regarding the injection of insulin and the administration of glucagon is updated at least annually. The selection of the type of insulin and dosage levels shall not be delegated.

(3) In accordance with an IHP, and except as provided herein and in R156-31b-701, a nurse may not delegate the administration of any medication which requires nursing assessment or judgment prior to injection or administration. The routine provision of scheduled or correction dosage of insulin and the administration of glucagon in an emergency situation, as prescribed by the practitioner's order and specified in the IHP, shall not be considered actions that require nursing assessment or judgment prior to administration and therefore, can be delegated to a delegatee.

(4) A nurse working in a school setting may not delegate the administration of the first dose of a new medication or a dosage change.

(5) An IHP shall be developed for any student receiving insulin in a school. By example, but not limited to the following list, the IHP may include:

(a) carbohydrate counting;

(b) glucose testing;

(c) activation, suspension, or bolus of an insulin pump;

(d) usage of insulin pens, syringes, and an insulin pump;

(e) copy of the medical orders; and

(f) emergency protocols related to glucagon administration.

(6) Insulin and glucagon injections by the delegatee shall only occur when the delegatee has followed the guidelines of the IHP.

(a) Dosages of insulin may be injected by the delegatee as designated in the IHP.

(b) Non-routine, correction dosages of insulin may be given by the delegatee only after:

(i) following the guidelines of the IHP; and

(ii) consulting with the delegator, parent or guardian, as designated in the IHP, and verifying and confirming the type and dosage of insulin being injected.

(c) Under Subsection (6), insulin and glucagon injections by the delegatee is limited to a specific delegatee, for a specific student and for a specific time.

(7) A student who is capable of administering his own insulin may self-administer insulin as provided in the IHP. A delegatee may verify the insulin dose of a student who self-administers insulin, if such verification is required in the IHP.

(8) When the student is not capable of self-administration, scheduled and routine correction doses of insulin may be administered, and the administration of glucagon may be performed, by a delegatee as provided in Subsection R156-31b-701a(2).

R156-31b-704. Generally Recognized Scope of Practice of a RN.

In accordance with Subsection 58-31b-102(16), the RN practicing within the generally recognized RN scope of practice practices as follows:

(1) In demonstrating professional accountability shall:

(a) practice within the legal boundaries for nursing through the scope of practice authorized in statute and rule[~~s~~];

(b) demonstrate honesty and integrity in nursing practice;

(c) base professional decisions on nursing knowledge and skills, the needs of patients/clients;

(d) accept responsibility for judgments, individual nursing actions, competence, decisions and behavior in the course of nursing practice; and

(e) maintain continued competence through ongoing learning and application of knowledge in the patient's/client's interest.

(2) In demonstrating the responsibility for nursing practice implementation shall:

(a) conduct a comprehensive nursing assessment;

(b) detect faulty or missing patient/client information;

(c) apply nursing knowledge effectively in the synthesis of the biological, psychological, spiritual and social aspects of the patient's/client's condition;

(d) utilize this broad and complete analysis to plan strategies of nursing care and nursing interventions that are integrated within the patient's/client's overall health care plan;

(e) provide appropriate decision making, critical thinking and clinical judgment to make independent nursing decisions and identification of health care needs;

(f) seek clarification of orders when needed;

(g) implement treatments and therapy, including medication administration, delegated medical and independent nursing functions;

(h) obtain orientation/training for competence when encountering new equipment and technology or unfamiliar situations;

(i) demonstrate attentiveness and provides client surveillance and monitoring;

(j) identify changes in patient's/client's health status and comprehends clinical implications of patient/client signs, symptoms and changes as part of expected and unexpected patient/client course or emergent situations;

(k) evaluate the impact of nursing care, the patient's/client's response to therapy, the need for alternative interventions, and the need to communicate and consult with other health team members;

(l) document nursing care;

(m) intervene on behalf of patient/client when problems are identified and revises care plan as needed;

(n) recognize patient/client characteristics that may affect the patient's/client's health status; and

(o) take preventive measures to protect patient/client, others and self.

(3) In demonstrating the responsibility to act as an advocate for patient/client shall:

(a) respect the patient's/client's rights, concerns, decisions and dignity;

(b) identify patient/client needs;

(c) attend to patient/client concerns or requests;

(d) promote safe patient/client environment;

(e) communicate patient/client choices, concerns and special needs with other health team members regarding:

(i) patient/client status and progress;

(ii) patient/client response or lack of response to therapies; and

(iii) significant changes in patient/client condition;

(f) maintain appropriate professional boundaries;

(g) maintain patient/client confidentiality; and

(h) assume responsibility for own decisions and actions.

(4) In demonstrating the responsibility to organize, manage and supervise the practice of nursing shall:

(a) assign to another only those nursing measures that fall within that nurse's scope of practice, education, experience and competence or unlicensed person's role description;

(b) delegate to another only those nursing measures which that person has the necessary skills and competence to accomplish safely;

(c) match patient/client needs with personnel qualifications, available resources and appropriate supervision;

(d) communicate directions and expectations for completion of the delegated activity;

(e) supervise others to whom nursing activities are delegated or assigned by monitoring performance, progress and outcome, and assures documentation of the activity;

(f) provide follow-up on problems and intervenes when needed;

(g) evaluate the effectiveness of the delegation or assignment;

(h) intervene when problems are identified and revises plan of care as needed;

(i) retain professional accountability for nursing care as provided;

(j) promote a safe and therapeutic environment by:

(i) providing appropriate monitoring and surveillance of the care environment;

(ii) identifying unsafe care situations; and

(iii) correcting problems or referring problems to appropriate management level when needed; and

(k) teach and counsel patient/client families regarding health care regimen, which may include general information about health and medical condition, specific procedures and wellness and prevention.

(5) In being a responsible member of an interdisciplinary health care team shall:

(a) function as a member of the health care team, collaborating and cooperating in the implementation of an integrated patient/client-centered health care plan;

(b) respect patient/client property, and the property of others; and

(c) protect confidential information.

(6) In being the chief administrative nurse shall:

(a) assure that organizational policies, procedures and standards of nursing practice are developed, kept current and implemented to promote safe and effective nursing care;

(b) assure that the knowledge, skills and abilities of nursing staff are assessed and that nurses and nursing assistive personnel are assigned to nursing positions appropriate to their determined competence and licensure/certification/registration level;

(c) assure that competent organizational management and management of human resources within the nursing organization are established and implemented to promote safe and effective nursing care; and

(d) assure that thorough and accurate documentation of personnel records, staff development, quality assurance and other aspects of the nursing organization are maintained.

(7) When functioning in a nursing program educator (faculty) role shall:

(a) teach current theory, principles of nursing practice and nursing management;

(b) provide content and clinical experiences for students consistent with statutes and rule[~~s~~];

(c) supervise students in the provision of nursing services; and

(d) evaluate student scholastic and clinical performance with expected program outcomes.

KEY: licensing, nurses
Date of Enactment or Last Substantive Amendment: [~~September 25, 2007~~]2008
Notice of Continuation: April 1, 2008
Authorizing, and Implemented or Interpreted Law: 58-31b-101; 58-1-106(1)(a); 58-1-202(1)(a)

Commerce, Occupational and Professional Licensing

R156-55a

Utah Construction Trades Licensing Act Rule

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 31292
FILED: 04/29/2008, 12:16

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The division and the Construction Services Commission are proposing amendments to the rule as a result of statutory amendments to Title 58, Chapter 55, in H.B. 459 which was passed during

the 2008 Legislative General Session and other various changes identified below which need to be made to the rule after review by the division and commission. (DAR NOTE: H.B. 459 (2008) is found at Chapter 354, Laws of Utah 2008, and was effective 05/05/2008.)

SUMMARY OF THE RULE OR CHANGE: In Section R156-55a-102, definitions for the following are being added: "construction trades instructor", "construction trades instruction facility", and "qualifier". These definitions are being added to the rule because the use of the term "instructor" in the statute is confusing. As used in the statute, it means the facility granted the license not the individual. Individual instructors are not required to be licensed by the division provided the facility holds a contractor license with the classification of construction trades instructor. However, the term "instructor" itself seems to imply the individual. Amendments changing "instructor" to "instruction facility" have been made throughout the rule where applicable. In Section R156-55a-301, amendments are made to the B100 and R100 license classifications to clarify which trade classifications can perform solar photovoltaic work. In Section R156-55a-302a, amendments are made to clarify what examination is required for each classification of licensure. The examinations are already in place and have been used for some time but they have not previously been identified in the rule as they should have been. Subsection R156-55a-302a(4) in this section is added to clarify that examinations administered by the division's prior contract examination provider are still acceptable. In Section R156-55a-302d, amendments made to this section to clarify the liability insurance certificate requirements. The division has been requiring this for many years but it was not put into the rule as it should have been. A new Section R156-55a-305a is being added as a result of statutory amendments made in H.B. 459 which requires certain exempt contractors to file an affirmation with the division that the contractor has liability and workers compensation insurance. Section R156-55a-306 is rewritten to clarify what is required to demonstrate financial responsibility. The existing section has provisions that are outdated and are no longer appropriate. A new Section R156-55a-309 is being added to clarify that certain reinstatement applications should pay the new application fee rather than the reinstatement fee. The reinstatement fee may be slightly higher than the new application fee but it is complicated to determine the fees and the costs of administration of the reinstatement fee would be more than any additional revenue generated. In Section R156-55a-311, an amendment is made to clarify entity conversions and when a new license application is required. A new Section R156-55a-504 is being added to identify what certifications are required to operate a crane on commercial construction projects.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 58-55-101 and Subsections 58-1-106(1)(a), 58-1-202(1)(a), 58-55-308(1), 58-55-102(35), and 58-55-501(21)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The division will incur costs of approximately $100 to reprint the rule once the proposed amendments are made effective. Any costs incurred will be absorbed in the division's current budget. Many of the updated procedures identified in the rule are already in place and therefore there will not be increased costs to administer. The statutory change and proposed rule amendment regarding exempt contractors filing an affirmation will require additional state resources but this rule amendment will not result in any additional costs beyond those costs already identified in H.B. 459.

❖ LOCAL GOVERNMENTS: The proposed amendments do not apply to local governments. The proposed rule amendments only apply to applicants for licensure in a construction trade, exempt contractors required to file affirmations and licensed contractors.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The proposed amendments apply to persons or companies applying for licensure as a contractor, exempt contractors required to file affirmations, and licensed contractors, which may include small businesses. Overall the clarifications and simplifications resulting from these proposed rule amendments may result in some minor cost savings but it is expected to be minimal. For exempt contractors required to file affirmations, there will be a $35 initial affirmation fee and also a $35 period reaffirmation fee that is to be paid to the division. The $35 reaffirmation fee will be paid every 2 years on or before November 30 of each odd numbered year. The division is unable to determine an aggregate amount due to the fact that the division does not know how many exempt contractors will comply with the new statutory requirements.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The proposed amendments apply to persons or companies applying for licensure as a contractor, exempt contractors required to file affirmations, and licensed contractors. Overall the clarifications and simplifications resulting from these proposed rule amendments may result in some minor cost savings but it is expected to be minimal. For exempt contractors required to file affirmations, there will be a $35 initial affirmation fee and also a $35 period reaffirmation fee that is to be paid to the Division. The $35 reaffirmation fee will be paid every 2 years on or before November 30 of each odd numbered year.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated as a result of this filing beyond those discussed in the rule summary. Francine A. Giani, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 5/28/2008 at 9:00 AM, Heber Wells Bldg, 160 E 300 S, Conference Room 474 (fourth floor), Salt Lake Clty, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: F. David Stanley, Director

R156. Commerce, Occupational and Professional Licensing.
R156-55a. Utah Construction Trades Licensing Act Rule.
R156-55a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as defined or used in this rule:

(1) "Construction trades instructor", as used in Subsection 58-55-301(2)(n) is clarified to mean the education facility which is issued the license as a construction trades instructor. It does not mean individuals employed by the facility who may teach classes.

(2) "Construction trades instruction facility" means the facility which is granted the license as a construction trades instructor as specified in Subsection 58-55-301(2)(n) and as clarified in R156-55a-102(1).

([~~1~~]3) "Employee", as used in Subsections 58-55-102(12)(a) and 58-55-102(14), means a person providing labor services in the construction trades who works for a licensed contractor, or the substantial equivalent of a licensed contractor as determined by the [~~d~~]Division, for compensation who has federal and state taxes withheld and workers' compensation and unemployment insurance provided by the person's employer.

([~~2~~]4) "Incidental", as used in Subsection 58-55-102(35), means work which:

(a) can be safely and competently performed by the specialty contractor; and

(b) arises from and is directly related to work performed in the licensed specialty classification and does not exceed 10 percent of the overall contract.

([~~3~~]5) "Maintenance" means the repair, replacement and refinishing of any component of an existing structure; but, does not include alteration or modification to the existing weight-bearing structural components.

([4]6) "Mechanical", as used in Subsections 58-55-102(18) and 58-55-102(28), means the work which may be performed by a S350 HVAC Contractor under Section R156-55a-301.

([~~5~~]7) "Personal property" means, as it relates to Title 58, Chapter 56, factory built housing and modular construction, a structure which is titled by the Motor Vehicles Division, state of Utah, and taxed as personal property.

(8) "Qualifier", as used in Title 58, Chapter 55 and this rule, means the individual who demonstrates competence for a contractor or construction trades instruction facility license by passing the examinations, completing the experience requirements or holding the individual licenses that are prerequisite requirements to obtain the contractor or construction trades instruction facility license.

([~~6~~]9) "School" means a Utah school district, applied technology college, or accredited college.

([~~7~~]10) "Unprofessional conduct" defined in Title 58, Chapters 1 and 55, is further defined in accordance with Section 58-1-203 in Section R156-55a-501.

R156-55a-301. License Classifications - Scope of Practice.

(1) In accordance with Subsection 58-55-301(2), the classifications of licensure are listed and described in this section. The construction trades or specialty contractor classifications listed are those determined to significantly impact the public health, safety, and welfare. A person who is practicing a construction trade or specialty contractor classification which is not listed is exempt from licensure in accordance with Subsection 58-55-305(1)(i).

(2) Licenses shall be issued in the following primary classifications and subclassifications:

E100 - General Engineering Contractor. A General Engineering contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(19).

B100 - General Building Contractor. A General Building contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(18) and pursuant to Subsection 58-55-102(18)(b) is clarified as follows: the General Building Contractor scope of practice does not include activities described in this Subsection under specialty classification S202 - Solar Photovoltaic Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the North American Board of Certified Energy Practitioners.

B200 - Modular Unit Installation Contractor. Set up or installation of modular units as defined in Subsection 58-56-3(11) and constructed in accordance with Section 58-56-13. The scope of the work permitted under this classification includes construction of the permanent or temporary foundations, placement of the modular unit on a permanent or temporary foundation, securing the units together if required and securing the modular units to the foundations. Work excluded from this classification includes installation of factory built housing and connection of required utilities.

R100 - Residential and Small Commercial Contractor. A Residential and Small Commercial contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(28) and pursuant to Subsection 58-55-102(28) is clarified as follows: the Residential and Small Commercial Contractor scope of practice does not include activities described in this Subsection under specialty classification S202 - Solar Photovoltaic Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the North American Board of Certified Energy Practitioners.

R101 - Residential and Small Commercial Non Structural Remodeling and Repair. Remodeling and repair to any existing structure built for support, shelter and enclosure of persons, animals, chattels or movable property of any kind with the restriction that no change is made to the bearing portions of the existing structure, including footings, foundation and weight bearing walls; and the entire project is less than $50,000 in total cost.

R200 - Factory Built Housing Contractor. Disconnection, setup, installation or removal of manufactured housing on a temporary or permanent basis. The scope of the work permitted under this classification includes placement of the manufactured housing on a permanent or temporary foundation, securing the units together if required, securing the manufactured housing to the foundation, and connection of the utilities from the near proximity, such as a meter, to the manufactured housing unit and construction

of foundations of less than four feet six inches in height. Work excluded from this classification includes site preparation or finishing, excavation of the ground in the area where a foundation is to be constructed, back filling and grading around the foundation, construction of foundations of more than four feet six inches in height and construction of utility services from the utility source to and including the meter or meters if required or if not required to the near proximity of the manufactured housing unit from which they are connected to the unit.

I101 - General Engineering Trades [~~Instructor~~]Instruction Facility. A General Engineering Trades [~~Instructor~~]Instruction Facility is a construction trades [~~instructor~~]instruction facility authorized to teach the construction trades and is subject to the scope of practice defined in Subsection 58-55-102(19).

I102 - General Building Trades [~~Instructor~~]Instruction Facility. A General Building Trades [~~Instructor~~]Instruction Facility is a construction trades [~~instructor~~]instruction facility authorized to teach the construction trades and is subject to the scope of practice defined in Subsections 58-55-102(18) or 58-55-102(28).

I103 - Electrical Trades [~~Instructor~~]Instruction Facility. An Electrical Trades [~~Instructor~~]Instruction Facility is a construction trades [~~instructor~~]instruction facility authorized to teach the electrical trades and subject to the scope of practice defined in Subsection R156-55a-301(S200).

I104 - Plumbing Trades [~~Instructor~~]Instruction Facility. A Plumbing Trades [~~Instructor~~]Instruction Facility is a construction trades [~~instructor~~]instruction facility authorized to teach the plumbing trades and subject to the scope of practice defined in Subsection R156-55a-301(S210).

I105 - Mechanical Trades [~~Instructor~~]Instruction Facility. A Mechanical Trades [~~Instructor~~]Instruction Facility is a construction trades [~~instructor~~]instruction facility authorized to teach the mechanical trades and subject to the scope of practice defined in Subsection R156-55a-301(S350).

. . . . . .

S600 - General Stucco Contractor. Applying stucco to lathe, plaster and other surfaces.

S700 - Specialty License Contractor.

(a) A specialty license is a license that confines the scope of the allowable contracting work to a specialized area of construction which the [~~d~~]Division grants on a case-by-case basis.

(b) When applying for a specialty license, an applicant, if requested, shall submit to the [~~d~~]Division the following:

(i) a detailed statement of the type and scope of contracting work that the applicant proposes to perform; and

(ii) any brochures, catalogs, photographs, diagrams, or other material to further clarify the scope of the work that the applicant proposes to perform.

(c) A contractor issued a specialty license shall confine the contractor's activities to the field and scope of operations as outlined by the [~~d~~]Division.

(3)(a) Any person holding a S215 Solar Systems Contractor license before the effective date of this rule may obtain a S202 Solar Photovoltaic Contractor license by submitting an affidavit demonstrating two years of experience that meets the requirements of R156-55a-302b no later than March 31, 2010.

(b) Any person holding a S271 Plastering and Stucco Contractor license before the effective date of this rule shall be issued a S270 General Drywall and Plastering Contractor license.

(c) Any person holding a S274 Drywall Contractor license before the effective date of this rule shall be issued a S270 General Drywall and Plastering Contractor license.

(d) Any person holding a S271 Plastering and Stucco Contractor license or an S270 General Drywall, Stucco and Plastering Contractor license before the effective date of this rule may obtain a S600 General Stucco Contractor license by submitting an affidavit demonstrating two years of experience that meets the requirements of R156-55a-302b no later than March 31, 2010.

(e) Any person holding any of the following licenses before the effective date of this rule shall be issued a S280 General Roofing Contractor license:

(i) S281 Single Ply and Specialty Coating Contractor;

(ii) S282 Build-up Roofing Contractor;

(iii) S283 Shingle and Shake Roofing Contractor;

(iv) S284 Tile Roofing Contractor; and

(v) S285 Metal Roofing Contractor.

R156-55a-302a. Qualifications for Licensure - Examinations.

(1) In accordance with Subsection 58-55-302(1)(c), the qualifier for an applicant for licensure as a contractor or the qualifier for an applicant for licensure as a construction trades [~~instructor~~]instruction facility shall pass the following examinations[~~as a condition precedent to licensure as a contractor or a construction trades instructor~~]:

(a) [~~the Trade Classification Specific Examination; and~~

~~(b)~~]the Utah Contractor Business - Law Examination; and

(b) an approved trade classification specific examination, where required in Subsection (2).

(2) An approved trade classification specific examination is required for the following contractor license classifications:

E100 - General Engineering Contractor

B100 - General Building Contractor

B200 - Modular Unit Installation Contractor

R100 - Residential and Small Commercial Contractor

R101 - Residential and Small Commercial Non Structural Remodeling and Repair Contractor

I101 - General Engineering Trades Instruction Facility

I102 - General Building Trades Instruction Facility

I105 - Mechanical Trades Instruction Facility

S212 - Irrigation Sprinkling Contractor

S213 - Industrial Piping Contractor

S215 - Solar Thermal Systems Contractor

S216 - Residential Sewer Connection and Septic Tank Contractor

S220 - Carpentry Contractor

S222 - Overhead and Garage Door Contractor

S230 - Siding Contractor

S240 - Glass and Glazing Contractor

S250 - Insulation Contractor

S260 - General Concrete Contractor

S270 - General Drywall and Plastering Contractor

S280 - General Roofing Contractor

S290 - General Masonry Contractor

S293 - Marble, Tile and Ceramic Contractor

S300 - General Painting Contractor

S310 - Excavation and Grading Contractor

S320 - Steel Erection Contractor

S321 - Steel Reinforcing Contractor

S330 - Landscaping Contractor

S340 - Sheet Metal Contractor

S350 - HVAC Contractor
S351 - Refrigerated Air Conditioning Contractor
S353 - Warm Air Heating Contractor
S360 - Refrigeration Contractor
S370 - Fire Suppression Systems Contractor
S380 - Swimming Pool and Spa Contractor
S390 - Sewer and Waste Water Pipeline Contractor
S410 - Pipeline and Conduit Contractor
S440 - Sign Installation Contractor
S450 - Mechanical Insulation Contractor
S490 - Wood Flooring Contractor
S600 - General Stucco Contractor

([~~2~~]3) The passing score for each examination is 70%.

(4) "Approved trade classification specific examination" means a trade classification specific examination:

(a) given, currently or in the past, by the Division's contractor examination provider; or

(b) given by another state if the Division has determined the examination to be substantially equivalent.

([~~3~~]5) An applicant for licensure who fails an examination may retake the failed examination as follows:

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

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

R156-55a-302b. Qualifications for Licensure - Experience Requirements.

In accordance with Subsection 58-55-302(1)(e)(ii), the minimum experience requirements are established as follows:

(1) Requirements for all license classifications:

(a) All experience shall be directly supervised by the applicant's employer.

(b) All experience shall be directly related to the scope of practice set forth in Section R156-55a-301 of the classification the applicant is applying for, as determined by the Division.

(c) One year of work experience means 2000 hours.

(d) No more than 2000 hours of experience during any 12 month period may be claimed.

(e) Except as described in paragraph (2)(c), experience obtained under the supervision of a construction trades instructor as a part of an educational program is not qualifying experience for a contractors license.

(2) Requirements for E100 General Engineering, B100 General Building, R100 Residential and Small Commercial Building license classifications:

(a) In addition to the requirements of paragraph (1), an applicant for an R100, B100 or E100 license shall have within the past 10 years a minimum of four years experience as an employee of a contractor licensed in the license classification applied for, or the substantial equivalent of a contractor licensed in that license classification as determined by the Division.

(b) Two of the required four years of experience shall be in a supervisory or managerial position.

(c) A person holding a four year bachelors degree or a two year associates degree in Construction Management may have one year of experience credited towards the supervisory or managerial experience requirement.

(3) Requirements for S220 Carpentry, S280 General Roofing, S290 General Masonry, S320 Steel Erection, S350 Heating Ventilating and Air Conditioning, S360 Refrigeration and S370 Fire Suppression Systems license classifications:

In addition to the requirements of paragraph (1), an applicant shall have within the past 10 years a minimum of four years of experience as an employee of a contractor licensed in the license classification applied for, or the substantial equivalent of a contractor licensed in that license classification as determined by the Division.

(4) Requirements for I101 General Engineering Trades [~~Instructor~~]Instruction Facility, I102 General Building Trades [~~Instructor~~]Instruction Facility, I103 Electrical Trades [~~Instructor~~]Instruction Facility, I104 Plumbing Trades [~~Instructor~~]Instruction Facility, I105 Mechanical Trades [~~Instructor~~]Instruction Facility license classifications:

An applicant for construction trades [~~instructor~~]instruction facility license shall have the same experience that is required for the license classifications for the construction trade they will instruct.

(5) Requirements for other license classifications:

Except as set forth in paragraph (6), in addition to the requirements of paragraph (1), an applicant for contractor license classification not listed above shall have within the past 10 years a minimum of two years of experience as an employee of a contractor licensed in the license classification applied for, or the substantial equivalent of a contractor licensed in that license classification as determined by the Division.

(6) Requirements for S202 Solar Photovoltaic Contractor. In addition to the requirements of paragraphs (1) and (5), an applicant shall hold a current certificate by the North American Board of Certified Energy Practitioners.

R156-55a-302c. Qualifications for Licensure Requiring Licensure in a Prerequisite Classification.

(1) Each [~~applicant~~]qualifier for licensure as a I103 Electrical Trades [~~Instructor~~]Instruction Facility shall also be licensed as either a journeyman or master electrician or a residential journeyman or residential master electrician.

(2) Each [~~applicant~~]qualifier for licensure as a I104 Plumbing Trades [~~Instructor~~]Instruction Facility shall also be licensed as either a journeyman plumber or a residential journeyman plumber.

R156-55a-302d. Qualifications for Licensure - Proof of Insurance and Registrations.

In accordance with the provisions of Subsection 58-55-302(2)(b), an applicant who is approved for licensure shall submit proof of public liability insurance in coverage amounts of at least $100,000 for each incident and $300,000 in total by means of a certificate of insurance naming the Division as a certificate holder.

R156-55a-302e. Additional Requirements for Construction Trades Instructor Classifications.

In accordance with Subsection 58-55-302(1)(f), the following additional requirements for licensure are established:

(1) Any school that provides instruction to students by building houses for sale to the public is required to become a Utah licensed contractor with a B100 General Building Contractor or R100 Residential and Small Commercial Building Contractor classification or both.

(2) Any school that provides instruction to students by building houses for sale to the public is also required to be licensed in the appropriate instructor classification.

(a) Before being licensed in a construction trades [~~instructor~~]instruction facility classification, the school shall submit the name of an individual person who acts as the qualifier in each of

the construction trades instructor classifications in accordance with Section R156-55a-304. The applicant for licensure as a construction trades instructor shall:

(i) provide evidence that the qualifier has passed the required examinations established in Section R156-55a-302a; and

(ii) provide evidence that the qualifier meets the experience requirement established in Subsection R156-55a-302b(4).

(3) Each individual employed by a school licensed as a construction trades [~~instructor~~]instruction facility and working with students on a job site shall meet any teacher certification, or other teacher requirements imposed by the school district or college, and be qualified to teach the construction trades [~~instructor~~]instruction facility classification as determined by the qualifier.

R156-55a-304. Construction Trades [~~Instructor~~]Instruction Facility License Qualifiers.

In accordance with Subsection 58-55-302(1)(f), the contractor license qualifier requirements in Section 58-55-304 shall also apply to construction trades [~~instructors~~]instruction facilities.

R156-55a-305a. Exempt Contractors Filing Affirmation of Liability and Workers Compensation Insurance.

(1) Initial affirmation. In accordance with Subsection 58-55-305(1)(h)(ii)(F), any person claiming exemption under Subsection 58-55-305(1)(h) for projects with a value greater than $1,000 but less than $3,000 shall file a registration of exemption with the Division which includes:

(a) the identity and address of the person claiming the exemption; and

(b) a statement signed by the registrant verifying:

(i) that the person has public liability insurance in force which includes the Division being named as a certificate holder, the policy number, the expiration date of the policy, the insurance company name and contact information, and coverage amounts of at least $100,000 for each incident and $300,000 in total; and

(ii) that the person has workers compensation insurance in force which names the Division as a certificate holder, includes the policy number, the expiration date of the policy, the insurance company name and contact information; or

(iii) that the person does not hire employees and is therefore exempt from the requirement to have workers compensation insurance.

(2) Periodic reaffirmations required. The affirmation required under Subsection (1) shall be reaffirmed on or before November 30 of each odd numbered year.

R156-55a-306. Contractor Financial Responsibility - Division Audit[~~– Financial Statements~~].

In accordance with [~~Section~~]Subsections 58-55-306(2) and 58-55-102(16), the Division may consider various relevant factors in conducting an audit of the demonstration of financial responsibility including[~~following shall apply~~]:

(1)(a) judgments, tax liens, collection actions, bankruptcy schedules and a history of late payments to creditors, including documentation showing the resolution of each of the above actions;

(b) the applicant's or licensee's[~~All~~] financial statements and tax returns, including the ability to prepare or have prepared competent and current financial statements and tax returns;

(c) an acceptable current credit report of the applicant or licensee which meets the following requirements:

(i) for individuals:

(A) a credit report from each of the three national reporting agencies, Trans Union, Experian, and Equifax; or

(B) a merged credit report of the agencies identified in Subsection (A) prepared by the National Association of Credit Managers (NACM); or

(ii) for entities, a business credit report such as an Experian Business Credit Report or a Dun and Bradstreet Report;

(d) the applicant's or licensee's explanation of the reasons for any financial difficulties and how the financial difficulties were resolved; and

(e) any of the factors listed in Subsection R156-1-302 which may relate to failure to maintain financial responsibility.

(2) If the applicant or licensee has an inadequate financial history, the Division may also consider the following factors:

(a) each of the factors listed in Subsection (1) regarding the financial history of the owners of the applicant or licensee;

(b) any guaranty agreements provided for the applicant or licensee; and

(c) any history of prior entities owned or operated by the owners of the applicant or licensee which have failed to maintain financial responsibility.[~~shall cover a period of time ending no earlier than the last tax year.~~

~~(2) Financial statements prepared by an independent certified public accountant (CPA) shall be "audited", "reviewed", or "compiled" financial statements prepared in accordance with generally accepted accounting principles and shall include the CPA's report stating that the statements have been audited, reviewed or compiled.~~

~~(3) Division reviewed financial statements shall be submitted in a form acceptable to the division and shall include the following:~~

~~(a) the balance sheet;~~

~~(b) all schedules;~~

~~(c) a complete copy of the applicant's most recently filed federal income tax return;~~

~~(d) a copy of the applicant's bank or broker account statements; and~~

~~(e) an acceptable credit report for the applicant.~~

~~(4) An acceptable credit report is:~~

~~(a) dated within 30 days prior to the date the application is received by the division;~~

~~(b) free from erasures, alterations, modifications, omissions, or any other form of change which alters the full and complete information provided by the credit reporting agency;~~

~~(c) a report from:~~

~~(i) Trans Union, Experian, and Equifax national credit reporting agencies; or~~

~~(ii) National Association of Credit Managers (NACM); or~~

~~(iii) another local credit reporting agency that includes a report for each of the three national credit reporting agencies names in Subsection (i) above.~~]

R156-55a-308a. Operating Standards for Schools or Colleges Licensed as Contractors.

(1) Each school licensed as a B100 General Building Contractor or a R100 Residential and Small Commercial Contractor or both shall obtain all required building permits for homes built for resale to the public as part of an educational training program.

(2) Each employee that works as a[~~n instructor~~] teacher for a school licensed as a construction trades [~~instructor~~]instruction facility shall:

(a) have on their person a school photo ID card with the trade they are authorized to teach printed on the card; and

(b) if instructing in the plumbing or electrical trades, they shall also carry on their person their Utah journeyman or residential journeyman plumber license or Utah journeyman, residential journeyman, master, or residential master electrician license.

(3) Each school licensed as a construction trades [~~instructor~~]instruction facility shall not allow any teacher or student to work on any portion of the project subcontracted to a licensed contractor unless the teacher or student are lawful employees of the subcontractor.

R156-55a-309. Reinstatement Application Fee.

The application fee for a contractor applicant who is applying for reinstatement more than two years after the expiration of licensure, who has been engaged in unauthorized practice of contracting following the expiration of the applicant's license, shall be the current license application fee normally required for a new application rather than the reinstatement fee provided under R156-1-308g(3)(d).

R156-55a-311. Reorganization - Conversion of Contractor Business Entity.

A reorganization of the business organization or entity under which a licensed contractor is licensed shall require application for a new license under the new form of organization or business structure. The creation of a new legal entity [~~or conversion~~]constitutes a reorganization and includes a change to a new entity under the same form of business entity or a change of the form of business entity between proprietorship, partnership, whether limited or general, joint venture, corporation or any other business form.

Exception: A conversion from one form of entity to another form where "Articles of Conversion" are filed with the Utah Division of Corporations and Commercial Code shall not require a new contractor application.

R156-55a-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to notify the [~~d~~]Division with respect to any matter for which notification is required under this rule or Title 58, Chapter 55, the Construction Trades Licensing Act, including a change in qualifier. Such failure shall be considered by the [~~d~~]Division and the [~~board~~]Commission as grounds for immediate suspension of the contractors license;

(2) failing to continuously maintain insurance and registration as required by Subsection 58-55-302(2), in coverage amounts and form as implemented by this chapter; and

(3) failing, upon request by the [~~d~~]Division, to provide proof of insurance coverage within 30 days.

R156-55a-504. Crane Operator Certifications.

In accordance with Subsection 58-55-504(2)(a) one of the following certifications is required to operate a crane on commercial construction projects:

(1) a certification issued by the National Commission for the Certification of Crane Operators; or

(2) a certification issued by the Southern California Crane and Hoisting Certification Program.

KEY: contractors, occupational licensing, licensing
Date of Enactment or Last Substantive Amendment: [~~March 11,~~]2008
Notice of Continuation: November 8, 2006
Authorizing, and Implemented or Interpreted Law: 58-1-106(1)(a); 58-1-202(1)(a); 58-55-101; 58-55-308(1); 58-55-102(35); 58-55-501(21)

♦ ♦

Commerce, Real Estate
R162-9
Continuing Education

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31277
FILED: 04/28/2008, 16:23

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to protect real estate licensees from taking courses that have not been approved by the Division of Real Estate. The licensees rely on the courses to qualify for licensure renewal.

SUMMARY OF THE RULE OR CHANGE: This rule prohibits continuing education providers from marketing continuing education courses to real estate licensees without first receiving approval for the course from the Division of Real Estate. The education providers may still advertise the classes, but not as approved classes.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2-5.5(1)(a)(iv)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The state budget is not impacted by this rule since no new service, employee, or fee is required to implement the rule.

❖ LOCAL GOVERNMENTS: Local governments will experience no cost savings or impacts since no local government has any responsibility under this rule.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Education providers will have to ensure their courses are approved prior to advertising them as approved by the division. While it is impossible to quantify an impact, some education providers who are now able to advertise a course as "pending" approval, will need to plan further ahead or not advertise the course as an approved course. Businesses who get approval as required by existing rule will see no change in cost or savings. Those who frequently advertise their course prior to division approval might see a decrease in students.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons because education providers are already required to obtain approval from the

Division of Real Estate for the courses they teach as continuing education courses. This rule requires them to ensure the approval is obtained prior to marketing, so they incur no additional costs to comply. No other individuals or entities have responsibility under the proposed rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated by this rule filing beyond those addressed in the rule summary. Francine Giani, Executive Director

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

COMMERCE
REAL ESTATE
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:
Mark Steinagel at the above address, by phone at 801-530-6744, by FAX at 801-530-6749, or by Internet E-mail at msteinagel@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Mark Steinagel, Director

R162. Commerce, Real Estate.
R162-9. Continuing Education.
R162-9-1. Course Application for Certification.

9.1 Continuing education credit shall be given to students only for courses that are certified by the Division at the time the courses are taught. Course sponsors shall apply for course certification by submitting all forms and fees required by the Division not less than 30 days prior to the course being taught. Applications shall include at a minimum the following information which will be used in determining approval:

9.1.1 Name and contact information of the course sponsor and the name of the entity through which the course will be provided;

9.1.2 A description of the physical facility where the course will be taught;

9.1.2.1 Except for distance education courses, all courses must be taught in an appropriate classroom facility and not in a private residence.

9.1.3 The title of the course;

9.1.4 The proposed amount of credit hours for the course;

9.1.4.1 A credit hour is defined as 50 minutes within a 60-minute time period[~~-~~];

9.1.4.2 The minimum length of a course shall be one credit hour[~~-~~];

9.1.5 A statement defining how the course will meet the objectives of continuing education by increasing the licensee's knowledge, professionalism, and ability to protect and serve the public;

9.1.6 A course outline including, for each segment of no more than 15 minutes, a description of the subject matter;

9.1.7 A minimum of three learning objectives for every three hours of class time;

9.1.8 The name and certification number of each certified instructor who will teach the course;

9.1.9 Identification of whether the method of instruction will be traditional education or distance education;

9.1.9.1 A sponsor seeking certification of a distance education course shall:

9.1.9.1.1 submit to the Division a complete description of all course delivery methods and all media to be used;

9.1.9.1.2 provide course access to the Division using the same delivery methods and media that will be provided to the students;

9.1.9.1.3 describe specific and regularly scheduled interactive events included in the course and appropriate to the delivery method that will contribute to the students' achievement of the stated learning objectives;

9.1.9.1.4 describe how and when instructors will be available to answer student questions; and

9.1.9.1.5 provide an attestation from the sponsor of the availability and adequacy of the equipment, software, and other technologies needed to achieve the course's instructional claims.

9.1.10 Copies of all materials to be distributed to the participants;

9.1.11 The procedure for pre-registration, the tuition or registration fee and a copy of the cancellation and refund policy;

9.1.12 Except for courses approved for distance education, the procedure for taking and maintaining control of attendance during class time, which procedure shall be more extensive than having the student sign a class roll;

9.1.13 A sample of the completion certificate which shall bear the following information:

(a) A Space for the licensee's name, type of license and license number, date of course;

(b) The name of the course provider, course title, hours of credit, certification number, and certification expiration date; and

(c) A Space for signature of the course sponsor and a space for the licensee's signature.

9.1.14 A signed statement agreeing not to market personal sales products;

9.1.15 A signed statement agreeing to allow the course to be randomly audited on an unannounced basis by the Division or its representative;

9.1.16 A signed statement agreeing to upload, within 10 days after the end of a course offering, to the database specified by the Division, the course name, course certificate number assigned by the Division, the date the course was taught, the number of credit hours, and the names and license numbers of all students receiving continuing education credit;[~~ and~~]

9.1.16.1 A course sponsor is not responsible for uploading information for students who fail to provide an accurate name or license number registered with the Division.

9.1.16.2 Continuing education credit will not be given to any student who fails to provide to a course sponsor an accurate name or license number registered with the Division within 7 days of attending the course[~~-~~]; and

9.1.17 Any other information as the Division may require.

R162-9-8. Marketing of Continuing Education Courses.

9.8.1 A course sponsor may not advertise or market a continuing education course where Division continuing education

course credit will be offered or provided to a licensed attendee unless the course:

(a) is approved and has been issued a current continuing education course certification number by the Division; and

(b) is advertised with the continuing education course certification number issued by the Division displayed in all advertising materials.

9.8.2 A course sponsor may not advertise, market, or promote a continuing education course with language which indicates Division continuing education course approval is "pending" or otherwise forthcoming.

KEY: continuing education
Date of Enactment or Last Substantive Amendment: [~~May 30, 2007~~]2008
Notice of Continuation: April 18, 2007
Authorizing, and Implemented or Interpreted Law: 61-2-5.5

♦ ♦

Commerce, Real Estate
R162-208
Continuing Education

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31278
FILED: 04/28/2008, 16:25

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to protect mortgage licensees from taking courses that have not been approved by the Division of Real Estate. The licensees rely on the courses to qualify for licensure renewal.

SUMMARY OF THE RULE OR CHANGE: This rule prohibits continuing education providers from marketing continuing education courses to mortgage licensees without first receiving approval for the course from the Division of Real Estate. The education providers may still advertise the classes, but not as approved classes.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 61-2c-103(6)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The state budget is not impacted by this rule since no new service, employee, or fee is required to implement the rule.

❖ LOCAL GOVERNMENTS: Local governments will experience no cost savings or impacts since no local government has any responsibility under this rule.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Education providers will have to ensure their courses are approved prior to advertising them as approved by the division. While it is impossible to quantify an impact, some education providers who are now able to advertise a course as "pending" approval, will need to plan further ahead or not advertise the course as an approved course. Businesses who get approval as required by existing rule will see no change in cost or savings. Those who frequently advertise their course prior to division approval might see a decrease in students.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs for affected persons because education providers are already required to obtain approval from the Division of Real Estate for the courses they teach as continuing education courses. This rule requires them to ensure the approval is obtained prior to marketing, so they incur no additional costs to comply. No other individuals or entities have responsibility under the proposed rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: No fiscal impact to businesses is anticipated by this rule filing beyond those addressed in the rule summary. Francine Giani, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMERCE
REAL ESTATE
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:
Mark Steinagel at the above address, by phone at 801-530-6744, by FAX at 801-530-6749, or by Internet E-mail at msteinagel@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Mark Steinagel, Director

R162. Commerce, Real Estate.
R162-208. Continuing Education.
R162-208-1. Required Hours of Continuing Education.

208.1 [~~As authorized by Section 61-2c-104(7)(d)(ii)(A), the Utah Residential Mortgage Regulatory Commission has set the number of hours of continuing education required for renewal at fourteen credit hours.~~]An applicant for license renewal shall complete fourteen hours of continuing education approved by the Division to qualify for license renewal.

R162-208-5. Unacceptable Subject Matter.

208.5 The following topics are not acceptable for continuing education purposes:

208.5.1 Offerings in mechanical office and business skills such as typing, speed reading, memory improvement, report writing, advertising or similar offerings;

208.5.2 Offerings concerning physical well-being or personal development, such as personal motivation, stress management, time management, dress-for-success, or similar offerings; and

208.5.3 Meetings held in conjunction with the general business of the licensee and the entity for which the licensee conducts residential mortgage business, such as sales meetings, or in-house staff meetings unless the in-house staff meetings consist of training on the subjects set forth in Section 61-2c-104(7)(d)[~~(i)~~](ii).

R162-208-7. Course Completion Certificate and Continuing Education Banking.

208.7.1 The course provider shall issue a course completion certificate in the form required by the Division to all licensees who successfully complete a course in a topic that is approved for continuing education purposes. The course completion certificate shall indicate the number of credit hours successfully completed by the student and must be signed by the student and the instructor who taught the course. The course completion certificate must include the course title, date of the course, course certificate number, and course certificate expiration date.

208.7.2 For the purposes of this rule, "continuing education banking" is defined as the upload by a course provider of such information as specified by the Division to the Division's data base concerning the students who have successfully completed a continuing education course, including the name of the course, the certificate number assigned to the course by the Division, the date the course was taught, and the names and license numbers of all students who successfully completed the course.

208.7.3 In addition to complying with the requirements of Subsection 208.7.1 and except as provided in Subsection 208.7.[4]5, all course providers shall bank continuing education for all students who successfully completed a course within ten days after the course was taught.

208.7.4 A student must provide an accurate license number and the full name the student has registered with the Division to the course provider within 7 days after course attendance.

208.7.5 If a course provider is unable to bank a student's continuing education credit because the student has failed to properly and accurately comply with the requirements of Subsection 208.7.4, the course provider shall not be disciplined by the Division for failure to bank the student's continuing education credit.

R162-208-9. Continuing Education Instructor Certification.

208.9 All instructors of courses to be taught for continuing education purposes must apply for certification from the Division not less than 30 days prior to the anticipated date of the first class that they intend to teach.

208.9.1 Continuing education course instructor applicants shall meet the requirements set forth in Section 210.5 and Section 210.7 of these rules, and shall demonstrate knowledge of the subject matter of the course they intend to teach by submitting proof of the following:

(a) at least three years of experience in a profession, trade, or technical occupation in a field directly related to the course which the applicant intends to instruct;[~~or~~]

(b) a bachelors or postgraduate degree in the field of real estate, business, law, finance, or other academic area directly related to the course which applicant intends to instruct; or

(c) any combination of at least three years of full-time experience and college-level education in a field directly related to the course which the applicant intends to instruct.

208.9.2 Instructor applicants shall demonstrate evidence of the ability to communicate the subject matter by the submission of proof of the following:

(a) a state teaching certificate or showing successful completion of appropriate college courses in the field of education;[~~or~~]

(b) a professional teaching designation from the National Association of Mortgage Brokers, the Real Estate Educators Association, the Mortgage Bankers Association of America, or a similar association; or

(c) evidence, such as instructor evaluation forms or letters of reference, of the ability to teach in schools, seminars, or in an equivalent setting.

208.9.3 Upon approval by the Division, an instructor shall be issued a certification to act as a continuing education instructor. A continuing education instructor certification shall expire twenty-four months after its issuance. An instructor shall apply for renewal of a continuing education instructor certification prior to the expiration of the instructor's current certification, using the form required by the Division.

208.9.3.1 To qualify for renewal of instructor certification, an instructor must provide proof of having taught a minimum of one class in each course for which renewal is sought in the year preceding application for renewal. The term of a renewed instructor certification shall be twenty-four months.

208.9.3.1.1 If the instructor has not taught during the year preceding renewal and wishes to renew certification, written explanation shall be submitted outlining the reason for not instructing the course, including documentation satisfactory to the Division as to the instructor's present level of expertise in the subject matter of the course.

208.9.4 Reinstatement of Expired Instructor Certification. If the instructor does not submit a properly completed renewal form, the renewal fee, and any required documentation prior to the expiration date of the instructor's current certification, the certification shall expire. When an instructor certification expires, the certification may be reinstated for a period of thirty days after the expiration date upon payment of a non-refundable late fee in addition to completing all of the requirements for a timely renewal. After the thirty day period, and until six months after the expiration date, an instructor certification may be reinstated upon payment of a non-refundable late fee and completion of 6 classroom hours of education related to residential mortgages or teaching techniques in addition to completing all of the requirements for a timely renewal. After the six month period, an instructor will be required to apply by following the procedure for obtaining original certification.

R162-208-15. Marketing of Continuing Education Courses.

208.15.1 A course provider may not advertise or market a continuing education course where Division continuing education course credit will be offered or provided to a licensed attendee unless the course:

(a) is approved and has been issued a current continuing education course certification number by the Division; and

(b) is advertised with the continuing education course certification number issued by the Division displayed in all advertising materials.

208.15.2 A course provider may not advertise, market, or promote a continuing education course with language which indicates Division continuing education course approval is "pending" or otherwise forthcoming.

KEY: residential mortgage loan origination
Date of Enactment or Last Substantive Amendment: [~~April 10, 2007~~]2008
Authorizing, and Implemented or Interpreted Law: 61-2c-103(3); 61-2c-104(7)(d)(ii)

♦ ♦

Community and Culture, History
R212-4
Archaeological Permits

NOTICE OF PROPOSED RULE
(Repeal and Reenact)
DAR FILE NO.: 31290
FILED: 04/29/2008, 10:50

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule filing is made subsequent to the enactment of Section 9-8-309, which gave new responsibilities to the Antiquities Section of the Division of State History under S.B. 204 in the 2007 General Session. The old Rule R212-4 is being repealed because changes made to Section 9-8-303 removed archaeological permitting as a function of the Antiquities Section; as of the expiration of the last existing permit issued by the Antiquities Section in November 2007, the rule is no longer needed. (DAR NOTE: S.B. 204 (2007) is found at Chapter 231, Laws of Utah 2007, and was effective 04/30/2007.)

SUMMARY OF THE RULE OR CHANGE: The specific provisions of the repealed rule that are no longer needed include: defined the kinds of archaeological permits required for working in Utah; set minimum qualifications and standards for archaeologists; set standards for excavation permits; identified provisions of permits; and identified processes for issuing and terminating permits. None of these provisions are needed as the division no longer issues archaeological permits. The specific provisions of the reenacted rule include definitions of key terms referred to in statue such as "Native American", "human remains", and "excavate". The new reenacted rule also explicates the time frames in which certain key decisions will be made regarding discovered human remains and within which the Antiquities Section will complete the excavation, analyzing, recovering, reporting, and determining the disposition of ancient human remains of ancient Native American human remains, if needed.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 9-8-309, 9-8-403, and 76-9-704

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: $100,000 in ongoing funds were appropriated to the Division of State History by the legislature for implementation of Section 9-8-309.
❖ LOCAL GOVERNMENTS: The statute and rule change relieve cities, counties, and some state agencies of the responsibility to analyze, care for, and repatriate ancient human remains and places that responsibility with the Antiquities Section of the Division of State History. Funding for this service was provided by the Legislature. This rule and statute will save developers and agencies significant time and expense in dealing with ancient human remains. An average of 15 discoveries of human remains per year have been made over the past 5 years. Removing the expense of lawfully dealing with those remains will save developers, landowners, and agencies a considerable amount, in addition to significant time savings. In recent years, the costs of excavating and reporting human remains have run from $3,600 to $28,000 per individual.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The statute and rule change relieve small businesses or other persons of the responsibility to analyze, care for, and repatriate ancient human remains and places that responsibility with the Antiquities Section of the Division of State History. Funding for this service was provided by the Legislature. This rule and statute will save developers and agencies significant time and expense in dealing with ancient human remains. An average of 15 discoveries of human remains per year have been made over the past 5 years. Removing the expense of lawfully dealing with those remains will save developers, landowners, and agencies a considerable amount, in addition to significant time savings. In recent years, the costs of excavating and reporting human remains have run from $3,600 to $28,000 per individual.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The statute and rule change relieve private citizens, cities, and counties of the compliance costs to analyze, care for, and repatriate ancient human remains and places that responsibility with the Antiquities Section of the Division of State History. Funding for this service was provided by the legislature. This rule and statue will save developers and agencies significant time and expense in dealing with ancient human remains. An average of 15 discoveries of human remains per year have been made over the past 5 years. Removing the expense of lawfully dealing with those remains will save developers, landowners, and agencies a considerable amount, in addition to significant time savings. In recent years the costs of excavating and reporting human remains have run from $3,600 to $28,000 per individual.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on business associated with this amendment. In cases where ancient human remains are found on private lands or by private developers, this rule and the statute it implements will result in a significant cost and time savings for those individuals. Palmer DePaulis, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
COMMUNITY AND CULTURE
HISTORY
300 RIO GRANDE
SALT LAKE CITY UT 84101-1182, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Alycia Aldrich at the above address, by phone at 801-533-3556, by FAX at 801-533-3567, or by Internet E-mail at AALDRICH@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Philip F Notarianni, Director

R212. Community and Culture, History.
|~~R212-4. Archaeological Permits.~~
~~R212-4-1. General Authority.~~

~~Section 9-8-201 provides for the creation and purpose of the division.~~

~~Section 9-8-203 defines the division's duties and includes the provision to mark and preserve historic sites, areas, and remains.~~

~~Section 9-8-304 specifies the Antiquities section duties and includes responsibility for the stimulation of research, study, and activities in the field of antiquities; the marking, protection, and preservation of sites; the administration of site survey and excavation records; and the cooperation with local, state, and federal agencies and all interested persons to achieve the purposes of this part and Part 4.~~

~~Section 9-8-305 provides that the division shall make rules for the issuance of permits for the survey and excavation of archaeological resources on state lands and allows for the division to enter into memoranda of agreement to issue permits for federal and Native American lands within the state.~~

~~Section 9-8-306 requires a permit to excavate a privately owned designated landmark.~~

~~Section 9-8-307 requires any person who discovers any archaeological resources on privately owned lands to promptly report the discovery to the division and discourages field investigations except by those holding a permit from the division.~~

~~Section 9-8-404 regards the issuance of a permit in consultation with the State Historic Preservation Officer.~~

~~R212-4-2. Purpose.~~

~~The primary purposes of issuing a permit are to:~~

~~A. Ensure that survey, excavation and related work are consistently and reliably executed by qualified personnel; and,~~

~~B. Ensure that educational, scientific, archaeological, anthropological, and historical information is recovered and preserved; and,~~

~~C. Ensure that physical items recovered and owned by the state are not lost to the people of Utah.~~

~~R212-4-3. Applicability.~~

~~This rule applies to all those seeking a permit from the division on any lands within the State of Utah.~~

~~R212-4-4. Definitions.~~

~~A. Terms used in this rule are defined in Section 9-8-302.~~

~~B. In addition:~~

~~1. "board" means the Board of State History;~~

~~2. "division" means the Division of State History;~~

~~3. "director" means the Director of the division;~~

~~4. "recovery" means the scientific disturbance, removal, or study of subsurface and substantial surface archaeological resources by a qualified permit holder.~~

~~5. "permit" means a valid approval by the division issued to professionals meeting qualifications.~~

~~6. "section" means the Antiquities Section of the division.~~

~~7. "surface investigation" means the study, including insubstantial surface collection and limited subsurface testing, of archaeological resources for determination of elegibility for State or National Register.~~

~~R212-4-5. Qualifications of Permit Holders.~~

~~The division shall issue a permit for the survey or excavation of archaeological resources to individuals and entities who demonstrate compliance with the following requirements:~~

~~A. Education, Experience, and Capabilities.~~

~~1. Archaeologists shall meet the minimum standards for education and experience set by federal regulation. The federal regulations, codified as 43 CFR 7.8, Subtitle A (October 1, 2000 Edition) as amended, Issuance of permits are hereby incorporated by reference.~~

~~a) Archaeologists shall be Registered Professional Archaeologists (RPA) in good standing, as recognized by the Register of Professional Archaeologists. Applicants listed on Antiquities Permits at the time this rule takes effect, but who may not meet the standards for RPA status, will not have their permit status revoked.~~

~~2. Applicants shall submit a resume or vita as proof of compliance.~~

~~3. Applicants shall provide written evidence indicating the ability to conduct surveys or the proposed excavation in a manner consistent with current professional practice, including access to proper equipment and facilities, and use of other personnel qualified to execute portions of the research design.~~

~~4. All work conducted under authority of an Antiquities Permit shall be undertaken to current standards of scientific rigor, and must conform to standards established by the Utah Professional Archaeological Council and the Register of Professional Archaeologists.~~

~~R212-4-6. Survey Permit Required for Archaeological Surveys.~~

~~A. A survey permit is issued to a qualified professional upon request. The permit holder may conduct archaeological surveys on behalf of land owners within the State of Utah.~~

~~R212-4-7. Excavation Permits.~~

~~A. The division may issue a permit for excavation on lands owned or controlled by the state and its subdivisions, and on school and institutional trust lands when permitting authority is delegated to the division, when the applicant complies with the requirements of sub-section C.~~

~~B. The division may issue a permit for excavation on other lands, including private lands, when the landowner gives permission and the applicant complies with the requirements of sub-section C.~~

~~C. The division shall require that the applicant:~~

~~1. Provide a research design which:~~

~~a) explicitly states the questions to be addressed;~~

~~b) the reasons for conducting the work;~~

~~c) defines the methods to be used;~~

~~d) describes the analysis to be performed;~~

~~e) outlines the expected results and the plans for reporting;~~

~~f) evaluates expected contributions of the proposed archaeological work to archaeological science and the field of anthropology or related disciplines;~~

~~g) provides for recovery of the maximum amount of historic, scientific, archaeological, anthropological, and educational information;~~

~~h) provides that the physical recovery of specimens and the reporting of archaeological information meet current standards of scientific rigor and conforms to standards established by the Utah Professional Archaeological Council and the Register of Professional Archaeologists; and~~

~~i) provides that no specimen, site or portion of any site is removed from the state of Utah, prior to placement in a museum, repository, or curation facility, without explicit permission from the division and after consultation with landowners and any other agency managing any interest in the land.~~

~~2. Possess written proof of consultation with the appropriate Native American Tribe or Nation, if required by law.~~

~~3. Provide written proof of consultation with the Museum of Natural History, if required by law.~~

~~4. Possess written proof of consultation with other agencies that manage other legal interests in the land.~~

~~5. Provide all other information requested by the division.~~

~~R212-4-8. Permit Provisions.~~

~~All permits shall contain the following provisions:~~

~~A. A permittee shall provide reports documenting results of the work and data obtained, and deliver relevant records, site forms, and reports to the section within the time specified in the permit.~~

~~B. A permittee who discovers human remains shall cease further activity and notify the landowner, antiquities section and appropriate agencies pursuant to Section 9-9-403 and 76-9-704.~~

~~C. Duration of Permits.~~

~~1. Survey permits are issued for a period of up to two years.~~

~~2. Permits for excavation are issued for a period of time necessary to accomplish the proposed work.~~

~~a) The period of time may be extended by the division upon application of the permittee and~~

~~b) The Museum of Natural History shall be consulted by the permittee if the duration of a required excavation permit is to be modified.~~

~~D. Other provisions the division deems necessary.~~

~~R212-4-9. Application Review.~~

~~A. Application for a survey or excavation permit shall be made on a form provided by the section. Applicants shall fully complete the application form.~~

~~B. Applicants shall be notified of the acceptance or rejection of the completed application within 30 calendar days.~~

~~R212-4-10. Violations of Statue or Rule.~~

~~If the division receives information indicating a violation of statute or rule, the division shall make a good faith effort to notify the alleged violator of the legal requirements and potential penalties. The division shall also notify the landowner, and take other actions deemed necessary.~~

~~R212-4-11. Terminating Permits.~~

~~If the permittee fails to comply with any statute, rule, or the provisions of the permit, the division may terminate the permit, temporarily suspend the permit, place additional restrictions on a permit, require other conditions, refuse to issue a permit, or take other appropriate actions.~~

~~A. Before action is taken regarding a permit, the division shall notify the permittee.~~

~~1. The notification shall describe deficiencies in performance or qualifications.~~

~~2. The division shall provide the permittee a reasonable opportunity to respond.~~

~~B. The division shall take into account a permittee's timely response before taking action on a permit.~~

~~C. The division may seek a peer review as necessary.~~

~~R212-4-12. Appeal of Decision.~~

~~Any applicant desiring review of a decision concerning an application, termination, or other conditions placed on a permit may appeal the decision pursuant to R212-1.~~

~~R212-4-13. Records Access.~~

~~The division shall maintain records of archaeological sites and localities. Access to location information within these records shall be restricted to those with legitimate research interests, and those holding valid permits, landowners, or state or federal agencies in accordance with the requirements contained in 16 USC 470 Section 304, the National Historic Preservation Act of 1966, as amended, and Title 63, Chapter 2.~~

~~R212-4-14. Exceptions.~~

~~Exceptions to this rule may be granted, with landowner permission, in emergency cases requiring immediate action, if in the best judgment of the division the intent of the law will not be compromised. The division shall require that a permit application be filed as soon as possible. The division shall notify the board of this action as soon as possible.~~]

R212-4. Ancient Human Remains.

R212-4-1. General Authority.

Section 9-8-309 defines the Antiquities Section's duties with respect to recovery, disposition, and determination of ownership of ancient human remains found on nonfederal lands that are not state lands in the State of Utah.

R212-4-2. Purpose.

The primary purpose of the 9-8-309 and this rule is to assure that ancient human remains are given respectful, lawful, and scientifically-sound treatment, that landowners are not harmed or burdened by a discovery of ancient human remains on their property, and to ensure that steps are taken to determine lawful ownership of recovered remains.

R212-4-3. Definitions.

A. "Antiquities Section" means the Antiquities Section of the Division of State History.

B. "ancient" means one-hundred years of age or older.

C. "Native American" means of or relating to a tribe, people, or culture that is indigenous to the United States.

D. "human remains" means all or part of a physical individual, in any stage of decomposition, and objects on or in association with the physical individual that were placed there as part of the death rite or ceremony of a culture.

E. "nonfederal land" includes land owned or controlled by the state, a county, city, or town, an Indian tribe, if the land is not held in trust by the United States for the Indian tribe or the Indian tribe's

members, a person other than the federal government; or school and institutional trust lands as defined in Section 53C-1-103.

F. "state land" means any land owned by the state including the state's legislative and judicial branches, departments, divisions, agencies, boards, commissions, councils, and committees, institutions of higher education as defined under Section 53B-3-102. "State land" does not include land owned by a political subdivision of the state, land owned by a school district; private land, school and institutional trust lands as defined in Section 53C-1-103.

G. "excavate" means the scientific disturbance or removal of surface or subsurface archaeological resources by qualified archaeologists in compliance with Title 9, Chapter 8, Part 3, Antiquities.

H. "Director" means the Director of the Utah Division of State History.

I. "local law enforcement agency" means the police department, sheriff's office, or other agency having jurisdiction.

R212-4-4. Response to Notification of a Discovery of Ancient Human Remains.

Human remains that are discovered in conjunction with a project or undertaking subject to Chapter 8, part 4 Historic Sites, or Section 106 of the National Historic Preservation Act, are the responsibility of the project proponents, not the Antiquities Section. The Antiquities Section may however advise, assist and cooperate with responsible agencies in meeting their obligations regarding ancient human remains. For ancient human remains recovered as part of a compliance project from lands covered by 9-8-309, the Antiquities Section will, following appropriate analyses, and if asked, assume the role of the landowner for purposes of determination of ownership as per 9-9-403(8).

Upon notification that ancient human remains have been discovered, the Antiquities Section will gather information and consult as necessary with affected agencies and individuals and within two business days determine a course of action with approval of the landowner(leave remains in place or excavate and remove remains) and notify the affected agencies and individuals of the decision.

R212-4-5. Excavation and Removal of Ancient Human Remains.

If the landowner grants permission for excavation and removal, the Antiquities Section or its agent will conduct respectful and scientifically-sound investigations of the remains and will remove from the site the remains within five days of receiving permission to excavate. If agreed to by the landowner, an alternative agreement may be reached (as provided for in 9-8-309(3)). If extraordinary circumstances (as defined in 9-8-309(1)(c)(i) exist or arise requiring a time extension, the Antiquities Section will notify the landowner immediately.

If the landowner does not grant permission to excavate and remove the ancient human remains, the Antiquities Section will inform the landowner of the legal restrictions regarding human remains as specified in UCA 76-9-704.

Excavated human remains will be examined. Those determined to be Native American will be subject to Chapter 9, Part 4, Native American Grave Protection and Repatriation Act. For the purposes of determining ownership under the act, for all remains excavated under the provisions of this part by the Antiquities Section, the Section will serve in the capacity of the landowner and will make lineal descent and cultural affiliation ownership determinations in consultation with the Division of Indian Affairs and allowing interested individuals and tribes to assert claims of ownership.

KEY: [~~administrative procedures,~~]archaeology, ancient human remains
Date of Enactment or Last Substantive Amendment: [~~November 23, 2004~~]2008
Notice of Continuation: August 1, 2006
Authorizing, and Implemented or Interpreted Law: [~~9-8-302; 9-8-305; 9-9-403; 63-2; 16 USC 470 Sec. 304; 43 CFR 7.8 Subtitle A~~]9-8-309; 9-8-403; 76-9-704

Health, Children's Health Insurance Program
R382-10
Eligibility

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31357
FILED: 05/01/2008, 15:31

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In accordance with the 2008 Utah Legislature, this change implements H.B. 326 that requires the Department of Health to keep enrollment open to any child who applies for coverage under the Children's Health Insurance Program (CHIP). This change also complies with Section 26-40-105, which requires the department to determine CHIP eligibility within 30 days after receiving the application for coverage. (DAR NOTE: H.B. 326 (2008) is found at Chapter 386, Laws of Utah 2008, and was effective 05/05/2008.)

SUMMARY OF THE RULE OR CHANGE: This change removes language that limits new enrollment to open enrollment periods, and removes the exceptions to that limitation. This change also removes the section of the rule that defines open enrollment periods, how the public is notified, and how applications are accepted. This amendment further changes the time frame for determining eligibility from 45 to 30 days.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-40-103

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There is no budget impact because appropriations for CHIP are allowing the department to keep CHIP open for an extended period of time. There is, however, a potential cost to the state budget if future enrollment or the cost of providing CHIP coverage exceeds current appropriations. Nevertheless, there is insufficient data to estimate what that cost would be.
❖ LOCAL GOVERNMENTS: There is no budget impact because local governments do not fund the CHIP program and they are not CHIP providers.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There is no impact on small businesses because CHIP only covers children without health insurance. Families who enroll in CHIP without waiting for open enrollment periods will experience lower costs, and thus save money, as CHIP pays for services than an uninsured family pays for before enrollment. There is insufficient data, however, to determine what the savings to families will be.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no budget impact to a single small business because CHIP only covers children without health insurance.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: By funding CHIP at a level to guarantee that everyone who qualifies can enroll without waiting for open enrollment periods, the Governor and the Legislature have made a major step forward in guaranteeing that children have needed health care. The impact on business should be positive. David N. Sundwall, MD, Executive Director

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

HEALTH
CHILDREN'S HEALTH INSURANCE PROGRAM
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Craig Devashrayee at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: David N. Sundwall, Executive Director

R382. Health, Children's Health Insurance Program.
R382-10. Eligibility.
R382-10-2. Definitions.

(1) The Department adopts the definitions found in Sections 2110(b) and (c) of the Social Security Act as enacted by Pub. L. No. 105-33 which is incorporated by reference in this rule.

(2) "Agency" means any local office or outreach location of either the Department of Health or Department of Workforce Services that accepts and processes applications for CHIP.

(3) "Applicant" means a child on whose behalf an application has been made for benefits under the Children's Health Insurance Program, but who is not an enrollee.

(4) "Best estimate" means the Department's determination of a household's income for the upcoming eligibility period, based on past and current circumstances and anticipated future changes.

(5) "Children's Health Insurance Program" or "CHIP" means the program for benefits under the Utah Children's Health Insurance Act, Title 26, Chapter 40.

(6) "Department" means the Utah Department of Health.

(7) "Employer-sponsored health plan" means health insurance that meets the requirements of R414-320-2(8) (a) (b) (c) (d) and (e).

(8) "Income averaging" means a process of using a history of past or current income and averaging it over a determined period of time that is representative of future income.

(9) "Income anticipating" means a process of using current facts regarding rate of pay, number of working hours, and expected changes to anticipate future income.

(10) "Income annualizing" means a process of determining the average annual income of a household, based on the past history of income and expected changes.

(11) "Local office" means any [~~Bureau of Eligibility Services~~]office location, outreach location, or telephone location where an individual may apply for medical assistance.

(12) "Quarterly Premium" means a payment that enrollees must pay every three months to receive coverage under CHIP.

(13) "Renewal month" means the last month of the eligibility period for an enrollee.

(14) "Utah's Premium Partnership for Health Insurance" or "UPP" means the program described in R414-320.

(15) "Verifications" means the proofs needed to decide if a child meets the eligibility criteria to be enrolled in the program. Verifications may include hard copy documents such as a birth certificate, computer match records such as Social Security benefits match records, and collateral contacts with third parties who have information needed to determine the eligibility of a child.

R382-10-4. Applicant and Enrollee Rights and Responsibilities.

(1) A parent or an adult who has assumed responsibility for the care or supervision of a child may apply or reapply for Children's Health Insurance Program benefits on behalf of a child[~~ during an open enrollment period~~]. An emancipated child or an 18 year old child may apply on his own behalf.

(2) The applicant must provide [~~the Department with~~]verifications to establish the eligibility of the child, including information about the parents.

(3) Anyone may look at the eligibility policy manuals located at any local office, except at outreach or telephone locations.

(4) The parent or other individual who arranged for medical services on behalf of the child shall repay the Department for services paid for by the Department under this program if the child is determined not to be eligible for CHIP.

(5) The parent(s) or child, or other responsible person acting on behalf of a child must report certain changes to the local office within ten days of the day the change becomes known. Some examples of reportable changes include:

(a) An enrollee begins to receive coverage under a group health plan or other health insurance coverage.

(b) An enrollee begins to have access to coverage under a group health plan or other health insurance coverage.

(c) An enrollee leaves the household or dies.

(d) An enrollee or the household moves out of state.

(e) Change of address of an enrollee or the household.

(f) An enrollee enters a public institution or an institution for mental diseases.

(6) Applicants and enrollees have the right to be notified about actions the agency takes regarding their eligibility or continued

eligibility, the reason the action was taken, and the right to request an agency conference or agency action.

R382-10-10. Creditable Health Coverage.

(1) To be eligible for enrollment in the program, a child must meet the requirements of Sections 2110(b)(1)(C) and (2)(B) of the Social Security Act as enacted by Pub. L. No. 105-33.

(2) A child who is covered under a group health plan or other health insurance coverage including coverage under a parent's or legal guardian's employer, as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), is not eligible for CHIP assistance.

(3) A child who is covered under an absent parent's insurance coverage that does not provide coverage in the State of Utah is eligible for enrollment.

(4) A child who is covered under a group health plan or other health coverage but has reached the lifetime maximum coverage under that plan is eligible for enrollment.

(5) A child who has access to health insurance coverage, where the cost to enroll the child in the least expensive plan offered by the employer is less than 5% of the household's gross annual income, is not eligible for CHIP. The child is considered to have access to coverage even if the employer offers coverage only during an open enrollment period.

(6) A child who has access to an employer-sponsored health plan where the least expensive plan is equal to or greater than 5% of the household's gross annual income, and the employer offers an employer-sponsored health plan that meets the requirements of R414-320-2 (8) (a), (b), (c), (d) and (e), may choose to enroll in the employer-sponsored health plan and receive reimbursement through the UPP program or may choose to enroll in the CHIP program.

(a) If the employer-sponsored health plan does not include dental benefits, the child may enroll in CHIP dental benefits.

(b) A child who chooses to enroll in the UPP program may switch to CHIP coverage at any time.

(7) The Department shall deny eligibility if the applicant or a custodial parent has voluntarily terminated health insurance coverage in the 90 days prior to the application date for enrollment under CHIP.[

~~(a)~~] An applicant or applicant's parent(s) who voluntarily terminates coverage under a COBRA plan or under the Health Insurance Pool (HIP), or who is involuntarily terminated from an employer's plan is eligible for CHIP without a 90 day waiting period.[

~~(b) An applicant who voluntarily terminates health insurance coverage purchased after the previous CHIP open enrollment period ended but before the beginning of the current open enrollment period and who met CHIP eligibility requirements at the time of purchase, is eligible for CHIP without a 90 day waiting period.~~]

(8) A child with creditable health coverage operated or financed by the Indian Health Services is not excluded from enrolling in the program.

(9) An applicant must report at application and renewal whether any of the children in the household for whom enrollment is being requested has access to or is covered by a group health plan, other health insurance coverage, or a state employee's health benefits plan.

(10) The Department shall deny an application or renewal if the enrollee fails to respond to questions about health insurance coverage for children the household seeks to enroll or renew in the program.

R382-10-11. Household Composition.

(1) The following individuals who reside together must be included in the household for purposes of determining the household size and whose income will be counted, whether or not the individual is eligible to enroll in the program:

(a) A child who meets the CHIP age requirement and who does not have access to and is not covered by a group health plan or other health insurance;

(b) Siblings, half-siblings, adopted siblings, and step-siblings of the child who meets the CHIP age requirement if these individuals also meet the CHIP age requirement;

(c) Parents and stepparents of any child who is included in the household size;

(d) Children of any child included in the household size;

(e) The spouse of any child who is included in the household size; and

(f) Unborn children of anyone included in the household size.

(g) Children of a former spouse when a divorce has been finalized.

(2) Any individual described in Subsection (1) of this Section who is temporarily absent solely by reason of employment, school, training, military service, or medical treatment, or who will return home to live within 30 days from the date of application, is part of the household.

(3) A household member described in Subsection (1) of this Section who does not qualify to enroll in the CHIP program due to his alien status is included in the household size and his income is counted as household income.[

~~(4) If an individual is caring for a child of his or her former spouse, in a case in which a divorce has been finalized, the child may be included in the household if the child resides in the home.~~]

R382-10-13. Income Provisions.

To be eligible to enroll in the Children's Health Insurance Program, gross household income must be equal to or less than 200% of the federal non-farm poverty guideline for a household of equal size. All gross income, earned and unearned, received by the parents and stepparents of any child who is included in the household size, is counted toward household income, unless this section specifically describes a different treatment of the income.

(1) The Department does not count as income [~~that is defined in 20 CFR 416(K) Appendix, 2006 edition, which is adopted and incorporated by reference~~]any payments from sources that federal law specifically prohibit from being counted as income to determine eligibility for federally-funded programs.

(2) Any income in a trust that is available to, or is received by a household member, is countable income.

(3) Payments received from the Family Employment Program, General Assistance, or refugee cash assistance or adoption support services as authorized under Title 35A, Chapter 3 is countable income.

(4) Rental income is countable income. The following expenses can be deducted:

(a) taxes and attorney fees needed to make the income available;

(b) upkeep and repair costs necessary to maintain the current value of the property;

(c) utility costs only if they are paid by the owner; and

(d) interest only on a loan or mortgage secured by the rental property.

(5) Deposits to joint checking or savings accounts are countable income, even if the deposits are made by a non-household member. An applicant or enrollee who disputes household ownership of deposits to joint checking or savings accounts shall be given an opportunity to prove that the deposits do not represent income to the household. Funds that are successfully disputed are not countable income.

(6) Cash contributions made by non-household members are counted as income unless the parties have a signed written agreement for repayment of the funds.

(7) The interest earned from payments made under a sales contract or a loan agreement is countable income to the extent that these payments will continue to be received during the eligibility period.

(8) In-kind income, which is goods or services provided to the individual from a non-household member and which is not in the form of cash, for which the individual performed a service or is provided as part of the individual's wages is counted as income. In-kind income for which the individual did not perform a service or did not work to receive is not counted as income.

(9) SSI and State Supplemental Payments are countable income.

(10) Death benefits are not countable income to the extent that the funds are spent on the deceased person's burial or last illness.

(11) A bona fide loan that an individual must repay and that the individual has contracted in good faith without fraud or deceit, and genuinely endorsed in writing for repayment is not countable income.

(12) Child Care Assistance under Title XX is not countable income.

(13) Reimbursements of Medicare premiums received by an individual from Social Security Administration or the Department are not countable income.

(14) Needs-based Veteran's pensions are not counted as income. If the income is not needs-based, only the portion of a Veteran's Administration check to which the individual is legally entitled is countable income.

(15) Income of a child is excluded if the child is not the head of a household.

(16) Educational income such as educational loans, grants, scholarships, and work-study programs are not countable income. The individual must verify enrollment in an educational program.

(17) Reimbursements for expenses incurred by an individual are not countable income.

(18) Any payments made to an individual because of his status as a victim of Nazi persecution as defined in Pub. L. No. 103-286 are not countable income, including payments made by the Federal Republic of Germany, Austrian Social Insurance payments, and Netherlands WUV payments.

(19) Victim's Compensation payments as defined in Pub. L. No. 101-508 are not countable income.

(20) Disaster relief funds received if a catastrophe has been declared a major disaster by the President of the United States as defined in Pub. L. No. 103-286 are not countable income.

(21) Income of an alien's sponsor or the sponsor's spouse, is not countable income.

(22) If the household expects to receive less than $500 per year[~~,~~] in taxable interest and dividend income, then they are not countable income.

R382-10-14. Budgeting.

The following section describes methods that the Department will use to determine the household's countable monthly or annual income.

(1) The gross income for parents and stepparents of any child included in the household size is counted to determine a child's eligibility, unless the income is excluded under this rule. Only expenses that are required to make an income available to the individual are deducted from the gross income. No other deductions are allowed.

(2) The Department shall determine monthly income by taking into account the months of pay where an individual receives a fifth paycheck when paid weekly, or a third paycheck when paid every other week. The Department shall multiply the weekly amount by 4.3 to obtain a monthly amount. The Department shall multiply income paid bi-weekly by 2.15 to obtain a monthly amount.

(3) The Department shall determine a child's eligibility and cost-sharing requirements prospectively for the upcoming eligibility period at the time of application and at each renewal for continuing eligibility. The Department shall determine prospective eligibility by using the best estimate of the household's average monthly income that is expected to be received or made available to the household during the upcoming eligibility period. The Department shall prorate income that is received less often than monthly over the eligibility period to determine an average monthly income. The Department may request prior years' tax returns as well as current income information to determine a household's income.

(4) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing. The Department may use a combination of methods to obtain the most accurate best estimate. The best estimate may be a monthly amount that is expected to be received each month of the eligibility period, or an annual amount that is prorated over the eligibility period. Different methods may be used for different types of income received in the same household.

(5) The Department shall determine farm and self-employment income by using the individual's recent tax return forms. If tax returns are not available, or are not reflective of the individual's current farm or self-employment income, the Department [~~shall~~]may request income information from a recent time period during which the individual had farm or self-employment income. The Department [~~shall deduct~~]deducts 40% of the gross income as a deduction for business expenses to determine the countable income of the individual. For individuals who have business expenses greater than 40%, the Department [~~shall request expense information and deduct the expenses from the gross income~~]may exclude more than 40% if the individual can demonstrate that the actual expenses are greater than 40%. The Department [~~shall deduct~~]deducts the same expenses from gross income that the Internal Revenue Service allows as self-employment expenses.

(6) The Department may annualize income for any household and in particular for households that have self-employment income, receive income sporadically under contract or commission agreements, or receive income at irregular intervals throughout the year.

R382-10-16. Application and Renewal.

The application is the initial request from an applicant for CHIP enrollment for a child. The application process includes gathering

information and verifications to determine the child's eligibility for enrollment in the program. Renewal is the process of gathering information and verifications on a periodic basis to determine continued eligibility of an enrollee.

(1) The applicant must complete and sign a written application to become enrolled in the program.

(2) The Department accepts any Department-approved application form for medical assistance programs offered by the state as an application for CHIP enrollment.

(3) Individuals may apply for enrollment during open enrollment periods in person, through the mail, by fax, or online.[

~~(4) A family who has a child enrolled in CHIP, may enroll a new child born to or adopted by a household member without waiting for the next open enrollment period.~~

~~(5) A child who loses Medicaid coverage because he or she has reached the maximum age limit and does not qualify for any other Medicaid program without paying a spenddown, may enroll in CHIP without waiting for the next open enrollment period.~~

~~(6) A child who loses Medicaid coverage because he or she is no longer deprived of parental support and does not qualify for any other Medicaid program without paying a spenddown, may enroll in CHIP without waiting for the next open enrollment period.~~

~~(7) A child enrolled in the UPP program who discontinues his or her coverage under an employer sponsored health plan, may enroll in CHIP without waiting for the next open enrollment period.~~]

([~~8~~]4) The Department may interview applicants, the applicant's parents, and any adult who has assumed responsibility for the care or supervision of the child to assist in determining eligibility.

([~~9~~]5) If eligibility for CHIP enrollment ends, the Department shall review the case for eligibility under any other medical assistance program without requiring a new application. The Department may request additional verification from the household if there is insufficient information to make a determination.

R382-10-17. Eligibility Decisions.

(1) The Department must determine eligibility for CHIP within [~~45~~]30 days of the date of application. If a decision can not be made in [~~45~~]30 days because the applicant fails to take a required action and requests additional time to complete the application process, or if circumstances beyond the Department's control delay the eligibility decision, the Department shall document the reason for the delay in the case record. The Department must inform the applicant of the status of the application and the time frame for completing the application process.

(2) The Department may not use the time standard as a waiting period before determining eligibility, or as a reason for denying eligibility because the Department has not determined eligibility within that time.

(3) The Department shall complete a determination of eligibility or ineligibility for each application unless:

(a) the applicant voluntarily withdrew the application and the Department sent a notice to the applicant to confirm the withdrawal;

(b) the applicant died; or

(c) the applicant can not be located or has not responded to requests for information within the 30 day application period.

(4) The Department must redetermine eligibility at least every 12 months.

(5) At application and renewal, the Department must determine if any child applying for CHIP enrollment is eligible for coverage under Medicaid. A child who is eligible for Medicaid coverage is not eligible for CHIP. A child who must meet a spend-down to receive Medicaid and chooses not to meet the spenddown can be enrolled in CHIP.

R382-10-18. Effective Date of Enrollment and Renewal.

(1) The effective date of CHIP enrollment is the date a completed and signed application is received at a local office by 5:00 p.m. on a business day. This applies to paper applications delivered in person or by mail, paper applications sent via facsimile transmission, and electronic applications sent via the internet. If a local office receives an application after 5:00 p.m. of a business day, the effective date of CHIP enrollment is the next business day.

(2) The effective date of CHIP enrollment for applications delivered to an outreach location is as follows:

(a) If the application is delivered at a time when the outreach staff is working at that location, the effective date of enrollment is the date the outreach staff receives the application.

(b) If the application is delivered at a time when the outreach office is closed, including being closed for weekends or holidays, the effective date of enrollment is the last business day that a staff person from the state agency was available to receive or pick up applications from the location.

(3) The Department may allow a grace enrollment period beginning no earlier than four days before the date a completed and signed application is received by the Department. The Department shall not pay for any services received before the effective enrollment date.

(4) For a family who has a child enrolled in CHIP and who adds a newborn or adopted child, the effective date of enrollment is the date of birth or adoption if the family requests the coverage within 30 days of the birth or adoption. If the request is made more than 30 days after the birth or adoption, enrollment in CHIP will be effective beginning the date of report, except as otherwise provided in R382-10-18(1).

(5) The effective date of enrollment for a renewal is the first day of the month after the renewal month, if the renewal process is completed by the end of the renewal month, or by the last day of the month immediately following the renewal month, and the child continues to be eligible.

(6) If the renewal process is not completed by the end of the renewal month, the case will be closed unless the enrollee has good cause for not completing the renewal process on time. Good cause includes a medical emergency, death of an immediate family member, or natural disaster, or other similar occurrence.

(7) The Department may require an interview with the parent, child, or adult who has assumed responsibility for the care or supervision of a child, or other authorized representative as part of the renewal process.[

~~**R382-10-19. Open Enrollment Period.**~~

~~(1) The Department accepts applications for enrollment at times when sufficient funding is available to justify enrolling more individuals. The Department limits the number it enrolls according to the funds available for the program.~~

~~(a) The Department shall notify the public of the open enrollment period 10 days in advance through a newspaper of general circulation.~~

~~(b) During an open enrollment period, the Department accepts applications in person, through the mail, by fax, or online. The Department sorts applications according to the date received. If the applications received on a day exceed the number of openings~~

~~available, the Department shall randomize all applications for that day and select the number needed to fill the openings.~~

~~(c) The Department will not accept applications prior to the open enrollment date, except as provided in R382-10-16.~~]

R382-10-[~~20~~]19. Enrollment Period.

(1) The enrollment period begins with either the date of application, or an earlier date as defined in R382-10-18, if the applicant is determined eligible for CHIP enrollment. Covered services the child received on or after the effective date of enrollment are payable by CHIP for a child who was eligible upon application.

(2) A child eligible for CHIP enrollment receives 12 months of coverage unless the child turns 19 years of age before the end of the 12-month enrollment period, moves out of the state, becomes eligible for Medicaid, begins to be covered under a group health plan or other health insurance coverage, enters a public institution, or does not pay his or her quarterly premium. The month a child turns 19 years of age is the last month the child is eligible for CHIP.

R382-10-[~~21~~]20. Quarterly Premiums.

(1) Each family with children enrolled in the CHIP program must pay a quarterly premium based on the countable income of the family during the first month of the quarter.

(a) A family whose countable income is equal to or less than 100% of the federal poverty level or who are American Indian pays no premium.

(b) A family with countable income greater than 100% and up to 150% of the federal poverty level must pay a quarterly premium of $30.

(c) A family with countable income greater than 150% and up to 200% of the federal poverty level must pay a quarterly premium of $60.

(2) A family who does not pay its quarterly premium by the premium due date will be terminated from CHIP. Coverage may be reinstated when any of the following events occur:

(a) The family pays the premium by the last day of the month immediately following the termination;

(b) The family's countable income decreased to below 100% of the federal poverty level prior to the first month of the quarter.

(c) The family's countable income decreases prior to the first month of the quarter and the family owes a lower premium amount. The new premium must be paid within 30 days.

(3) A family who was terminated from CHIP who reapplies within one year of the termination date, must pay any outstanding premiums before the children can be re-enrolled.

R382-10-[~~22~~]21. Termination and Notice.

(1) The Department shall notify an applicant or enrollee in writing of the eligibility decision made on the application or at renewal.

(2) The Department shall notify an enrollee in writing ten days before taking a proposed action adversely affecting the enrollee's eligibility.

(3) Notices under this section shall provide the following information:

(a) the action to be taken;

(b) the reason for the action;

(c) the regulations or policy that support the action;

(d) the applicant's or enrollee's right to a hearing;

(e) how an applicant or enrollee may request a hearing; and

(f) the applicant's or enrollee's right to represent himself, or use legal counsel, a friend, relative, or other spokesperson.

(4) The Department need not give ten-day notice of termination if:

(a) the child is deceased;

(b) the child has moved out of state and is not expected to return;

(c) the child has entered a public institution; or

(d) the child has enrolled in other health insurance coverage, in which case eligibility ends the day before the new coverage begins.

R382-10-[~~23~~]22. Case Closure or Withdrawal.

The Department shall terminate a child's enrollment upon enrollee request or upon discovery that the child is no longer eligible. An applicant may withdraw an application for CHIP benefits any time prior to approval of the application.

KEY: children's health benefits
Date of Enactment or Last Substantive Amendment: [~~July 1, 2007~~]2008
Notice of Continuation: June 10, 2003
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-40

Health, Community and Family Health Services, Children with Special Health Care Needs

R398-1

Newborn Screening

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31350
FILED: 05/01/2008, 13:12

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Several nationally recognized authorities, including the March of Dimes, the American College of Medical Genetics have recommended screening for cystic fibrosis. The Department of Health's Genetics Advisory Committee and, Newborn Screening Subcommittee have also requested that cystic fibrosis be added to the list of disorders that are screened.

SUMMARY OF THE RULE OR CHANGE: Screening for cystic fibrosis is added in Subsection R398-1-3(3). Changes to Section R398-1-12 require hospitals and birthing centers to enter screening form numbers in the Vital Records and newborn hearing screening systems. Changes in Section R398-1-9 clarify notification and payment responsibilities. A new Section R398-1-18 is added as required by statute. There are many technical changes throughout the rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 26-1-6 and Subsections 26-1-30(2)(a), (b), (c) and 26-10-6 (d), and (g)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The cost to Medicaid will be $142,400 based on 2006 Medicaid eligible deliveries. This is calculated as $8 X 17,800 Medicaid eligible deliveries. Medical literature indicates that screening for cystic fibrosis will identify between 3 and 4 cases in 17,800 births. Early identification results in a decrease in hospitalizations and testing to identify sick newborns with the disorder. Each child not identified through newborn screening requires between $250,000 and $1,250,000 in hospitalizations and testing before cystic fibrosis is identified. Estimated aggregate savings range from cost neutral to between $750,000 and $5,000,000.

❖ LOCAL GOVERNMENTS: There is no impact on local governments. Additional costs for the cystic fibrosis screening are passed on to the Medicaid, third party payers and others.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There is no impact on small businesses. Additional costs for the cystic fibrosis screening are passed on to the Medicaid, third party payers and others. The additional cost to persons other than businesses is $284,800 based on 2006 non-Medicaid deliveries. This is calculated as $8 X 35,600 births. Medical literature indicates that screening for cystic fibrosis will identify between seven and nine cases in 35,600 births. Early identification results in a decrease in hospitalizations and testing to identify sick newborns with the disorder. Each child not identified through newborn screening requires between $250,000 and $1,250,000 in hospitalizations and testing before cystic fibrosis is identified. Estimated aggregate savings range from cost neutral to between $1,750,000 and $11,250,000.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The compliance cost will be $8 per newborn screened. The department does not have sufficient data to estimate the cost to any particular third party payer who pays for the screenings.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The $8 cost per test will be shared by many persons and businesses to identify a relatively small number of cases of cystic fibrosis. The cost to the families of those identified will be much less and the entire health care system will not have to bear the large hospitalization and testing costs to diagnose. This rule is important for the public health and that the costs are justified. David N. Sundwall, MD, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:

Fay Keune at the above address, by phone at 801-584-8256, by FAX at 801-536-0966, or by Internet E-mail at fkeune@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: David N. Sundwall, Executive Director

R398. Health, Community and Family Health Services, Children with Special Health Care Needs.

R398-1. Newborn Screening.

R398-1-1. Purpose and Authority.

(1) The purpose of this rule is to facilitate early detection, prompt referral, early treatment, and prevention of disability and mental retardation in infants with certain genetic[~~metabolic,~~] and endocrine[~~, and hematologie~~] disorders.

(2) Authority for the Newborn Screening program and promulgation of rules to implement the program are found in Sections 26-1-30(2)(a), (b), (c), (d), and (g) and 26-10-6.

R398-1-2. Definitions.

(1) "Abnormal test result" means a result that is outside of the normal range for a given test.

(2) "Appropriate specimen" means a blood specimen submitted on the Utah Newborn Screening [~~Kit~~]form that conforms with the criteria in R398-1-8.

(3) "Blood spot" means a clinical specimen(s) submitted on the filter paper (specially manufactured absorbent specimen collection paper) of the Newborn Screening form using the heel stick method[~~collected by carefully applying a few drops of blood, freshly drawn by heel stick with a lancet from infants, onto the filter paper (specially manufactured absorbent specimen collection paper) of the Newborn Screening Kit~~].

(4) "Department" means the Utah Department of Health.

(5) "Follow up" means the tracking of all newborns with an abnormal result, inadequate or unsatisfactory specimen or a quantity not sufficient specimen through to a normal result or confirmed diagnosis and referral.

(6) "Inadequate specimen" means a specimen determined by the Newborn Screening Laboratory to be unacceptable for testing.

(7) "Indeterminate result" means a result that requires another specimen to determine normal or abnormal status.

(8) "Institution" means a hospital, alternate birthing facility, or midwife service in Utah [~~which~~]that provides maternity or nursery services or both.

([~~8~~]9) "Medical home/practitioner" means a person licensed by the Department of Commerce, Division of Occupational and Professional Licensing to practice medicine, naturopathy, or chiropractic or to be a nurse practitioner, as well as the licensed or unlicensed midwife who takes responsibility for delivery or the on-going health care of a newborn.

([~~9~~]10) "Metabolic diseases" means those diseases screened by the Department which are caused by[~~due to~~] an inborn error of metabolism[~~, for which the Department of Health shall screen all infants~~].

(1[~~0~~]1) "Newborn Screening [~~Kit~~]form" means the [~~d~~]Department's demographic form with attached Food and Drug Administration (FDA)-approved filter paper medical collection device.

(1[~~1~~]2) "Quantity not sufficient specimen" or "[~~(~~]QNS specimen[~~)~~]" means a specimen that has been partially tested but [~~requires more~~]does not have enough blood available to complete the full testing.

(1[~~2~~]3) "Unsatisfactory specimen" means an inadequate specimen.

R398-1-3. Implementation.

(1) Each newborn in the state of Utah shall submit to the Newborn Screening testing, except as provided in Section R398-1-11.

(2) The Department of Health, after consulting with the Genetic Advisory Committee, will determine the Newborn Screening battery of tests based on demonstrated effectiveness and available funding. Disorders for which the infant blood is screened are:

(a) Biotinidase Deficiency;

(b) Congenital Adrenal Hyperplasia;

(c) Congenital Hypothyroidism;

(d) Galactosemia;

(e) Hemoglobinopathy;

(f) Amino Acid Metabolism Disorders:

(i) Phenylketonuria (phenylalanine hydroxylase deficiency and variants);

(ii) Tyrosinemia type 1(fumarylacetoacetate hydrolase deficiency);

(iii) Tyrosinemia type 2 (tyrosine amino transferase deficiency);

(iv) Tyrosinemia type 3 (4-OH-phenylpyruvate dioxygenase deficiency);

(v) Maple Syrup Urine Disease (branched chain ketoacid dehydrogenase deficiency);

(vi) Homocystinuria (cystathionine beta synthase deficiency);

(vii) Citrullinemia (arginino succinic acid synthase deficiency);

(viii) Argininosuccinic aciduria (arginino succinic acid lyase deficiency);

(ix) Argininemia (arginase deficiency);

(x) Hyperprolinemia type 2 (pyrroline-5-carboxylate dehydrogenase deficiency);

(g) Fatty Acid Oxidation Disorders:

(i) Medium Chain Acyl CoA Dehydrogenase Deficiency;

(ii) Very Long Chain Acyl CoA Dehydrogenase Deficiency;

(iii) Short Chain Acyl CoA Dehydrogenase Deficiency;

(iv) Long Chain 3-OH Acyl CoA Dehydrogenase Deficiency;

(v) Short Chain 3-OH Acyl CoA Dehydrogenase Deficiency;

(vi) Primary carnitine deficiency (OCTN2 carnitine transporter defect);

(vii) Carnitine Palmitoyl Transferase I Deficiency;

(viii) Carnitine Palmitoyl Transferase 2 Deficiency;

(ix) Carnitine Acylcarnitine Translocase Deficiency;

(x) Multiple Acyl CoA Dehydrogenase Deficiency;[~~and~~]

(h) Organic Acids Disorders:

(i) Propionic Acidemia (propionyl CoA carboxylase deficiency);

(ii) Methylmalonic acidemia (multiple enzymes);

(iii) Isovaleric acidemia (isovaleryl CoA dehydrogenase deficiency);

(iv) 2-Methylbutiryl CoA dehydrogenase deficiency;

(v) Isobutyryl CoA dehydrogenase deficiency;

(vi) 2-Methyl-3-OH-butyryl-CoA dehydrogenase deficiency;

(vii) Glutaric acidemia type 1 (glutaryl CoA dehydrogenase deficiency);

(viii) 3-Methylcrotonyl CoA carboxylase deficiency;

(ix) 3-Ketothiolase deficiency;

(x) 3-Hydroxy-3-methyl glutaryl CoA lyase deficiency;[~~and~~]

(xi) Holocarboxylase synthase (multiple carboxylases) deficiency; and

(i) Cystic Fibrosis.

R398-1-4. Responsibility for Collection of the First Specimen.

(1) If the newborn is born in an institution, the institution must collect and submit an appropriate specimen, unless the newborn is transferred to another institution prior to 48 hours of age.

(2) If the newborn is born outside of an institution, the practitioner or other person primarily responsible for providing assistance to the mother at the birth must arrange for the collection and submission of an appropriate specimen.

(3) If there is no other person in attendance of the birth, the parent or legal guardian must arrange for the collection and submission of an appropriate specimen.

(4) If the newborn is transferred to another institution prior to 48 hours of age, the receiving health institution must collect and submit an appropriate specimen.

R398-1-6. Parent Education.

The person who has responsibility under Section R398-1-4 shall inform the parent or legal guardian of the required collection and submission and the disorders screened. That person shall give the second half of the Newborn Screening [~~Kit~~]form to the parent or legal guardian with instructions on how to arrange for collection and submission of the second specimen.

R398-1-7. [~~The~~]Timing of Collection of the Second Specimen.

A second specimen shall be collected between 7 and 28 days of age.

(1) The parent or legal guardian shall arrange for the collection and submission of the appropriate second specimen through an institution, medical home/practitioner, or local health department.

(2) If the newborn's first specimen was obtained prior to 48 hours of age, the second specimen shall be collected by fourteen days of age.

(3) If the newborn is hospitalized beyond the seventh day of life, the institution shall arrange for the collection and submission of the appropriate second specimen.

R398-1-8. Criteria for Appropriate Specimen.

(1) The institution or medical home/practitioner collecting the appropriate specimen must:

(a) Use only a Newborn Screening [~~Kit~~]form purchased from the Department. The fee for the [~~kit~~]Newborn Screening form is set by the Legislature in accordance with Section 26-1-6;

(b) Correctly store the Newborn Screening [~~Kit~~]form;

(c) Not use the Newborn Screening [~~Kit~~]form beyond the date of expiration;

(d) Not alter the Newborn Screening [~~Kit~~]form in any way;

(e) Complete all information on the Newborn Screening [~~Kit~~]form. If the infant is being adopted, the following may be omitted: infant's last name, birth mother's name, address, and telephone number. Infant must have an identifying name, and a contact person must be listed;

(f) Apply sufficient blood to the filter paper;

(g) Not contaminate the filter paper with any foreign substance;

(h) Not tear, perforate, scratch, or wrinkle the filter paper;

(i) Apply blood evenly to one side of the filter paper and be sure it soaks through to the other side;

(j) Apply blood to the filter paper in a manner that does not cause caking;

(k) Collect the blood in such a way as to not cause serum or tissue fluids to separate from the blood;

(l) Dry the specimen properly;

(m) Not remove the filter paper from the Newborn Screening [~~Kit~~]form.

(2) Submit the completed Newborn Screening [~~Kit~~]form to the Utah Department of Health, Newborn Screening Laboratory, 46 North Medical Drive, Salt Lake City, Utah 84113.

(a) The Newborn Screening [~~Kit~~]form shall be placed in an envelope large enough to accommodate it without folding the [~~kit~~]form.

(b) If mailed, the Newborn Screening [~~Kit~~]form shall be placed in the U.S. Postal system within 24 hours of the time the appropriate specimen was collected.

(c) If hand-delivered, the Newborn Screening [~~Kit~~]form shall be delivered within 48 hours of the time the appropriate specimen was collected.

R398-1-9. Abnormal Result.

(1)(a) If the Department finds an abnormal result consistent with a disease state, the Department shall [~~inform~~]send written notice to the medical home/practitioner noted on the Newborn S[~~s~~]creening [~~specimen~~]form.

(b) If the Department finds an indeterminate result on the first screening, the Department shall determine whether to send a notice to the medical home/practitioner based on the results on the second screening specimen.

(2) The Department may require the medical home/practitioner to collect and submit additional specimens [~~and conduct additional diagnostic tests~~]for screening or confirmatory testing. The Department shall pay for the initial confirmatory testing on the newborn requested by the Department. The Department may recommend additional diagnostic testing to the medical home/practitioner. The cost of additional testing recommended by the Department is not covered by the Department.

(3) The medical home/practitioner shall collect and submit specimens within the time frame and in the manner instructed by the Department[~~ for the particular diagnostic test~~].

(4) As instructed by the Department or the medical home/practitioner, the parent or legal guardian of a newborn identified with an abnormal test result shall promptly take the newborn to the Department or medical home/practitioner to have an appropriate specimen collected.

(5) The medical home/practitioner who makes the final diagnosis shall complete a diagnostic form and return it to the Department within 30 days of the notification letter from the Department.

R398-1-10. Inadequate or Unsatisfactory Specimen, or QNS Specimen.

(1) If the Department finds an inadequate or unsatisfactory specimen, or QNS specimen, the Department shall inform the medical home/practitioner noted on the Newborn S[~~s~~]creening[~~specimen~~] form.

(2) The medical home/practitioner shall submit an appropriate specimen in accordance with Section R398-1-8. The specimen shall be collected and submitted within two days of notice, and the form shall be labeled for testing as directed by the Department.

(3) The parent or legal guardian of a newborn identified with an inadequate or unsatisfactory specimen or QNS specimen shall promptly take the newborn to the medical home/practitioner to have an appropriate specimen collected.

R398-1-12. Access to Medical Records.

(1) The Department shall have access to the medical records of a newborn in order to identify medical home/practitioner, reason appropriate specimen was not collected, or to collect missing demographic information.

(2) The institution shall enter the Newborn Screening form number, also known as the Birth Record Number, into the Vital Records database and the Newborn Hearing Screening database.

R398-1-14. Confidentiality and Related Information.

(1) The Department releases test results to the institution of birth for first specimens and to the medical home/practitioner, as noted on the [~~demographic~~]Newborn Screening form, for the second specimen.

(2) The Department notifies the medical home/practitioner noted on the [~~demographic~~]Newborn Screening form [~~if the test results are abnormal, inconclusive or QNS~~]as provided in Section R398-1-9(1).

(3) The Department releases information to the medical home/practitioner noted on the [~~demographic~~]Newborn Screening form for timely and effective referral for diagnostic services or to ensure appropriate management for individuals with confirmed diagnosis.

(4) Upon request of the parent or guardian, the Department may release results as directed in the release.

(5) All requests for test results or records are governed by Utah Code Title 26, Chapter 3.

(6) The Department may release information in summary, statistical, or other forms that do not identify particular individuals.

(7) A testing laboratory that analyzes newborn screening samples for the Department may not release information or samples without the Department's express written direction.

R398-1-15. Blood Spots.

(1) Blood spots become the property of the Department.

(2) The Department includes in parent education materials information about the Department's policy on the retention and use of residual newborn blood spots.

(3) The Department may use residual blood spots for newborn screening quality assessment activities.

(4) The Department may release blood spots for research upon the following:

(a) The person proposing to conduct the research applies in writing to the Department for approval to perform the research. The application shall include a written protocol for the proposed research, the person's professional qualifications to perform the proposed research, and other information if needed and requested by the Department. When appropriate, the proposal will then be submitted to the Department's [~~IRB~~]Internal Review Board for approval.

(b) The Department shall de-identify blood spots it releases unless it obtains informed consent of a parent or guardian to release identifiable samples.

(c) All research must be first approved by the Department's [~~IRB~~]Internal Review Board.

R398-1-18 Statutory Penalties.

As required by Subsection 63-46a-3(5): Any person that violates any provision of this rule may be assessed a civil money penalty not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

KEY: health care, newborn screening
Date of Enactment or Last Substantive Amendment: [~~October 25, 2005~~]2008
Notice of Continuation: September 22, 2004[~~, (d), and (g)~~]
Authorizing, and Implemented or Interpreted Law: 26-1-6; 26-1-30(2)(a), (b), (c); 26-10-6 (d), and (g)

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-1-5

State Plan

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31359
FILED: 05/01/2008, 15:42

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Subsection 26-18-3(2)(a) requires the Medicaid program to implement policy through administrative rules. The department, in order to draw down federal funds, must have an approved State Plan with the Centers for Medicare and Medicaid Services. This change, therefore, incorporates the most current Medicaid State Plan by reference.

SUMMARY OF THE RULE OR CHANGE: Subsection R414-1-5(2) is changed to update the incorporation of the State Plan by reference effective 07/01/2008. It also incorporates State Plan Amendments that become effective no later than 07/01/2008.

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

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: Utah Medicaid State Plan, 07/01/2008

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments.
❖ LOCAL GOVERNMENTS: There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There is no budget impact because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs because this change only fulfills the requirement to incorporate the State Plan by reference. Implementation of the State Plan is within legislative budget allotments.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule should not have a direct fiscal impact on business. Incorporation of the state plan by this rule assures that the Medicaid program is implemented through administrative rule. David N. Sundwall, MD, Executive Director

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Craig Devashrayee at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: David N. Sundwall, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-1. Utah Medicaid Program.
R414-1-5. State Plan.

(1) As a condition for receipt of federal funds under title XIX of the Act, the Utah Department of Health must submit a State Plan contract to the federal government for the medical assistance program, and agree to administer the program in accordance with the provisions of the State Plan, the requirements of Titles XI and XIX of the Act, and all applicable federal regulations and other official issuances of the United States Department of Health and Human Services. A copy of the State Plan is available for public inspection at the Division's offices during regular business hours.

(2) The [~~d~~]Department adopts the Utah State Plan Under Title XIX of the Social Security Act Medical Assistance Program[~~, in effect January 1, 2007, which is incorporated by reference~~] effective July 1, 2008. It also incorporates by reference State Plan Amendments that become effective no later than July 1, 2008.

KEY: Medicaid
Date of Enactment or Last Substantive Amendment: [~~September 7, 2007~~]2008
Notice of Continuation: April 16, 2007
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-1

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-27
Medicare Nursing Home Certification

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31360
FILED: 05/01/2008, 15:49

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to implement Medicaid certification requirements for nursing facilities in accordance with H.B. 366 (2008). H.B. 366 will not allow, in most cases, any increase in bed capacity for nursing facilities certified by Medicaid. (DAR NOTE: H.B. 366 (2008) is found at Chapter 347, Laws of Utah 2008, and was effective 03/18/2008.)

SUMMARY OF THE RULE OR CHANGE: This change specifies Medicaid certification requirements for nursing care facilities. Facilities will not be allowed to increase bed capacity in most cases.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-18-3 and 26-18-503

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There may be a savings to the state budget because of this rule change. Facilities will not be allowed to expand in most cases which may mitigate upward pressure on nursing home reimbursement resulting from excess bed capacity. The exact amount cannot be quantified.
❖ LOCAL GOVERNMENTS: Local governments that operate nursing care facilities will not be allowed to expand. This could have a negative impact on revenue. The number of their occupied beds may increase as overall bed capacity in the system is stabilized. If so, the fiscal impact of the rule would be positive as their fixed costs are spread over more residents. The exact amount cannot be quantified.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Nursing care facilities will not be allowed to expand. This could have a negative impact on revenue. The number of their occupied beds may increase as overall bed capacity in the system is stabilized. If so, the fiscal impact of the rule would be positive as their fixed costs are spread over more residents. The exact amount cannot be quantified.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs mandated by this rule or reporting requirements.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Pressure to increase reimbursement to Medicaid certified nursing facilities may be mitigated by this rule. The fiscal impact on business may be positive as their fixed costs are spread over more residents. David N. Sundwall, MD, Executive Director

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.

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

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: David N. Sundwall, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-27. [~~Medicare Nursing Home Certification~~]Medicaid Certification of Nursing Care Facilities.
[~~R414-27-1. Medicare Nursing Home Certification.~~
~~All skilled nursing homes must be certified for Medicare participation as a condition of Medicaid certification. The effects of this rule will be to enable more third-party collections (Medicare) and reduce Medicaid nursing home payments.~~]
R414-27-1. Introduction and Authority.
(1) This rule governs the certification of nursing care facilities to receive Medicaid payments for services to Medicaid eligible individuals.
(2) This rule implements Title 26, Chapter 18, Part 5.
(3) Section 26-18-3 authorizes this rule.

R414-27-2. Medicaid Certification Requirements.
(1) The director of the Division of Health Care Financing (DHCF) within the Department of Health may authorize Medicaid certification for a nursing care facility that:
(a) is in compliance with 42 CFR Part 483 or has a plan of correction approved by the Department to remedy areas of noncompliance;

(b) is in compliance with the Health Care Facility Licensing and Inspection Act, Title 26, Chapter 21, and the rules applicable to nursing homes made pursuant to that act or has a plan of correction approved by the Department to remedy areas of noncompliance;

(c) has not increased its certified bed capacity by more than 30 percent annually after March 31, 2004, except as authorized in Subsection 26-18-503(5);

(d) since March 18, 2008, has not increased its licensed bed capacity except in conjunction with an increase in certified bed capacity as authorized in Subsection 26-18-503(5) or for which the DHCF Director has approved the increase in the nursing care facility program's certified bed capacity expansion before October 15, 2007; and

(e) since March 18, 2008, has not increased its certified bed capacity except as authorized in Subsection 26-18-503(5).

(2) A nursing care facility is not eligible for Medicaid certification if it expands bed capacity without prior approval from the DHCF Director as authorized in this section.

KEY: Medicaid
Date of Enactment or Last Substantive Amendment: [~~1987~~]2008
Notice of Continuation: January 17, 2008
Authorizing, Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-18-503

♦ ♦

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-310

Medicaid Primary Care Network Demonstration Waiver

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31356
FILED: 05/01/2008, 15:25

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this change is to make Primary Care Network (PCN) eligibility consistent with policies that determine eligibility for Medicaid and the Children's Health Insurance Program (CHIP). The state will now determine PCN eligibility within 30 days rather than 45.

SUMMARY OF THE RULE OR CHANGE: This amendment changes the time period for the state to determine PCN eligibility from 45 days to 30 days during the PCN application period. In addition, this change removes a reference to the Bureau of Eligibility Services because this bureau no longer determines eligibility for the department.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is no budget impact because this change does not affect coverage for adults who are determined eligible for the PCN program. The department does not believe this change will increase or decrease the number of individuals determined eligible for the program. The Department of Workforce Services indicates that the shorter deadline will not impose any costs on it because the change simplifies the eligibility determination. The new time frame now matches the time frame for the majority of the other medical programs.

❖ LOCAL GOVERNMENTS: There is no budget impact because local governments do not fund the PCN program and they are not PCN providers.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There is no impact to other persons and small businesses because this change does not affect coverage for adults who are determined eligible for the PCN program. Adults applying for PCN may receive notice sooner regarding the determination of their eligibility.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no impact to a single PCN client, provider or small business because this change does not affect coverage for adults who are determined eligible for the PCN program. An adult applying for PCN may receive notice sooner regarding the determination of his eligibility.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule change should have a positive fiscal impact on business by determining eligibility within 30 days. David N. Sundwall, MD, Executive Director

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
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THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: David N. Sundwall, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-310. Medicaid Primary Care Network Demonstration Waiver.
R414-310-2. Definitions.

The following definitions apply throughout this rule:

(1) "Applicant" means an individual who applies for benefits under the Primary Care Network program, but who is not an enrollee.

(2) "Best estimate" means the Department's determination of a household's income for the upcoming certification period based on past and current circumstances and anticipated future changes.

(3) "Co-payment and co-insurance" means a portion of the cost for a medical service for which the enrollee is responsible to pay for services received under the Primary Care Network.

(4) "Deeming" or "deemed" means a process of counting income from a spouse or an alien's sponsor to decide what amount of income after certain allowable deductions, if any, must be considered income to an applicant or enrollee.

(5) "Department" means the Utah Department of Health.

(6) "Enrollee" means an individual who has applied for and been found eligible for the Primary Care Network program and has paid the enrollment fee.

(7) "Enrollment fee" means a payment that an applicant or an enrollee must pay to the Department to enroll in and receive coverage under the Primary Care Network program.

(8) "Employer-sponsored health plan" means health insurance that meets the requirements of R414-320-2 (8) (a) (b) (c) (d) and (e).

(9) "Income averaging" means a process of using a history of past and current income and averaging it over a determined period of time that is representative of future income.

(10) "Income anticipating" means a process of using current facts regarding rate of pay, number of working hours, and expected changes to anticipate future income.

(11) "Income annualizing" means a process of determining the average annual income of a household, based on the past history of income and expected changes.

(12) "Local office" means any [~~Bureau of Eligibility Services or~~]Department of Workforce Services office location, outreach location, or telephone location where an individual may apply for medical assistance.

(13) "Open enrollment means a time period during which the Department accepts applications for the Primary Care Network program.

(14) "Primary Care Network" or "PCN" means the program for benefits under the Medicaid Primary Care Network Demonstration Waiver.

(15) "Recertification month" means the last month of the eligibility period for an enrollee.

(16) "Spouse" means any individual who has been married to an applicant or enrollee and has not legally terminated the marriage.

(17) "Verifications" means the proofs needed to decide if an individual meets the eligibility criteria to be enrolled in the program. Verifications may include hard copy documents such as a birth certificate, computer match records such as Social Security benefits match records, and collateral contacts with third parties who have information needed to determine the eligibility of the individual.

(18) "Student health insurance plan" means a health insurance plan that is offered to students directly through a university or other educational facility or through a private health insurance company that offers coverage plans specifically for students.

(19) "Utah's Premium Partnership for Health Insurance" or "UPP" means the program described in R414-320.

R414-310-14. Eligibility Decisions and Recertification.

(1) The Department adopts 42 CFR 435.911 and 435.912, 2004 ed., which are incorporated by reference.

(2) When an individual applies for PCN, the local office shall determine if the individual is eligible for Medicaid. An individual who qualifies for Medicaid without paying a spenddown or a premium cannot enroll in the Primary Care Network program. If the individual appears to qualify for Medicaid, but additional information is required to determine eligibility for Medicaid, the applicant must provide additional information requested by the eligibility worker. Failure to provide the requested information shall result in the application being denied.

(a) If the individual must pay a spenddown or premium to qualify for Medicaid, the individual may choose to enroll in the PCN program if it is an open enrollment period, and the individual meets all the applicable criteria for eligibility. If the PCN program is not in an enrollment period, the individual must wait for an open enrollment period.

(b) At recertification for PCN, the local office shall first review eligibility for Medicaid. If the individual qualifies for Medicaid without a spenddown or premium, the individual cannot be reenrolled in the PCN program. If the individual appears to qualify for Medicaid, the applicant must provide additional information requested by the eligibility worker. Failure to provide the requested information shall result in the application being denied.

(3) To enroll, the individual must meet the eligibility criteria for enrollment in the Primary Care Network program, pay the enrollment fee, and it must be a time when the Department has not stopped enrollment under section R414-310-16.

(4) The local office shall complete a determination of eligibility or ineligibility for each application unless:

(a) the applicant voluntarily withdraws the application and the local office sends a notice to the applicant to confirm the withdrawal;

(b) the applicant died; or

(c) the applicant cannot be located; or

(d) the applicant has not responded to requests for information within the [~~45~~]30 day application period or by the date the eligibility worker asked the information or verifications to be returned, if that date is later.

(5) The enrollee must recertify eligibility at least every 12 months.

(6) The local office eligibility worker may require the applicant, the applicant's spouse, or the applicant's authorized representative to attend an interview as part of the application and recertification process. Interviews may be conducted in person or over the telephone, at the local office eligibility worker's discretion.

(7) The enrollee must complete the recertification process and provide the required verifications by the end of the recertification month.

(a) If the enrollee completes the recertification, continues to meet all eligibility criteria and pays the enrollment fee, coverage will be continued without interruption.

(b) The case will be closed at the end of the recertification month if the enrollee does not complete the recertification process and provide required verifications by the end of the recertification month.

(c) If an enrollee does not complete the recertification by the end of the recertification month, but completes the process and provides required verifications by the end of the month immediately following the recertification month, coverage will be reinstated as of the first of that month if the individual continues to be eligible and pays the enrollment fee.

(8) The eligibility worker may extend the recertification due date if the enrollee demonstrates that a medical emergency, death of an immediate family member, natural disaster or other similar cause prevented the enrollee from completing the recertification process on time.

KEY: Medicaid, primary care, covered-at-work, demonstration
Date of Enactment or Last Substantive Amendment: [~~May 23, 2007~~]2008
Notice of Continuation: June 13, 2007
Authorizing, and Implemented or Interpreted Law: 26-18-1; 26-1-5; 26-18-3

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Health, Health Care Financing, Coverage and Reimbursement Policy

R414-320

Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31358
FILED: 05/01/2008, 15:37

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: In accordance with H.B. 133, 2008 General Session, this change implements a requirement that allows individuals who qualify for Utah's Premium Partnership for Health Insurance (UPP) to enroll in their employer's health insurance outside of an employer health benefit plan open enrollment period. (DAR NOTE: H.B. 133 (2008) is found at Chapter 383, Laws of Utah 2008, and was effective 05/05/2008.)

SUMMARY OF THE RULE OR CHANGE: This change removes language regarding an employer open enrollment period because application during an open enrollment period will no longer be a factor in determining eligibility for UPP. This amendment also changes the time frame for determining eligibility from 45 to 30 days to match other medical programs. In addition, this change explains the 30-day requirement for clients to enroll in their employer-sponsored health insurance, upon receiving notice of qualifying for the UPP program. This change also makes other minor clarifications to the rule.

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

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: 42 CFR 433.138(b), 435.911, and 435.912, 2007 ed.

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is no budget impact because any increases in UPP enrollment only contribute to the enrollment limit of 1,000 adults, for which the Legislature has previously appropriated funds.

❖ LOCAL GOVERNMENTS: There is no budget impact because local governments do not fund the UPP program.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There is insufficient data to quantify total dollar amounts. Nevertheless, there are additional health insurance costs for small businesses because this change allows individuals who qualify for UPP to enroll in employer-sponsored health insurance outside of the employer's regular open enrollment periods. On the other hand, this change also produces savings to small businesses because the more individuals who enroll in an employer's health insurance plan may reduce the per person cost to the employer. There are also additional initial costs for individuals who qualify for UPP because the program requires them to pay part of their employer's health insurance premium. These total costs are reduced, however, as their health insurance begins to pay for medical costs that were previously the responsibility of the individual.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is insufficient data to quantify total dollar amounts. Nevertheless, there are additional health insurance costs for a small business because this change allows individuals who qualify for UPP to enroll in employer-sponsored health insurance outside of the employer's regular open enrollment periods. On the other hand, this change also produces savings to a small business because the more individuals who enroll in an employer's health insurance plan may reduce the per person cost to the employer. There are also additional initial costs for an individual who qualifies for UPP because the program requires the individual to pay part of his employer's health insurance premium. These total costs are reduced, however, as the individual's health insurance begins to pay for medical costs that were previously the individual's responsibility.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Allowing applicants for state assistance with medical needs to enroll in the Utah Premium Partnership program regardless of the timing of their employer's open enrollment period is mandated by statute. There may be some fiscal impact on business as more employees enroll in employer sponsored health insurance. David N. Sundwall, MD, Executive Director

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

HEALTH
HEALTH CARE FINANCING,
COVERAGE AND REIMBURSEMENT POLICY
CANNON HEALTH BLDG

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Craig Devashrayee at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: David N. Sundwall, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-320. Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver.
R414-320-2. Definitions.

The following definitions apply throughout this rule:

(1) "Adult" means an individual who is at least 19 and not yet 65 years of age.

(2) "Applicant" means an individual who applies for benefits under the UPP program, but who is not an enrollee.

(3) "Best estimate" means the Department's determination of a household's income for the upcoming certification period based on past and current circumstances and anticipated future changes.

(4) "Child" means an individual who is younger than 19 years of age.

(5) "Children's Health Insurance Program" or "CHIP" provides medical services for children under age 19 who do not otherwise qualify for Medicaid.

(6) "Department" means the Utah Department of Health.

(7) "Enrollee" means an individual who applies for and is found eligible for the UPP program.

(8) "Employer-sponsored health plan" means a health insurance plan offered through an employer where:

(a) the employer contributes at least 50 percent of the cost of the health insurance premium of the employee;

(b) coverage includes at least physician visits, hospital inpatient services, pharmacy, well child visits, and children's immunizations;

(c) lifetime maximum benefits are at least $1,000,000;

(d) the deductible is no more than $1,000 per individual; and

(e) the plan pays at least 70% of an inpatient stay after the deductible.

(9) "Utah's Premium Partnership for Health Insurance" (UPP) program provides cash reimbursement for all or part of the insurance premium paid by an employee for health insurance coverage through an employer-sponsored health insurance plan that covers either the eligible employee, the eligible spouse of the employee, dependent children, or the family.

(10) "Income averaging" means a process of using a history of past and current income and averaging it over a determined period of time that is representative of future income.

(11) "Income anticipating" means a process of using current facts regarding rate of pay, number of working hours, and expected changes to anticipate future income.

(12) "Income annualizing" means a process of determining the average annual income of a household, based on the past history of income and expected changes.

(13) "Local office" means any [~~Bureau of Eligibility Services~~]Department of Workforce Services office location, outreach location, or telephone location where an individual may apply for medical assistance.

(14) "Open enrollment means a time period during which the Department accepts applications for the UPP program.

(15) "Public Institution" means an institution that is the responsibility of a governmental unit or that is under the administrative control of a governmental unit.

(16) "Primary Care Network" or "PCN" program provides primary care medical services to uninsured adults who do not otherwise qualify for Medicaid.

(17) "Recertification month" means the last month of the eligibility period for an enrollee.

(18) "Spouse" means any individual who has been married to an applicant or enrollee and has not legally terminated the marriage.

(19) "Verifications" means the proofs needed to decide if an individual meets the eligibility criteria to be enrolled in the program. Verifications may include hard copy documents such as a birth certificate, computer match records such as Social Security benefits match records, and collateral contacts with third parties who have information needed to determine the eligibility of the individual.

R414-320-4. General Eligibility Requirements.

(1) The provisions of R414-302-1, R414-302-2, R414-302-3, R414-302-5, and R414-302-6 apply to adult applicants and enrollees.

(2) The provisions of R382-10-6, R382-10-7, and R382-10-9 apply to child applicants and enrollees.

(3) An individual who is not a U.S. citizen and does not meet the alien status requirements of R414-302-1 or R382-10-6 is not eligible for any services or benefits under the UPP program.

(4) Applicants and enrollees for the UPP program are not required to provide Duty of Support information. An adult who would be eligible for Medicaid but fails to cooperate with Duty of Support requirements required by the Medicaid program cannot enroll in the UPP program.

(5) Individuals who must pay a spenddown or premium to receive Medicaid can enroll in the UPP program if they meet the program eligibility criteria in any month they do not receive Medicaid as long as the Department has not stopped enrollment under the provisions of R414-320-[~~15~~]16. If the Department has stopped enrollment, the individual must wait for an applicable open enrollment period to enroll in the UPP program.

R414-320-7. Creditable Health Coverage.

(1) The Department adopts 42 CFR 433.138(b), [~~2005~~]2007 ed., which is incorporated by reference.

(2) An individual who is covered under a group health plan or other creditable health insurance coverage, as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), is not eligible for enrollment.

(3) Eligibility for an individual who has access to but has not yet enrolled in employer-sponsored health insurance coverage will be determined as follows:

(a) If the cost of the employer-sponsored coverage is less than 5% of the household's gross income, the individual is not eligible for the UPP program.

(b) For adults, if the cost of the employer-sponsored coverage exceeds 15% of the household's gross income the adult may choose to enroll in the UPP program or may choose direct coverage through the Primary Care Network program if enrollment has not been stopped under the provisions of R414-310-16.

(c) A child may choose enrollment in UPP or direct coverage under the CHIP program if the cost of the employer sponsored coverage is equal to or more than 5% of the household's gross income.[

~~(d) An individual is considered to have access to coverage even if the employer offers coverage only during an employer's open enrollment period.~~]

(4) An individual who is covered under Medicare Part A or Part B, or who could enroll in Medicare Part B coverage, is not eligible for enrollment, even if the individual must wait for a Medicare open enrollment period to apply for Medicare benefits.

(5) An individual who is enrolled in the Veteran's Administration (VA) Health Care System is not eligible for enrollment. An individual who is eligible to enroll in the VA Health Care System, but who has not yet enrolled, may be eligible for the UPP program while waiting for enrollment in the VA Health Care System to become effective. To be eligible during this waiting period, the individual must initiate the process to enroll in the VA Health Care System. Eligibility for the UPP program ends once the individual becomes enrolled in the VA Health Care System.

(6) The Department shall deny eligibility if the applicant, spouse, or dependent child has voluntarily terminated health insurance coverage within the 90 days immediately prior to the application date for enrollment under the UPP program.

(a) An applicant, applicant's spouse, or dependent child can be eligible for the UPP program if their prior insurance ended more than 90 days before the application date.

(b) An applicant, applicant's spouse, or dependent child who voluntarily discontinues health insurance coverage under a COBRA plan, or under the Utah Comprehensive Health Insurance Pool, or who is involuntarily terminated from an employer's plan may be eligible for the UPP program without a 90 day waiting period.

(7) An individual with creditable health coverage operated or financed by Indian Health Services may enroll in the UPP program.

(8) Individuals must report at application and recertification whether each individual for whom enrollment is being requested has access to or is covered by a group health plan or other creditable health insurance coverage. This includes coverage that may be available through an employer or a spouse's employer, Medicare Part A or B, or the VA Health Care System.

(9) The Department shall deny an application or recertification if the applicant or enrollee fails to respond to questions about health insurance coverage for any individual the household seeks to enroll or recertify.

R414-320-14. Eligibility Decisions and Recertification.

(1) The Department adopts 42 CFR 435.911 and 435.912, [~~2004~~]2007 ed., which are incorporated by reference.

(2) When an individual applies for UPP, the local office shall determine if the individual is eligible for Medicaid. An individual who qualifies for Medicaid without paying a spenddown or a premium cannot enroll in the UPP program. If the individual appears to qualify for Medicaid, but additional information is required to determine eligibility for Medicaid, the applicant must provide additional information requested by the eligibility worker. Failure to provide the requested information shall result in the application being denied.

(a) If the individual must pay a spenddown or premium to qualify for Medicaid, the individual may choose to enroll in the UPP program if it is an open enrollment period and the individual meets all the applicable criteria for eligibility. If the UPP program is not in an enrollment period, the individual must wait for an open enrollment period.

(b) At recertification, the local office shall first review eligibility for Medicaid. If the individual qualifies for Medicaid without a spenddown or premium, the individual cannot be reenrolled in the UPP program. If the individual appears to qualify for Medicaid, the applicant must provide additional information requested by the eligibility worker. Failure to provide the requested information shall result in the application being denied.

(3) To enroll, the individual must meet enrollment eligibility criteria at a time when the Department has not already stopped enrollment under provisions of Section R414-320-[~~15~~]16.[~~An applicant may apply for UPP anytime between the month before the applicant signs up for the employer's health insurance plan and before coverage begins. Otherwise, eligibility will be denied, and the individual may reapply during another open enrollment period.~~]

(4) The local office shall complete a determination of eligibility or ineligibility for each application unless:

(a) The applicant voluntarily withdraws the application and the local office sends a notice to the applicant to confirm the withdrawal;

(b) The applicant died; or

(c) The applicant cannot be located; or

(d) The applicant has not responded to requests for information within the [~~45~~]30 day application period or by the date the eligibility worker asked the information or verifications to be returned, if that date is later.

(5) The enrollee must recertify eligibility at least every 12 months.

(6) The local office eligibility worker may require the applicant, the applicant's spouse, or the applicant's authorized representative to attend an interview as part of the application and recertification process. Interviews may be conducted in person or over the telephone, at the local office eligibility worker's discretion.

(7) The enrollee must complete the recertification process and provide the required verifications by the end of the recertification month.

(a) If the enrollee completes the recertification and continues to meet all eligibility criteria, coverage will be continued without interruption.

(b) The case will be closed at the end of the recertification month if the enrollee does not complete the recertification process and provide required verifications by the end of the recertification month.

(c) If an enrollee does not complete the recertification by the end of the recertification month, but completes the process and provides required verifications by the end of the month immediately following the recertification month, coverage will be reinstated as of the first of that month if the individual continues to be eligible.

(8) The eligibility worker may extend the recertification due date if the enrollee demonstrates that a medical emergency, death of an immediate family member, natural disaster or other similar cause

prevented the enrollee from completing the recertification process on time.

R414-320-15. Effective Date of Enrollment and Enrollment Period.

(1) The effective date of enrollment is the day that a completed and signed application or an on-line application is received by the local office and the applicant meets all eligibility criteria. The effective date for applications submitted by fax and online is the date of the electronic transmission. The Department shall not provide any benefits before the effective enrollment date.

(2) The effective date of enrollment cannot be before the month in which the applicant pays a premium for the employer-sponsored health insurance and is determined as follows:

(a) The effective date of enrollment is the date an application is received and the person is found eligible, if the applicant enrolls in and pays the first premium for the employer-sponsored health insurance in the application month.

(b) If the applicant will not pay a premium for the employer-sponsored health insurance in the application month, the effective date of enrollment is the first day of the month in which the applicant pays a premium for the employer-sponsored health insurance. The applicant must enroll in the employer-sponsored health insurance no later than [~~the end of the month following the month the application is received~~]30 days from the day on which the Department of Workforce Services sends the applicant written notice that he meets the qualifications for UPP.

(c) If the applicant [~~cannot~~]does not enroll in the employer-sponsored health insurance [~~by the end of the month immediately following the application month~~]within 30 days from the day on which the Department of Workforce Services sends the applicant written notice that he meets the qualifications for UPP, the application shall be denied and the individual will have to reapply during another open enrollment period.

(3) The effective date of enrollment for a newborn or newly adopted child is the date the newborn or newly adopted child is enrolled in the employer-sponsored health insurance if the family requests the coverage within 30 days of the birth or adoption. If the request is more than 30 days after the birth or adoption, enrollment is effective the date of report.

(4) The effective date of re-enrollment for a recertification is the first day of the month after the recertification month, if the recertification is completed as described in R414-320-13.

(5) If the enrollee does not complete the recertification as described in R414-320-13, and the enrollee does not have good cause for missing the deadline, the case will remain closed and the individual may reapply during another open enrollment period.

(6) An individual found eligible shall be eligible from the effective date through the end of the first month of eligibility and for the following 12 months. If the enrollee completes the redetermination process in accordance with R414-320-13 and continues to be eligible, the recertification period will be for an additional 12 months beginning the month following the recertification month. Eligibility could end before the end of a 12-month certification period for any of the following reasons:

(a) The individual turns age 65;

(b) The individual becomes entitled to receive Medicare, or becomes covered by Veterans Administration Health Insurance;

(c) The individual dies;

(d) The individual moves out of state or cannot be located;

(e) The individual enters a public institution or an Institute for Mental Disease.

(7) If an adult enrollee discontinues enrollment in employer-sponsored insurance coverage, eligibility ends. If the enrollment in employer-sponsored insurance is discontinued involuntarily and the individual notifies the local office within 10 calendar days of when the insurance ends, the individual may switch to the PCN program for the remainder of the certification period.

(8) A child enrollee may discontinue employer-sponsoreed health insurance and move to direct coverage under the Children's Health Insurance Program at any time during the certification period without any waiting period.

(9) An individual enrolled in the Primary Care Network or the Children's Health Insurance Program who enrolls in an employer-sponsored plan may switch to the UPP program if the individual reports to the local office within 10 calendar days of enrolling in an employer-sponsored plan and before coverage on the employer-sponsored plan begins.

(10) If a UPP case closes for any reason, other than to become covered by another Medicaid program or the Children's Health Insurance Program, and remains closed for one or more calendar months, the individual must submit a new application to the local office during an open enrollment period to reapply. The individual must meet all the requirements of a new applicant.

(11) If a UPP case closes because the enrollee is eligible for another Medicaid program or the Children's Health Insurance Program, the individual may reenroll if there is no break in coverage between the programs, even if the State has stopped enrollment under R414-320-15.

(a) If the individual's 12-month certification period has not ended, the individual may reenroll for the remainder of that certification period. The individual is not required to complete a new application or have a new income eligibility determination.

(b) If the 12-month certification period from the prior enrollment has ended, the individual may still reenroll. However, the individual must complete a new application and meet eligibility and income guidelines for the new certification period.

(c) If there is a break in coverage of one or more calendar months between programs, the individual must reapply during an open enrollment period.

KEY: Medicaid, PCN, CHIP
Date of Enactment or Last Substantive Amendment: [~~March 9, 2007~~]2008
Authorizing, and Implemented or Interpreted Law: 26-18-3; 26-1-5

♦ ♦

Health, Health Care Financing, Coverage and Reimbursement Policy

R414-504

Nursing Facility Payments

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31362
FILED: 05/01/2008, 16:13

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rulemaking updates the fair rental value calculation in accordance with H.B. 366 as enrolled from the 2008 Utah Legislative Session, updates the Quality Improvement Incentive programs, and makes minor modifications to simplify and improve the accuracy of nursing facility rate calculations. (DAR NOTE: H.B. 366 (2008) is found at Chapter 347, Laws of Utah 2008, and was effective 03/18/2008.)

SUMMARY OF THE RULE OR CHANGE: This amendment updates definitions, updates property related calculations (minimum occupancy levels, removes usage of banked beds, and the update of base bed valuation), updates notification requirements prior to withholding payments, increases the Quality Improvement Incentive monies and adds new state fiscal year 2009 Quality Incentive programs, and other minor verbiage updates.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is no budget impact because the clarifications in this rule do not change the overall amount of state and federal funds that regulated health care facilities may receive.

❖ LOCAL GOVERNMENTS: There is no budget impact because the clarifications in this rule do not change the overall amount of state and federal funds that local government operated health care facilities may receive. There are a few government-owned facilities and payments to these facilities are not likely to be substantially impacted.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The amendments impact small and large businesses equally. The aggregate paid to Medicaid certified nursing homes does not change because of the amendments. Nursing homes that take advantage of the incentives will receive more than nursing homes that do not. The total incentive amount available to nursing homes is $5,475,900, which is reserved from the base rate budget for nursing homes. The incentives positively impact the treatment that nursing home residents receive.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The department cannot quantify the impact of the new legislation that prohibits bed banking and modifies minimum occupancy thresholds because it is highly dependent on business practices made by individual nursing home providers and on patient occupancy at each facility.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Consistent with Legislative direction embodied in H.B. 366 passed in the 2008 legislative session, this rule should give facilities an incentive to improve patient care and the environment for patients. Facilities that do not make changes will not receive the incentive payments. David N. Sundwall, MD, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Craig Devashrayee at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: David N. Sundwall, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-504. Nursing Facility Payments.
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 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 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; 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 fair rental value (FRV) established by this rule.

(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 and 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)(a) "Urban provider" means a facility located in a county which has a population greater than 90,000 persons.

(b) "Rural provider" means a facility that is not an urban provider.

(14) "FRV Data Report" means a report that provides the Department with information relating to capital improvements to be included in the FRV calculation.

(15) "Banked beds" means beds that have been taken off-line by the provider, through the process defined by Utah Department of Health, Bureau of Facility Licensing, Certification, and Resident Assessment, to reduce the operational capacity of the facility, but does not reduce the licensed bed capacity.[~~This is used in the FRV calculation.~~]

[~~(16) "Medicaid operational bed capacity" means the number of beds remaining when the weighted Medicaid banked beds are subtracted from the facility's Medicaid certified beds.~~

~~(17) "Weighted Medicaid banked beds" means the facility's Medicaid certified beds divided by the facility's total licensed beds, which quotient is then multiplied by the facility's banked beds, rounded down to the nearest whole number. For example, assume there is a facility with 180 licensed beds, 60 banked beds, and 156 Medicaid certified beds. The 156 Medicaid certified beds are divided by 180 total licensed beds, which equals 0.87, which is then multiplied by 60 banked beds, which equals 52 weighted Medicaid banked beds. The Medicaid operational bed capacity then becomes 156 Medicaid certified beds minus 52 weighted Medicaid banked beds, which equals 104 Medicaid operational beds.~~](16) "Bed Addition" means, as used in the fair rental value calculation, a capitalized project that adds additional beds to the facility. This must be new and complete construction. An increase in total licensed beds and new construction costs support a claim of additional beds.

(17) "Bed Replacement" means, as used in the fair rental value calculation, a capitalized project that furnishes a bed in the place of another, previously existing, bed. Room remodeling is not a replacement of beds. This must be new and complete construction.

(18) "Major Renovation" means, as used in the fair rental value calculation, a capitalized project with a cost equal to or greater than $500 per licensed bed. A renovation extends the life, increases the productivity, or significantly improves the safety (such as by asbestos removal) of a facility as opposed to repairs and maintenance which either restore the facility to, or maintain it at, its normal or expected service life. Vehicle costs are not a major renovation capital expenditure.

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 patient add-on amounts.

(1) Approximately 59% 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 29% 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) Each quarter, the Department shall calculate a new case mix index for each nursing facility. The case mix index is based on three months of MDS assessment data. The newly calculated case mix index is applied to a new rate at the beginning of a quarter according to the following schedule:

(a) January, February and March MDS assessments are used for July 1 rates.

(b) April, May and June MDS assessments are used for October 1 rates.

(c) July, August and September MDS assessments are used for January 1 rates.

(d) October, November and December MDS assessments are used for April 1 rates.

(3) MDS data is used in calculating each facility's case mix index. This information is submitted by each facility and, as such, each facility is responsible for the accuracy of its data. The Department may exclude inaccurate or incomplete MDS data from the calculation.

(4) MDS assessments for recipients who are eligible for the "Intensive Skilled" add-on are excluded from the case mix calculation. A facility with less than 20 percent of its total census days as Medicaid days, as reported on its FCP or FRV data report, is excluded from the state case mix average. The state average case mix index is used to set the rate for that facility.

(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. Utah's Bureau of Health Facility Licensure, Certification and Resident Assessment 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.

(6) Property costs are paid separately from the RUGS rate.

(7) Property costs shall be calculated once per year, each July 1, and reimbursed as a component of the facility rate based on an FRV System.

(a) Under this FRV system, the Department reimburses a facility based on the estimated [~~current~~]value of its capital assets in lieu of direct reimbursement for depreciation, amortization, interest, and rent or lease expenses. The FRV system establishes a nursing facility's bed value based on the age of the facility and total square footage.

(i) The initial age of each nursing facility used in the FRV calculation is determined as of September 15, 2004, using each facility's initial year of construction.

(ii) The age of each facility is adjusted each July 1 to make the facility one year older.

(iii) The age is reduced for replacements, major renovations, or additions placed into service since the facility was built, as reported on the FRV Data Report, provided there is sufficient documentation to support the historical changes.

(A) If a facility adds new beds or replaces existing beds, these [~~new~~]beds are averaged into the age of the original beds to arrive at the facility's age. Bed additions and bed replacements must be completed within a 24-month period and be reported on an FRV Data Report for the reporting period used for the July 1 rate year.

(B) If a facility completed a major renovation[~~ (defined as a project with capitalized cost equal to or greater than $500 per bed) or replacement project~~], the cost of the project is represented by an equivalent number of new beds.

(I) The renovation[~~ or replacement project~~] must have been completed during a 24-month period and reported on an FRV Data Report for the reporting period used for the July 1 rate year and be related to the reasonable functioning of the nursing facility. Renovations unrelated to either the direct or indirect functioning of the nursing facility shall not be used to adjust the facility's age.

(II) The equivalent number of new beds is determined by dividing the cost of the project by the accumulated depreciation per bed of the facility's existing beds immediately before the project.

(III) The equivalent number of new beds is then subtracted from the total actual beds. The result is multiplied by the difference in the year of the completion of the project and the age of the facility, which age is based on the initial construction year or the last reconstruction or renovation project. The product is then divided by the actual number of beds to arrive at the number of years to reduce the age of the facility.

(b) A nursing facility's fair rental value per diem is calculated as follows:

As used in this subsection (b), "capital index" is the percent change in the nursing home "Per bed or person, total cost" row and "3/4" column as found in the two most recent annual R.S. Means Building Construction Cost Data as adjusted by the weighted average total city cost index for Salt Lake City, Utah.

(i) The buildings and fixtures value per licensed bed is $50,000, which is based upon a standard facility size of at least 450 square feet determined using the R.S. Means Building Construction Cost Data adjusted by the weighted average total city cost index for Salt Lake City, Utah. To this $50,000 is added 10% ($5,000) for land and 10% ($5,000) for movable equipment. Each nursing facility's total licensed beds are multiplied by this amount to arrive at the "total bed value." The total bed value is trended forward by multiplying it by the capital index and adding it to the total bed value to arrive at the "newly calculated total bed value." The newly calculated total bed value is depreciated, except for the portion related to land, at 1.50 percent per year according to the weighted age of the facility. The maximum age of a nursing facility shall be 35 years. [~~Therefore, nursing facilities shall not be depreciated to an amount less than 47.50 percent or 100 percent minus (1.50 percent times 35) of the newly calculated bed value.~~]There shall be no recapture of depreciation. The base value per licensed bed is updated annually using the R.S. Means Building Construction Cost Data as noted above. Beginning July 1, 2008, the 2007 base value per licensed bed is used for all facilities, except facilities having completed a qualifying addition, replacement or major renovation. These qualifying facilities have that year's base value per licensed bed used in their FRV calculation until an additional qualifying addition, replacement or major renovation project is completed and reported, at which time the base value is updated again.

(ii) A nursing facility's annual FRV is calculated by multiplying the facility's newly calculated bed value times a rental factor. The rental factor is the sum of the 20-year Treasury Bond Rate as published in the Federal Reserve Bulletin using the average for the calendar year preceding the rate year and a risk value of three percent. Regardless of the result produced in this subsection (ii), the rental factor shall not be less than nine percent or more than 12 percent.

(iii) The facility's annual FRV is divided by the greater of:

(A) the facility's annualized actual resident days during the cost reporting period; and

(B) [~~Seventy-five percent of the annualized Medicaid operational bed capacity of the facility; however, the Department recognizes banked beds only as reported in the most recent FRV Data Report. For example, banked beds as reported on the FRV Data Report for the period ending February 28th/29th would be incorporated in the following July 1 FRV calculation.~~]for rural providers, 65 percent of the annualized licensed bed capacity of the facility and, for urban providers, 85 percent of the annualized licensed bed capacity of the facility.

(iv) The FRV per diem determined under this fair rental value system shall be no lower than $8[~~ and no greater than $22 per patient day~~].

(c) A pass-through component of the rate is applied and is calculated as follows:

(i) The nursing facility's per diem real property tax and real property insurance cost is determined by dividing the sum of the facility's allowable real property tax and real property insurance costs, as reported in the most recent FCP or FRV Data Report, as applicable, by the facility's actual total patient days.

(ii) For a newly constructed or newly certified facility that has not submitted an FCP or FRV Data Report that would be used in the rate period, the per diem real property tax and real property insurance is the state average daily real property tax and real property insurance cost of all facilities.

(8) Newly constructed or newly certified facilities' case mix component of the rate shall be paid using the average case mix index. This average case mix index remains in place until sufficient MDS data exist for the facility to calculate the case mix as described in R414-504-3(2). At the following quarter's rate setting, the Department shall issue a new case mix adjusted rate. The property payment to the facility is controlled by R414-504-3(7).

(9) 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.

(a) The subsequent quarter's case mix index is established using the prior ownership facility MDS data until sufficient MDS data exist for the facility to calculate the case mix as described in R414-504-3(2).

(b) The property component is calculated for the facility at the beginning of the next state fiscal year, as noted in R414-504-3(7).

(10) 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 7.5% above the average of the most recent Medicaid daily rate for all Medicaid residents in all freestanding nursing facilities in the state. The maximum duration of this adjustment is for no more than a total of 12 months per facility in any five-year period.

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

(b) 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 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.

(i) If the governmental agency receives donations in order to provide the financial contribution, it must document that the donations are "bona fide" as set forth in 42 CFR 433.54.

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

(d) 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.

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

(f) 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.

(g) 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.

(h) 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.

(11) A provider may challenge the rate set pursuant to this rule using the appeal in R410-14. This applies to which rate methodology is used as well as to the specifics of implementation of the methodology. A provider must exhaust administrative remedies before challenging rates in any other forum.

(12) 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.

(13) The Department reimburses swing beds, transitional care unit beds, and small health care facility beds that are used as nursing facility beds, using the prior calendar year state-wide average of the daily nursing facility rate.

(14) Withholding of Title XIX payments

(a) The Department may withhold Title XIX payments from providers if:

(i) there is a shortage in a resident trust account managed by the facility;

(ii) the facility fails to submit a complete and accurate FCP as required by Utah State Plan Attachment 4.19-D, Section 332;

(iii) the facility fails to submit timely, accurate Minimum Data Set (MDS) data;

(iv) the facility owes money to the Division of Health Care Financing because of an overpayment, nursing care facility assessment, civil money penalty, or other offset; or

(v) the facility fails to respond within ten business days to requests for information relating to desk review or audit findings relating to the facility's submitted FCP or FRV Data Report.

(b) For ongoing operations, the Department will provide[~~ a 30-day~~] notice before withholding payments.[~~ The Department may immediately withhold Title XIX payments without giving 30 days notice if it believes the delay may jeopardize the recovery.~~] The Department and provider may negotiate a repayment schedule acceptable to the Department for monies owed to the Department listed in subsection (a)(iv). The repayment schedule may not exceed 180 days.

(c) When the Department rescinds withholding of payments to a facility, it will resume payments according to the regular claims payment cycle.

R414-504-4. Quality Improvement Incentive.

(1)(a) Upon federal approval of the Nursing Care Facilities State Plan Amendment for the quality program outlined in this subsection (1), funds in the amount of $1,000,000 shall be set aside from the base rate budget annually to reimburse non-ICF/MR facilities that have:

(i) a quality improvement plan which includes the involvement of residents and family[~~,~~];

(ii) a process of assessing and measuring that plan[~~,~~];

(iii) quarterly customer satisfaction surveys conducted by an independent third-party[~~,~~];

(iv) a plan for culture change along with an example of how the facility has implemented culture change;

(v) an employee satisfaction program; and[~~ have~~]

(vi) no violations that are at an "immediate jeopardy" level, as determined by the Department, at the most recent re-certification survey and during the incentive period.

(b) 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~~]seeks administrative review of the determination of a survey violation, the incentive payment will be withheld pending the final administrative [~~appeal~~]adjudication. [~~On appeal, i~~]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.

[~~(a)~~](c) A facility that receives a substandard quality of care level F, H, I, J, K, or L during the July 1 through June 30 incentive period is eligible for only 50% of the possible payout. A facility receiving substandard quality of care level F, H, I, J, K, or L in more than one survey during the July 1 through June 30 incentive period is ineligible for payout under this incentive.

(2) Upon federal approval of the Nursing Care Facilities State Plan Amendment for the quality program outlined in this subsection (2) and [~~I~~]in addition to the above incentive, funds in the amount of [~~$3,406,000~~]$4,275,900 shall be set aside from the base rate budget in state fiscal year [~~2008~~]2009 for use in state fiscal year [~~2008~~]2009 for the following quality improvement initiatives:

[~~(a) Incentive for facilities to purchase or enhance clinical information systems, which incorporate advanced technology into improved patient care, such as better integration, capture of more information at the point of care, more automated reminders, etc. Qualifying Medicaid providers may receive up to $108.02 for software and up to $90 for hardware for each Medicaid certified bed. The Medicaid certified bed count used for each facility for this incentive is the count as of July 1, 2007. Qualifying criteria include the following:~~

~~(i) Software:~~

~~(A) A facility must purchase or lease a new or enhance its existing clinical information system. The software component incorporates advanced technology into improved patient care that includes better integration, capture of more information at the point of care, more automated reminders, etc. The following clinical tracking minimum requirements must all be included in the software:~~

~~(I) Care plans;~~

~~(II) Current condition(s);~~

~~(III) Medical order(s);~~

~~(IV) Activities of Daily Living;~~

~~(V) Medication Administration Records;~~

~~(VI) Timing of medication(s);~~

~~(VII) Medical notes; and~~

~~(VIII) Point of care data tracking.~~

~~(B) A facility, with its application, must submit a detailed description of the functionality of the software, denoting each of the minimum clinical tracking requirements.~~

~~(C) A facility must purchase or lease and implement the software on or after July 1, 2005, and no later than June 8, 2008.~~

~~(D) A facility, with its application, must submit its software, software installation and training costs, and detailed supporting documentation. These costs must be separate from hardware related costs.~~

~~(E) A facility, with its application, must submit proof of purchase that includes receipts and invoices.~~

~~(ii) Hardware:~~

~~(A) The purchase or lease of hardware must facilitate the tracking of patient care and integrate the collection of data into the facility's clinical information system software.~~

~~(B) A facility, with its application, must submit a detailed description of the functionality of the hardware and its integration with the clinical information system software.~~

~~(C) A facility must purchase or lease and implement the hardware on or after July 1, 2005, and no later than June 8, 2008.~~

~~(D) A facility, with its application, must submit its hardware, hardware installation and training costs, and detailed supporting documentation. These costs must be separate from software related costs.~~

~~(E) A facility, with its application, must submit proof of purchase that includes receipts and invoices.~~

~~(iii) A facility must qualify for the software incentive and the hardware incentive separately. Thus, a facility must provide separate supporting documentation for each incentive component.~~

~~(iv) The Department must receive the application form and all supporting documentation no later than June 8, 2008, for consideration under this incentive. Failure to include all required supporting documentation precludes a facility from qualification.~~

~~(b) Incentive for facilities to improve their heating, ventilating, and air conditioning systems. Qualifying Medicaid providers may receive up to $162 for each Medicaid certified bed. The Medicaid certified bed count used for each facility for this incentive is the count as of July 1, 2007. Qualifying criteria include the following:~~

~~(i) A facility must purchase a new or enhance its existing heating, ventilating, and air conditioning system (HVAC).~~

~~(ii) A facility, with its application, must submit a detailed description of the change.~~

~~(iii) The HVAC system must be purchased and installed on or after July 1, 2005, and no later than June 8, 2008.~~

~~(iv) A facility, with its application, must submit proof of purchase that includes receipts and invoices.~~

~~(v) The Department must receive the application form and all supporting documentation no later than June 8, 2008, for consideration under this incentive. Failure to include all required supporting documentation precludes a facility from qualification.~~

~~(c) Incentive to encourage facilities to use innovative means to improve the residents' dining experience. Qualifying Medicaid providers may receive up to $111 for each Medicaid certified bed. The Medicaid certified bed count used for each facility for this incentive is the count as of July 1, 2007. Qualifying criteria include the following:~~

~~(i) A facility must implement changes to its dining program to improve the resident's dining experience. These changes may include meal ordering, dining times or hours, atmosphere, more food choices, etc.~~

~~(ii) A facility, with its application, must submit a detailed description of the changes.~~

~~(iii) The changes to the dining program must be made on or after July 1, 2006, and no later than June 8, 2008. A facility must submit invoices or similar documentation to show the date of purchase or implementation.~~

~~(iv) A facility, with its application, must submit invoices, receipts, or other documentation, to show proof of payment for the incremental costs that resulted from the dining program changes.~~

~~(v) The Department must receive the application form and all supporting documentation no later than June 8, 2008, for consideration under this incentive. Failure to include all required supporting documentation precludes a facility from qualification.~~](a) Incentive for facilities to purchase or enhance nurse call systems. Qualifying Medicaid providers may receive up to $390.51 for each Medicaid certified bed. The Medicaid certified bed count used for each facility for this incentive is the count in the facility as of July 1, 2008.

(i) Qualifying criteria include the following:

(A) The nurse call system that is compliant with approved "Guidelines for Design and Construction of Health Care Facilities."

(B) The nurse call system does not primarily use overhead paging; rather a different type of paging system is used. The paging system could include pagers, cell phones, Personal Digital Assistant devices, hand-held radio, etc. If radio frequency systems are used, consideration should be given to electromagnetic compatibility between internal and external sources.

(C) The nurse call system shall be designed so that a call activated by a resident will initiate a signal distinct from the regular

staff call system and that can be turned off only at the resident's location.

(D) The signal shall activate an annunciator panel or screen at the staff work area or other appropriate location, and either a visual signal in the corridor at the resident's door or other appropriate location, or staff pager indicating the calling resident's name and/or room location, and at other areas as defined by the functional program.

(E) The nurse call system must be capable of tracking and reporting response times, such as the length of time from the initiation of the call to the time a nurse enters the room and answers the call.

(ii) A facility must purchase and implement the nurse call system on or after July 1, 2006, and no later than June 8, 2009.

(iii) A facility, with its application, must submit a detailed description of the functionality of the nurse call system, attesting to its meeting all of the above criteria.

(iv) A facility, with its application, must submit detailed supporting documentation of its nurse call system costs, installation and training costs.

(v) A facility, with its application, must submit proof of purchase that includes receipts and invoices.

(vi) The Department must receive the application form and all supporting documentation no later than June 8, 2009, for consideration under this incentive. Failure to include all required supporting documentation precludes a facility from qualification.

(b) Incentive for facilities to purchase new patient lift systems. Qualifying Medicaid providers may receive up to $90 for each Medicaid certified bed. The Medicaid certified bed count used for each facility for this incentive is the count in the facility as of July 1, 2008.

(i) To qualify, a facility must, at a minimum, purchase one new normal duty patient lift capable of lifting patients weighing up to 450 pounds and one new heavy duty patient lift capable of lifting patients weighing up to 1,000 pounds; or, two new heavy duty patient lifts capable of lifting patients weighing up to 1,000 pounds.

(ii) A facility, with its application, must submit a detailed description of the lifts purchased.

(iii) The patient lifts must be purchased and installed on or after July 1, 2007, and no later than June 8, 2009.

(iv) A facility, with its application, must submit proof of purchase that includes receipts and invoices.

(v) The Department must receive the application form and all supporting documentation no later than June 8, 2009, for consideration under this incentive. Failure to include all required supporting documentation precludes a facility from qualification.

(c) Incentive for facilities to purchase new patient bathing systems. Qualifying Medicaid providers may receive up to $110 for each Medicaid certified bed. The Medicaid certified bed count used for each facility for this incentive is the count in the facility as of July 1, 2008.

(i) To quality, a facility must, at a minimum, purchase one new side-entry bathing system that allows the resident to enter the bathing system without having to step over or be lifted into the bathing area.

(ii) A facility, with its application, must submit a detailed description of the bathing system purchased.

(iii) The bathing system must be purchased and installed on or after July 1, 2007, and no later than June 8, 2009.

(iv) A facility, with its application, must submit proof of purchase that includes receipts and invoices.

(v) The Department must receive the application form and all supporting documentation no later than June 8, 2009, for consideration under this incentive. Failure to include all required supporting documentation precludes a facility from qualification.

(d) Applications and all supporting documentation must be received by June 8, [~~2008~~]2009, for consideration.

(e) A facility must clearly mark and organize all supporting documentation to facilitate review by Department staff.

(f) A facility may not receive more than its documented costs under these incentive programs.

R414-504-5. Reimbursement for Intermediate Care Facilities for the Mentally Retarded.

The following principles apply to the payment of community-based intermediate care facilities for the mentally retarded (ICF/MRs) that are licensed under Utah Code 26-21-13.5:

(1) The Department pays approximately 93% of the aggregate payments to ICF/MR[-]s based on a prospective flat rate established in Utah State Plan Attachment 4.19-D. The Department pays the balance as a property cost component calculated by the Fair Rental Value system pursuant to R414-504-3.

(2)[~~Funds in the amount of $200,000 shall be set aside annually for incentives to facilities that have a meaningful quality improvement plan and have demonstrated a means to measure that plan. In addition, the facility must have had no violations, as determined by the Department, that are at an immediate jeopardy level at the most recent re-certification 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 Department shall distribute the remaining incentive payments to all qualifying facilities.~~](a) The Department shall set aside $200,000 annually from the base rate budget for incentives to facilities that have:

(i) a meaningful quality improvement plan;

(ii) a demonstrated means to measure that plan; and

(iii) quarterly customer satisfaction surveys conducted by an independent third-party.

(b) In addition to meeting the requirements under (a), the facility must have had no violations, as determined by the Department, that are at an "immediate jeopardy" level at the most recent re-certification survey and during the incentive period.

(c) The Department shall distribute incentive payments to qualifying facilities based on the proportionate share of the total Medicaid patient days in qualifying facilities.

(d) If a facility seeks administrative review of a survey violation, the incentive payment will be withheld pending the final administrative determination. 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 Department shall distribute the remaining incentive payments to all qualifying facilities.

KEY: Medicaid
Date of Enactment or Last Substantive Amendment: [~~September 7, 2007~~]2008
Notice of Continuation: December 12, 2007
Authorizing, and Implemented or Interpreted Law: 26-1-5; 26-18-3; 26-35a

Health, Health Care Financing, Coverage and Reimbursement Policy
R414-508
Requirements for Transfer of Bed Licenses

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 31361
FILED: 05/01/2008, 15:54

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this new rule is to implement H.B. 445 (2008), which establishes requirements for the transfer of bed licenses. (DAR NOTE: H.B. 445 (2008) is found at Chapter 219, Laws of Utah 2008, and was effective 05/05/2008.)

SUMMARY OF THE RULE OR CHANGE: This new rule outlines requirements for a Medicaid nursing care facility program to transfer a bed license or Medicaid certification to another entity.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 26-18-3 and 26-18-505

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Nursing facilities have low occupancy currently. By allowing facilities to transfer beds and allowing up to 70% of those beds to be used elsewhere in the state, occupancy rates may go up. In addition, areas where there is a need for more beds may benefit. It is possible that this may reduce pressure to increase rates and be a savings for the state.

❖ LOCAL GOVERNMENTS: Nursing facilities have low occupancy currently. By allowing facilities to transfer beds and allowing up to 70% of those beds to be used elsewhere in the state, occupancy rates may go up. In addition, areas where there is a need for more beds may benefit. It is possible that this may lower costs per bed for facilities and allow them to profitably operate at current rates.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Nursing facilities have low occupancy currently. By allowing facilities to transfer beds and allowing up to 70% of those beds to be used elsewhere in the state, occupancy rates may go up. In addition, areas where there is a need for more beds may benefit. It is possible that this may lower costs per bed for facilities and allow them to profitably operate at current rates.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Facilities that wish to transfer beds and those receiving beds are required to file written information with the department to assure that the statute is complied with and persons with an interest in the current facility have consented to the transfer. It is expected that the cost of these filings for each facility will be minimal. Only facilities that choose to transfer beds will be required to report.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Pressure to increase reimbursement to Medicaid certified nursing facilities may be mitigated by this rule. The fiscal impact on business will be limited to those that choose to participate in a transfer. David N. Sundwall, MD, Executive Director

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Craig Devashrayee at the above address, by phone at 801-538-6641, by FAX at 801-538-6099, or by Internet E-mail at cdevashrayee@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: David N. Sundwall, Executive Director

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-508. Requirements for Transfer of Bed Licenses.
R414-508-1. Introduction and Authority.

(1) This rule implements requirements that a Medicaid certified nursing care facility program must meet to transfer licensed bed capacity for Medicaid certified beds to another entity.

(2) Sections 26-18-3 and 26-18-505 authorize this rule.

R414-508-2. Definitions.

As used in this rule:

(1) "Bureau of Health Facility Licensing, Certification and Resident Assessment" (BHFLCRA) within the Department of Health is the entity that evaluates nursing care facilities to comply with state and federal regulations.

(2) "Bed License" is the state authorization given by BHFLCRA to provide nursing care facility services to an individual resident. BHFLCRA only issues licenses to a nursing care facility program to provide services for several individuals. The number of individuals for which a nursing care facility program can provide service equals the total licensed beds held by the licensee.

(3) "Current Owner" is any one of or combination of the following: owner of a building from which a nursing care facility program operates, owner of land on which a nursing care facility program operates, owner of a nursing care facility program licensed by the BHFLCRA, owner of Medicaid certification, lessor of the building, lessor of the land, mortgagor of the building, mortgagor of the land, the management team responsible for executing the operations of a nursing care facility program, a holder of a lien security interest in the land, a

holder of a lien security interest in the building, and a holder of a lien security interest in the business operation.

(4) "Medicaid Certification" is the authorization to provide services outlined in the Medicaid State Plan in accordance with Section R414-27-1;

(5) "Transfer" is a change of ownership due to sale, lease, or mortgage.

(6) "Transfer Agreement" is a contract for a transfer of bed licenses.

R414-508-3. Bed License Transfer Requirements.

(1) A nursing care facility program must meet the requirements of Section R414-27 to fulfill the transfer requirements found in Subsection 26-18-505(2).

(2) Pursuant to Subsection 26-18-505(2), a nursing care facility program must demonstrate its intent to transfer bed licenses by providing written notice to the Division of Health Care Financing 30 calendar days before the effective date of the transfer under the agreement. The notice must include the following:

(a) the number of bed licenses that the nursing care facility program intends to transfer;

(b) the effective date of the transfer;

(c) the identity and physical location of the entity receiving the transferred bed licenses;

(d) a notarized statement from all current owners acknowledging and consenting to the transfer of the bed licenses; and

(e) a request to de-license and de-certify the number of transferred licensed beds from the transferring nursing care facility as of the effective transfer date in the transfer agreement.

R414-508-4. Bed License Receiving Requirements.

Pursuant to Subsection 26-18-505(3), an entity that receives bed licenses from a nursing care facility program must provide written notice to the Division of Health Care Financing within 14 calendar days of seeking Medicaid certification. The notice must include the following:

(1) the total number of bed licenses for which it will seek Medicaid certification, which may not exceed the total number of bed licenses received multiplied by a conversion factor of 0.7 and rounded down to the lowest integer as provided in Subsection 26-18-505(3)(c); and

(2) the identity of the nursing care facility program from which the bed licenses were transferred.

R414-508-5. Expiration and Forfeiture of Bed Licenses.

Pursuant to Subsection 26-18-505(2), if the receiving entity does not obtain Medicaid certification within three years of the effective date of the transfer, the transferred bed licenses expire and the receiving entity forfeits the bed licenses available through the transfer. The transferring nursing care facility program does not regain any right to the transferred beds that have expired.

KEY: Medicaid
Date of Enactment or Last Substantive Amendment: 2008
Authorizing, and Implemented or Interpreted Law: 26-1-3; 26-18-505

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Human Resource Management, Administration
R477-1
Definitions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31186
FILED: 04/25/2008, 08:31

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These amendments remove unnecessary definitions and definitions that are no longer in use and add definitions or change terms within existing definitions to improve clarity. Nonsubstantive changes were also made to streamline language, renumber definitions, and correct references.

SUMMARY OF THE RULE OR CHANGE: In Subsection R477-1-1(11), adds Agency Human Resource Field Office to distinguish between the Department of Human Resource Management (DHRM) and the agencies it serves on site. In Subsection R477-1-1(31) "Demeaning Behavior" is deleted as the definition is vague and irrelevant. In Subsection R477-1-1(33), department is deleted since the term as defined is no longer used in Title R477. In Subsection R477-1-1(34), "derisive behavior" is deleted as the definition is vague and irrelevant. In new Subsection R477-1-1(39), adds a reference for further clarification. In new Subsection R477-1-1(42), "Employment Eligibility Certification" is changed to "Employment Eligibility Verification" in alignment with the term used in federal law. In Subsections R477-1-1(46) "Equal Employment Opportunity", R477-1-1(48) "Fair Employment Opportunity and Practice", R477-1-1(59) "Hostile Work Environment", and R477-1-1(80) "Performance Evaluation Date" are deleted as these terms are already defined in rule within their relevant context. In the new Subsection R477-1-1(85), "Preemployment Drug Test" and the new Subsection R477-1-1(91), "Random Drug or Alcohol Test" have the term "safety sensitive" replaced with "highly sensitive" to align with the term used in the Utah Code. In new Subsection R477-1-1(93), the term "position" is replaced with the more accurate term "status". In Subsections R477-1-1(107), "Retaliation", R477-1-1(108) "Return from LWOP", R477-1-1(109) "Return to Duty Drug or Alcohol Test", R477-1-1(110) "Ridiculing Behavior", R477-1-1(111) "RIF'd Individual", R477-1-1(112) "Safety Sensitive Position", R477-1-1(118) "Temporary Transitional Assignment", and R477-1-1(121) "Unlawful Harassment" are deleted as these terms are already defined in rule within their relevant context.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: These definitions do not by themselves impose any action or commitment of resources by agencies. They merely support policy in the larger body of DHRM rules.

There is therefore no anticipated fiscal impact to agencies with these changes.

❖ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This rule only affects the executive branch of state government and will have no impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule only affects agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by DHRM have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business. Jeff Herring, Executive Director

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
Room 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
J.J. Acker or Tina Sweet at the above address, by phone at 801-537-9096 or 801-538-3761, by FAX at 801-538-3081 or 801-538-3081, or by Internet E-mail at jacker@utah.gov or tinasweet@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.
R477-1. Definitions.
R477-1-1. Definitions.

The following definitions apply throughout these rules unless otherwise indicated within the text of each rule.

(1) Abandonment of Position: An act of resignation resulting when an employee is absent from work for three consecutive working days without approval.

(2) Actual FTE: The total number of full time equivalents based on actual hours paid in the state payroll system.

(3) Actual Hours Worked: Time spent performing duties and responsibilities associated with the employee's job assignments.

(4) Actual Wage: The employee's assigned salary rate in the central personnel record maintained by the Department of Human Resource Management.

(5) Administrative Leave: Leave with pay granted to an employee at management discretion that is not charged against the employee's leave accounts.

(6) Administrative Adjustment: A DHRM approved change of a position from one job to another job or a salary range change for administrative purposes that is not based on a change of duties and responsibilities.

(7) Administrative Salary Decrease: A decrease in the current actual wage of one or more salary steps based on non-disciplinary administrative reasons determined by an agency head or commissioner.

(8) Administrative Salary Increase: An increase in the current actual wage of one or more salary steps based on special circumstances determined by an agency head or commissioner.

(9) Agency: An entity of state government that is:

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

(b) authorized to employ personnel; and

(c) subject to DHRM rules.

(10) Agency Head: The executive director or commissioner of each agency or [~~their~~]a designated appointee.

(11) Agency Human Resource Field Office: An office of the Department of Human Resource Management located at another agency's facility.

(12) Agency Management: The agency head and all other officers or employees who have responsibility and authority to establish, implement, and manage agency policies and programs.

(1[~~2~~]3) Appeal: A formal request to a higher level [~~review~~]for reconsideration of [~~an unacceptable~~]a grievance decision.

(1[~~3~~]4) Appointing Authority: The officer, board, commission, person or group of persons authorized to make appointments in their agencies.

(1[~~4~~]5) Budgeted FTE: The total number of full time equivalents budgeted by the Legislature and approved by the Governor.

(1[~~5~~]6) 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.

(1[~~6~~]7) Career Mobility: A time limited assignment of an employee to a position of equal or higher salary range for purposes of professional growth or fulfillment of specific organizational needs.

(1[~~7~~]8) Career Service Employee: An employee who has successfully completed a probationary period in a career service position.

(1[~~8~~]9) 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.

([~~19~~]20) Career Service Exempt Position: A position in state service exempted by law from provisions of competitive career service [~~as prescribed in~~]under Sections 67-19-15 and [~~in Subsection~~]R477-2-1[~~(1)~~].

(2[~~0~~]1) Career Service Status: Status granted to employees who successfully complete a probationary period for competitive career service positions.

(2[~~1~~]2) 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) unit number;

(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.

(2[~~2~~]3) 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.

(2[~~3~~]4) Change of Workload: A change in position responsibilities and duties or a need to eliminate or create particular positions in an agency caused by legislative action, financial circumstances, or administrative reorganization.

(2[~~4~~]5) 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.

(2[~~5~~]6) Classified Service: Positions that are subject to the classification and compensation provisions stipulated in Section 67-19-12.

(2[~~6~~]7) Classification Study: A Classification review conducted by DHRM under [~~the rules outlined in~~]Section R477-3-4. A study may include single or multiple job or position reviews.

(2[~~7~~]8) Compensatory Time: Time off that is provided to an employee in lieu of monetary overtime compensation.

(2[~~8~~]9) 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~~]may not accrue benefits.

([~~29~~]30) Corrective Action: A documented administrative action to address substandard performance of an employee [~~as described in~~]under Section R477-10-2.

(3[~~0~~]1) 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.

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

~~——~~](32) Demotion: A disciplinary action resulting in a reduction of an employee's current actual wage.

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

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

~~——~~]([~~35~~]33) Designated Hiring Rule: A rule promulgated by DHRM that defines which individuals on a certification are eligible for appointment to a career service position.

([~~36~~]34) DHRM: The Department of Human Resource Management.

([~~37~~]35) DHRM Approved Recruitment and Selection System: The state's recruitment and selection system, which is a centralized and automated computer system administered by the Department of Human Resource Management.

([~~38~~]36) 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.

([~~39~~]37) Disciplinary Action: Action taken by management under [~~the rules outlined in Section~~]Rule R477-11.

([~~40~~]38) 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~~]prohibited by law.

([~~41~~]39) Dismissal: A separation from state employment for cause under Section R477-11-2.

([~~42~~]40) 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.

([~~43~~]41) Employee Personnel Files: For purposes of Title 67, Chapters 18 and 19, the files maintained by DHRM and agencies as required by Section R477-2-5. This does not include employee information maintained by supervisors.

([~~44~~]42) Employment Eligibility [~~Certification~~]Verification: A requirement of the Immigration Reform and Control Act of 1986, 8 USC 1324 (1988) that employers verify the identity and eligibility of individuals for employment in the United States.

([~~45~~]43) "Escalator" Principle: Under the Uniformed Services Employment and Reemployment Rights Act (USERRA), returning veterans are entitled to return back onto their seniority escalator at the point they would have occupied had they not left state employment.

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

~~——~~]([~~47~~]44) Excess Hours: A category of compensable hours separate and apart from compensatory or overtime hours that accrue at straight time only when an employee's actual hours worked, plus additional hours paid, exceed an employee's normal work period.

[~~(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.~~

~~——~~]([~~49~~]45) Fitness For Duty Evaluation: Evaluation, assessment or study by a licensed professional to determine if an individual is able to meet the performance or conduct standards required by the position held, or is a direct threat to the safety of self or others.

([~~50~~]46) FLSA: Fair Labor Standards Act. The federal statute that governs overtime. See 29 USC 201 (1996).

([~~51~~]47) FLSA Exempt: Employees who are exempt from the Fair Labor Standards Act.

([~~52~~]48) FLSA Nonexempt: Employees who are not exempt from the Fair Labor Standards Act.

([~~53~~]49) Follow Up Drug or Alcohol Test: Unannounced drug or alcohol tests conducted for up to five years on an employee who has previously tested positive or who has successfully completed a voluntary or required substance abuse treatment program.

([~~54~~]50) Furlough: A temporary leave of absence from duty without pay for budgetary reasons or lack of work.

([~~55~~]51) Grievance: A career service employee's claim or charge of the existence of injustice or oppression, including dismissal from

employment resulting from an act, occurrence, omission, condition, discriminatory practice or unfair employment practice not including position classification or schedule assignment.

([~~56~~]52) Grievance Procedures: The statutory process of grievances and appeals as set forth in Sections 67-19a-101 through 67-19a-408 and the rules promulgated by the Career Service Review Board.

([~~57~~]53) Gross Compensation: Employee's total earnings, taxable and nontaxable, as shown on the employee's pay[~~check stub~~] statement.

([~~58~~]54) Hiring List: A list of qualified and interested applicants who are eligible to be considered for appointment or conditional appointment to a specific position.

[~~(59) Hostile Work Environment: A work environment or work related situation where an individual suffers physical or emotional stress due to the unwelcome behavior of another individual which is motivated by race, religion, national origin, color, sex, age, disability or protected activity under the anti-discrimination statutes.~~

~~——~~]([~~60~~]55) HRE: Human Resource Enterprise; the state human resource management information system.

([~~61~~]56) Immediate Supervisor: The employee or officer who exercises direct authority over an employee and who appraises the employee's performance.

([~~62~~]57) Incompetence: Inadequacy or unsuitability in performance of assigned duties and responsibilities.

([~~63~~]58) Inefficiency: Wastefulness of government resources including time, energy, money, or staff resources or failure to maintain the required level of performance.

([~~64~~]59) 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.

([~~65~~]60) Intern: An individual in a college degree program assigned to work in an activity where on-the-job training is accepted.

([~~66~~]61) Job: A group of positions similar in duties performed, in degree of supervision exercised or required, in requirements of training, experience, or skill and other characteristics. The same salary range and test standards are applied to each position in the group.

([~~67~~]62) Job Description: A document containing the duties, distinguishing characteristics, knowledge, skills, and other requirements for a job.

([~~68~~]63) Job Identification Number: A unique number assigned to a job by DHRM.

([~~69~~]64) Job Proficiency Rating: An average of the last three annual performance evaluation ratings used in reduction in force proceedings.

([~~70~~]65) Job Requirements: Skill requirements defined at the job level.

([~~71~~]66) 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.

([~~72~~]67) Legislative Salary Adjustment: A legislatively approved salary increase for a specific category of employees based on criteria determined by the Legislature.

([~~73~~]68) Malfeasance: Intentional wrongdoing, deliberate violation of law or standard, or mismanagement of responsibilities.

([~~74~~]69) Market Based Bonus: One time lump sum monies given to a new hire or a current employee to encourage employment with the state.

([~~75~~]70) Market Comparability Adjustment: Legislatively approved change to a salary range for a job or to an employee's actual wage based on a compensation survey conducted by DHRM.

([~~76~~]71) Merit Increase: A legislatively approved and funded salary increase for employees to recognize and reward successful performance.

([~~77~~]72) Misfeasance: The improper or unlawful performance of an act that is lawful or proper.

([~~78~~]73) Nonfeasance: Failure to perform either an official duty or legal requirement.

([~~79~~]74) Performance Evaluation: A formal, periodic evaluation of an employee's work performance.

[~~(80) Performance Evaluation Date: The date when an employee's performance evaluation shall be conducted. An evaluation shall be conducted at least once during the probationary period and no less than once annually thereafter consistent with the common review date.~~

~~——~~]([~~81~~]75) Performance Management: The ongoing process of communication between the supervisor and the employee which defines work standards and expectations, and assesses performance leading to a formal annual performance evaluation.

([~~82~~]76) Performance Plan: A written summary of the standards and expectations required for the successful performance of each job duty or task. These standards normally include completion dates and qualitative and quantitative levels of performance expectations.

([~~83~~]77) Performance Standard: Specific, measurable, observable and attainable objectives that represent the level of performance to which an employee and supervisor are committed during an evaluation period.

([~~84~~]78) Personnel Adjudicatory Proceedings: The informal appeals procedure contained in Title 63, Chapter 46b, for all human resource policies and practices not covered by the state employees grievance procedure promulgated by the Career Service Review Board, or the classification appeals procedure.

([~~85~~]79) Position: A unique set of duties and responsibilities identified by DHRM authorized job and position management numbers.

([~~86~~]80) Position Description: A document that describes the detailed tasks performed, as well as the knowledge, skills, abilities, and other requirements of a specific position.

([~~87~~]81) Position Identification Number: A unique number assigned to a position for FTE management.

([~~88~~]82) Position Management Report: A document that lists an agency's authorized positions including job identification numbers, salaries, and schedules. The list includes occupied or vacant positions and full or part-time positions.

([~~89~~]83) Position Sharing: A situation where two employees share the duties and responsibilities of one full-time career service position. Leave benefits for position sharing employees are pro-rated according to the number of hours worked. To be eligible for benefits, position sharing employees must work at least 50% of a full-time equivalent.

([~~90~~]84) 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.

([~~91~~]85) Preemployment Drug Test: A drug test conducted on final candidates for a [~~safety~~]highly sensitive position or on a current employee prior to assuming [~~safety~~]highly sensitive duties.

([~~92~~]86) Probationary Employee: An employee hired into a career service position who has not completed the required probationary period for that position.

([~~93~~]87) Probationary Period: A period of time considered part of the selection process, identified at the job level, the purpose of which is to allow management to evaluate an employee's ability to perform assigned duties and responsibilities and to determine if career service status should be granted.

([~~94~~]88) 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 actual and budgeted FTE reductions.

([~~95~~]89) Promotion: An action moving an employee from a position in one job to a position in another job having a higher maximum salary step.

([~~96~~]90) 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.

([~~97~~]91) Random Drug or Alcohol Test: Unannounced drug or alcohol testing of a sample of [~~safety~~]highly sensitive employees done in accordance with federal regulations or state rules, policies, and procedures, and conducted in a manner such that each [~~safety~~]highly sensitive employee has an equal chance of being selected for testing.

([~~98~~]92) Reappointment: Return to work of an individual from the reappointment register[~~-~~], whose [~~A~~]accrued annual leave, converted sick leave, compensatory time and excess hours in the employee's former position were cashed out upon separation.

([~~99~~]93) Reappointment Register: A register of individuals who have:

(a) held career service [~~positions~~]status and been separated in a reduction in force;

(b) held career service [~~positions~~]status 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.

([~~100~~]94) Reasonable Suspicion Drug or Alcohol Test: A drug or alcohol test conducted on an employee based on specific, contemporaneous, articulated observations concerning the appearance, behavior, speech or body odors of the employee.

([~~101~~]95) Reassignment: A management initiated action moving an employee from his current job or position to a different job or position for administrative reasons not included in the definition of promotion or demotion.

([~~102~~]96) Reclassification: A DHRM reallocation of a single position or multiple positions from one job to another job to reflect management initiated changes in duties and responsibilities.

([~~103~~]97) 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.

([~~104~~]98) Reemployment: Return to work of an employee who resigned or took military leave of absence from state employment to serve in the uniformed services covered under USERRA. Accrued annual leave, converted sick leave, compensatory time and excess hours may have been cashed out at separation.

([~~105~~]99) Rehire: Return to work of a former career service employee who resigned from state employment. Accrued annual leave, converted sick leave, compensatory time and excess hours in their former position were cashed out at separation.

([~~106~~]100) Requisition: An electronic document used for Utah Job Match recruitment, selection and tracking purposes that includes specific information for a particular position, job seekers' applications, and a hiring list.

[~~(107) Retaliation: An adverse employment action taken against an employee who has engaged in a protected activity. The adverse action must have a causal link.~~

~~(108) 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.~~

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

~~(111) RIF'd Individual: A former employee whose employment is terminated as a result of a reduction in force.~~

~~(112) 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.~~

~~]~~([~~113~~]101) Salary Range: The segment of an approved pay plan assigned to a job.

([~~114~~]102) Schedule: The determination of whether a position meets criteria stipulated in the Utah Code Annotated to be career service ([~~S~~]schedule B) or career service exempt ([~~S~~]schedule A).

([~~115~~]103) 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; or

(b) outpatient care with continuing treatment by a health care provider.

([~~116~~]104) 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.

([~~117~~]105) Temporary employee: A career service exempt employee on schedule AI, AJ, or AL.

[~~(118) 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.~~

~~——~~]([~~119~~]106) Transfer: An employee initiated movement from one job or position to another job or position for which the employee qualifies for reasons not included in the definition of promotion.

([~~120~~]107) Uniformed Services: The United States Army, Navy, Marine Corps, Air Force, Coast Guard; Reserve units of the Army, Navy, Marine Corps, Air Force, or Coast Guard; Army National Guard or Air National Guard; Commissioned Corps of Public Health Service, National Oceanic and Atmospheric Administration (NOAA), National Disaster Medical Systems (NDMS)[~~, or~~] and any other category of persons designated by the President in time of war or emergency. Service in Uniformed Services includes: voluntary or involuntary duty, including active duty; active duty for training; initial active duty for training; inactive duty training; full-time National Guard duty; or absence from work for an examination to determine fitness for any of the above types of duty.

[~~(121) 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.~~

~~——~~]([~~122~~]108) USERRA: Uniformed Services Employment and Reemployment Rights Act of 1994 (P.L. 103-353), requires state governments to re-employ eligible veterans who resigned or took a military leave of absence from state employment to serve in the uniformed services and who return to work within a specified time period after military discharge. Employees covered under USERRA are in a leave without pay status from their state position.

([~~123~~]109) 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.

([~~124~~]110) 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.

([~~125~~]111) 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
Date of Enactment or Last Substantive Amendment: [~~July 1, 2007~~]2008
Notice of Continuation: June 9, 2007
Authorizing, and Implemented or Interpreted Law: 67-19-6

♦ ——————————————— ♦

Human Resource Management, Administration
R477-2
Administration

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31187
FILED: 04/25/2008, 09:20

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These amendments remove redundant language relative to unlawful harassment, add greater alignment with the Immigration Reform and Control Act of 1986, and correct record keeping procedures for employee files. Nonsubstantive changes are also made to comply with rulemaking style.

SUMMARY OF THE RULE OR CHANGE: Language deleted from Subsection R477-2-3(2) is redundant because it is covered under Rule R477-15, Unlawful Harassment Policy and Procedure. Language is deleted from Subsection R477-2-5(2)(a) because it is not permitted by federal law. Language in Subsections R477-2-5(3) and R477-2-5(3)(a) is deleted because it is unnecessary. A new Subsection R477-2-5(4) is inserted to provide greater clarity as to the disposition of documentation required under the Immigration Reform and Control Act of 1986. In Subsection R477-2-5(5)(a)(i), language was added to direct employee requests to view employment files specifically to the appropriate agency human resource field office. The requirement of the employee's notarized written consent was added to Subsections R477-2-5(8)(c) and R447-2-5(14) for individuals seeking individual employment records. In Subsection R477-2-5(12), the term "obtained orally" was removed regarding medical documentation because it cannot be documented orally and once information is written it is no longer oral. In Section R477-2-7, the term Employment Eligibility Certification was changed to Employment Eligibility Verification in alignment with terminology of the Immigration Reform and Control Act.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 52-3-1, Subsections 63-2-204(5) and 63-2-903(4), and Sections 67-19-6 and 67-19-18

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There may be small incidental costs to agencies for the maintenance of separate files for employee documentation. However, all agencies are known to be in compliance with these amendments already.
❖ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local governments.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This rule may affect individuals seeking a state employee's employment record. Amendments require notarized consent before accessing records which may subject individuals to a small cost and additional labor to seek notarization.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule only affects agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state

government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business. Jeff Herring, Executive Director

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:

Tina Sweet or J.J. Acker at the above address, by phone at 801-538-3761 or 801-537-9096, by FAX at 801-538-3081 or 801-538-3081, or by Internet E-mail at tinasweet@utah.gov or jacker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Jeff Herring, Executive Director

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

These rules apply to all career and 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 Rule R477-3 and R477-6.

(2) Nonstate agencies with employees protected by the career service provisions [~~of these rules~~]in Rules 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 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) employees in the [~~Attorney General's~~]Office of the Attorney General;

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

(h) employees of the Governor's Office of Economic Development whose positions have been designated executive/professional by the executive director of the Governor's Office of Economic Development with the concurrence of the Executive Director, DHRM;

(i) employees of the Medical Education Council.

(4) All other exempt positions are covered by [~~provisions of~~]these rules except rules governing career service status in Rule 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 comply 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 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~~]under Subsection 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~~]may 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) An employee who alleges illegal discrimination may submit a claim to the agency head.

(a) The employee may file a charge with the Utah Anti-Discrimination and Labor Division within 180 days of the alleged harm, or directly with the EEOC within 300 days of the alleged harm.

(b) [~~No~~]A state official [~~shall~~]may not impede any employee from the timely filing of a discrimination complaint in accordance with state and federal requirements.

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 types of records in [~~each~~]employee[~~'s~~] personnel files:

(a) [~~applications for employment, Employment Eligibility Certification record, Form I-9, and other documents required by the United States Bureau of Citizenship and Immigration Services 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, performance evaluation 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~~]containing confidential employee medical information.

(a) [~~Information in t~~]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, and any other medical information.

(b) Information regarding the results from fitness for duty evaluations and drug testing shall be maintained in a file separate from the personnel file and from the file containing confidential employee medical information.

[~~(c)~~]Information in this file [~~is considered~~]shall be private or controlled information. Communication shall adhere to Title 63, Chapter 2, the Government Records Access and Management Act.

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

(4) Agencies shall maintain a separate file containing Form I-9 and other documents required by the United States Bureau of Citizenship and Immigration Services regulations, under Immigration Reform and Control Act of 1986, 8 USC Section 1324a.

([~~4~~]5) An employee has the right to review the employee's personnel file, upon request, in DHRM or the agency, as governed by law and [~~as provided through~~]under agency policy.

(a) 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 to the appropriate agency human resource field office that changes occur.

(ii) The employing agency shall be given an opportunity to respond.

(iii) Disputes over information that are not resolved between the employing agency and the employee shall be decided in writing by the Executive Director, DHRM. DHRM shall maintain a record of the employee's letter, the agency's response, and the DHRM Executive Director's decision.

([~~5~~]6) 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.

([~~6~~]7) Upon employee 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 to be retained according to the record retention schedule.

([~~7~~]8) 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 notarized written consent.

([~~8~~]9) Utah is an open records state, according to Title 63, Chapter 2, the Government Records Access and Management Act. Information classified as public concerning current or former state employees, volunteers, independent contractors, and members of advisory boards or commissions shall be released upon request.

([~~9~~]10) When an employee transfers from one agency to another, the former agency shall transfer the employee's personnel and medical file to the new agency. The file shall contain a record of all actions that have affected the employee's status and standing.

([~~10~~]11) 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. An employee may not request documentary evidence used for rebuttal.[~~This shall not apply to documentary evidence used for rebuttal.~~]

([~~11~~]12) Employee medical information [~~obtained orally or~~]documented in separate confidential files [~~is considered~~]shall be private or controlled information. Communication must adhere to Title 63, Chapter 2, the Government Records Access and Management Act. Employees who violate confidentiality are subject to state disciplinary procedures and may be personally liable for slander or libel.

([~~12~~]13) 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 authorized manager in DHRM shall make the determination.

([~~13~~]14) An employee may verbally request the release of information for personal use, or authorize in writing the release of 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 notarized written request has been evaluated and approved.

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

All career and career service exempt employees appointed on and after November 7, 1986, as a new hire, rehire, 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 by completing all

sections of the Employment Eligibility [~~Certification~~]Verification Form I-9 as required under the Immigration Reform and Control Act of 1986.

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

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

(1) A public officer supervising a relative shall make a complete written disclosure of the relationship to the agency head in accordance with Section 52-3-1.

R477-2-9. Employee Liability.

An employee who becomes aware of any occurrence which may give rise to a law suit, who receives notice of claim, or is sued because of an incident related to his employment, shall give immediate notice to his supervisor and to the Department of Administrative Services, Division of Risk Management.

(1) In most cases, under [~~provisions of~~]Sections 63-30-36, and 63-30-37, the Governmental Immunity Act (GIA), 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.

KEY: administrative responsibility, confidentiality of information, fair employment practices, public information
Date of Enactment or Last Substantive Amendment: [~~July 1, 2007~~]2008
Notice of Continuation: June 9, 2007
Authorizing, and Implemented or Interpreted Law: 52-3-1; 63-2-204(5); 63-2-903(4); 67-19-6; 67-19-18

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Human Resource Management, Administration
R477-3
Classification

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 31188
FILED: 04/25/2008, 09:22

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These amendments expand approval authority to conduct a formal classification review to designees in order to make the process more flexible. Amendments also clarify what warrants a position classification review. Nonsubstantive changes are also made to comply with rulemaking style.

SUMMARY OF THE RULE OR CHANGE: In Section R477-3-3, the term "department administration" is replaced by "agency management" in order to be consistent throughout Title R477 when referencing agency management rather than Department of Human Resource Management (DHRM). In Subsection R477-3-4(1)(b), the alternate approval of a designee is added to executive director, DHRM. In Subsection R477-3-4(2), language was added to indicate an elevated degree of changes needed to warrant a formal review.

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 have no budgetary impact because no agency changes to policy or practice are required.
- LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local governments.
- SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This rule only affects the executive branch of state government and will have no impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule only affects agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by DHRM have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business. Jeff Herring, Executive Director

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at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Tina Sweet or J.J. Acker at the above address, by phone at 801-538-3761 or 801-537-9096, by FAX at 801-538-3081 or 801-538-3081, or by Internet E-mail at tinasweet@utah.gov or jacker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Jeff Herring, 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 Subsection R477-2-2(1).

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~~]agency management.

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 an agency, with the approval of the Executive Director, DHRM or designee; or

(c) as part of a classification grievance review

(2) DHRM shall determine if there [~~are~~]have been sufficient significant changes in the duties of a position to warrant a formal review.

(3) When an agency is reorganized or positions are redesigned, no classification reviews shall be conducted until an appropriate settling period has occurred.

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

KEY: administrative procedures, grievances, job descriptions, position classifications
Date of Enactment or Last Substantive Amendment: [~~July 1, 2007~~]2008
Notice of Continuation: June 9, 2007
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-12

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Human Resource Management, Administration
R477-4
Filling Positions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31189
FILED: 04/25/2008, 09:23

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These amendments remove redundancies and clarify intent. Nonsubstantive changes are also made to comply with rulemaking style.

SUMMARY OF THE RULE OR CHANGE: Subsection R477-4-3(2) which reiterates that protected classes shall have opportunity for consideration for available positions is deleted. This is unnecessary language since it is already specified in federal law and Rule R477-15. Language is added to Subsection R477-4-7(1) to clarify that rehire is not a right. In Subsection R477-4-7(1)(a)(ii), "12 months" is changed to "one year" for better clarity in calculation and language is reworked to clarify that an employee rehired within one year of separation is entitled to reinstatement of Program II sick leave.

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

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: There is no impact to state budgets as these amendments merely clarify intent and remove unnecessary language.
❖ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local governments.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This rule only affects the executive brand of state government and will have no impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule only affects agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business. Jeff Herring, Executive Director

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INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Jeff Herring, 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 Subsection 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.

R477-4-3. Career Service Positions.

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

(a) DHRM standards and procedures;

(b) career service principles;

(c) equal employment opportunity principles;

(d) Section 52-3-1, employment of relatives;

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

~~(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 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~~]shall 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 Subsection 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 or through transfer of a qualified career service employee, career mobility assignments to a higher salary range, or conversions from schedule A to schedule B as authorized by Subsection 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 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~~]under Subsection R477-4-4(1).

(5) Appointment of an employee from the statewide reappointment register must comply with the order of selection [~~specified in~~]under Section R477-4-4.

R477-4-6. Transfer and Reassignment.

(1) Positions may be filled by reassigning an employee without a reduction in the current actual wage except [~~as provided in~~]under Subsection R477-6-4(5).

(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 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.

(5) A reassignment or transfer 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.

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. Rehire is not a right.

(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.

(ii) An employee [~~who is~~]rehired within [~~12 months~~]one year of separation [~~to a position which receives sick leave benefits~~]shall have [~~his previously accrued~~]forfeited sick leave [~~credit~~]reinstated as [~~p~~]Program II sick leave.

(b) A rehired employee may be offered any salary within the 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.

R477-4-10. Time Limited Exempt Positions.

The Executive Director, DHRM, may approve the creation and filling of career service exempt positions for temporary, emergency, seasonal, intermittent or other special and justified agency needs. These appointments shall be career service exempt as defined in Section 67-19-15.

(1) Time limited, temporary or seasonal 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 shall last no longer than 1560 working hours in any consecutive 12 month period.

(b) Appointments under schedules AE, AI and AL shall be 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~~]under Subsection R477-4-9 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.

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

KEY: employment, fair employment practices, hiring practices
Date of Enactment or Last Substantive Amendment: [~~July 1, 2007~~]2008
Notice of Continuation: June 9, 2007
Authorizing, and Implemented or Interpreted Law: 67-19-6

♦ ♦

Human Resource Management, Administration
R477-5
Employee Status and Probation

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31190
FILED: 04/25/2008, 09:24

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These amendments add long-term disability as a reason for a probationary period to be extended and remove Temporary Transitional Positions from this section in favor of placement in a better aligned section.

SUMMARY OF THE RULE OR CHANGE: In Subsection R477-5-2(2)(a), the term "long-term disability" is added to the list of reasons for extending a probationary period in order to judge an employee's performance. In Section R477-5-3, Temporary Transitional Position is deleted since this is covered completely in Section R477-8-9, Temporary Transitional Assignment.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 67-19-6 and Subsection 67-19-16(5)(b)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: These changes are administrative and have no impact on agency budgets.

❖ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This rule only affects the executive brand of state government and will have no impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule only affects agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business. Jeff Herring, Executive Director

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HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
Room 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

J.J. Acker or Tina Sweet at the above address, by phone at 801-537-9096 or 801-538-3761, by FAX at 801-538-3081 or 801-538-3081, or by Internet E-mail at jacker@utah.gov or tinasweet@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.
R477-5. Employee Status and Probation.
R477-5-2. Probationary Period.

The probationary period allows agency management to evaluate an employee's ability to perform the duties, responsibilities, skills, and other related requirements of the assigned career service position. The probationary period shall be considered part of the selection process.

(1) An employee shall receive full and fair opportunity to demonstrate competence in the job in a career position. As a minimum, a performance plan shall be established and the employee shall receive feedback on performance in relation to that plan.

(a) During the probationary period, an employee may be separated from state employment in accordance with Subsection R477-11-2(1).

(b) At the end of the probationary period, an employee shall receive a performance evaluation. Evaluations shall be entered into HRE as the performance evaluation that reflects successful or unsuccessful completion of probation.

(2) Each career position shall be assigned a probationary period consistent with its job.

(a) The probationary period may not be extended except for periods of leave without pay, long-term disability, workers compensation leave, temporary transitional assignment, military leave under USERRA, or donated leave from an approved leave bank.

(b) The probationary period may not be reduced after appointment.

(c) An employee who has completed a probationary period and obtained career service status shall not be required to serve a new probationary period unless there is a break in service.

(3) An employee in a career service position who works at least 50 percent of the time or more shall acquire career service status after working the same amount of elapsed time in hours as a full-time employee would work with the same probationary period.

(4) An employee serving probation in a competitive career service position may be transferred, reassigned or promoted to another competitive career service position. Each new appointment shall include a new probationary period unless the agency determines that the required duties or knowledge, skills, and abilities of the old and new position are similar enough not to warrant a new probationary period. If an agency determines that a new probationary period is needed, it shall be the full probationary period defined in the job description.

[~~**R477-5-3. Temporary Transitional Position.**~~

~~(1) An employee on probation who is temporarily disabled may be placed in another position with lighter duty or reduced responsibility and salary.~~

~~(a) This accommodation shall occur for no longer than one year from the date of disability.~~

~~(b) Time spent in a transitional position does not reduce the required probationary period in the primary position.~~

]

R477-5-4. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to [~~the provisions of~~]this rule, consistent with Subsection R477-2-2(1).

KEY: employment, personnel management, state employees
Date of Enactment or Last Substantive Amendment: [~~July 1, 2007~~]2008
Notice of Continuation: June 9, 2007
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-16(5)(b)

Human Resource Management, Administration
R477-6
Compensation

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 31191
FILED: 04/25/2008, 09:26

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments clarify eligibility for merit pay increases, remove restrictions on referral bonuses to allow greater incentive and flexibility for agency management, delete unnecessary language, and replace terminology for consistency. Nonsubstantive changes are also made to comply with rulemaking style.

SUMMARY OF THE RULE OR CHANGE: In Section R477-6-4, replaces vague eligibility criteria with a specific outline of criteria for merit pay increases. In Subsection R477-6-5(4)(e), removes the requirement for a referred selected candidate to remain employed for six months before the referring employee is awarded a bonus. In Subsection R477-6-6(4), concerning flex benefits is deleted because it is informational only and does not pertain to rule. In Section R477-6-7, Schedule AT is removed because the election to convert from career service to exempt in that schedule is no longer available. In Subsection R477-6-9(2)(c), the term "discharged for cause" is replaced by "dismissed" for consistency throughout Title R477.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 63F-1-106, 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: Criteria for merit pay increases only impacts state budgets when the legislature approves. This rule has no budgetary impact by itself. Agency budgets could be impacted by referral bonuses, but these are controlled by agency policies and are not mandated by this rule. All other changes are administrative in nature without budgetary impact.

❖ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local governments.

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THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.
R477-6. Compensation.
R477-6-4. Salary.

(1) Merit increases. The following [~~are applicable~~]conditions apply if merit pay increases are authorized and funded by the legislature:

(a) Employees, classified in position schedule B, shall be eligible for the merit increase if the following conditions are met:[~~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.~~]

(i) Employee may not be on a longevity step.

(ii) Employee may not be paid at the maximum step of their salary range.

(iii) Employee has received a minimum rating of successful on their most recent performance evaluation.

(iv) Employee has been in a paid status by the state for at least six months at the beginning of the new fiscal year.

(b) [~~Employees designated as schedule AE, AI and AL who are receiving benefits are eligible for merit step increases.~~]All other position schedules will be reviewed by DHRM in consultation with the Governor's Office.

(c) Employees designated as schedule AJ are not eligible for merit step increases.

(2) Promotions and Reclassifications.

(a) An employee promoted or reclassified to a 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. An employee who is promoted or reclassified to a 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) 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 an employee in longevity shall be consistent with Subsection R477-6-4(3).

(ii) An employee who remains in longevity status after a promotion or reclassification shall retain 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) An employee whose position is reclassified or changed by administrative adjustment to a job with a lower salary range shall retain the current salary. The employee shall be placed on the corresponding longevity step if the salary exceeds the maximum of the new salary range.

(3) Longevity.

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

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

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

(d) An employee on a longevity step who is reclassified to a lower salary range shall retain the current actual wage.

(e) An employee on a longevity step who is promoted or reclassified to a higher salary range shall only receive an increase if the current actual wage is less than the highest salary step of the new range.

(f) Agency heads or time limited exempt employees identified in Section R477-4-10 are not eligible for the longevity program.

(4) Administrative Adjustment.

(a) An employee whose position has been allocated by DHRM from one job to another job or salary range for administrative purposes, [~~shall~~]may not receive an adjustment in the current actual wage.

(b) Implementation of new job descriptions as an administrative adjustment shall not result in an increase in the current actual wage unless the employee is below the minimum step of the new range.

(5) Reassignment.

An employee's current actual wage may only be lowered when permitted by federal or state law, including but not limited to the Americans with Disabilities Act.

(6) Transfer.

Management may increase or decrease the current actual wage of an employee who initiates a transfer to another position consistent with [~~Section~~]Subsections R477-6-4(9) and (10).

(7) Demotion.

An employee demoted consistent with Section R477-11-2 shall receive a reduction in the current actual wage 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 reduction in the current actual wage.

(8) Productivity step adjustment.

Agency management may establish policies to reward an employee who assumes additional workloads which result from the elimination of a position for at least one year with an increase of up to four salary steps. An employee at the maximum step of 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 or management can make the suggestion;

(ii) the employee and management agree;

(iii) the agency head approves;

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

(v) DHRM approves;

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

(vii) staff receive 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.

(9) Administrative Salary Increase.

The agency head authorizes and approves administrative salary increases under the following parameters:

(a) An employee shall receive one or more steps up to the maximum of the salary range.

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

(c) Justifications for Administrative Salary Increases shall be:

(i) in writing;

(ii) approved by the agency head;

(iii) supported by issues such as: special agency conditions or problems or other unique situations or considerations in the agency.

(d) The agency head is the final authority for salary actions authorized within these guidelines. The agency head or designee shall answer any challenge or grievance resulting from an administrative salary increase.

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

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

(10) Administrative Salary Decrease.

The agency head authorizes and approves administrative salary decreases for nondisciplinary reasons according to the following:

(a) An employee shall receive a one or more step decrease not to exceed the minimum of the salary range.

(b) Justification for administrative salary decreases shall be:

(i) in writing;

(ii) approved by the agency head; and

(iii) supported by issues such as previous written agreements between the agency and 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 is the final authority for salary actions within these guidelines. The agency head 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 incentive awards or bonuses. Incentive awards and bonuses are discretionary, not an entitlement, and are subject to the availability of funds in the agency.

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

(b) Individual awards [~~shall~~]may not exceed $4,000 per occurrence and $8,000 in a fiscal year. In exceptional circumstances, an award may exceed these limits upon application to DHRM and approval by the Governor.

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

(2) Performance Based Incentive Awards.

(a) Cash Incentive Awards

(i) An agency may grant a cash incentive award to an employee or group of employees who:

(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.

(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.

(b) Noncash Incentive Awards

(i) An agency may recognize an employee or group of employees with noncash incentive awards.

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

(iii) Noncash incentive awards may include cash equivalents such as gift certificates or tickets for admission. Cash equivalent incentive awards shall be subject to payroll taxes and must follow standards and procedures established by the Department of Administrative Services, Division of Finance.

(3) Cost Savings Bonus

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

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

(4) Market Based Bonuses

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

(c) Scarce Skills Bonus

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

(d) Relocation Bonus

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

(e) Referral Bonus

An agency may award 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) 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. 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) A new employee wishing to participate in the FLEX benefits program shall enroll within the first 60 days of employment. Coverage becomes effective on the employment date.~~

~~(ii) An employee who 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. 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) 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, 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.~~

~~(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~~]4) An employee in a position which normally requires working less than 40 hours per pay period is ineligible for benefits. An employee 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~~]5) A reemployed veteran under USERRA shall be entitled to the same employee benefits given to other continuously employed eligible employees to include seniority based increased pension and leave accrual.

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

(1) A career service employee in a position meeting the criteria for career service exempt [~~S~~]schedule AD, AR, or AS [~~or AT~~]shall have 60 days to elect to convert from career service to career service exempt. As an incentive to convert, an employee shall be provided the following:

(a) a base salary increase of one to three salary steps, as determined by the agency head. An employee at the maximum of 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) An employee electing to convert to career service exempt after the 60 day election period [~~shall~~]may not be eligible for the salary increase, but shall be entitled to apply for the insurance coverage through the Group Insurance Office.

(3) An employee electing not to convert to career service exemption shall retain career service status even though the position shall be designated as [~~S~~]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, the employee [~~shall~~]may not be eligible for the severance package or the life insurance. In this situation, the agency and employee shall make arrangements through the Group Insurance Office to discontinue the coverage.

(5) A career service exempt employee without prior career service status shall remain exempt. When the employee leaves the position, subsequent appointments shall be consistent with R477-4.

(6) Agencies shall communicate to all impacted and future eligible employees the conditions and limitations of this incentive program.

R477-6-9. Severance Benefit.

(1) A benefits eligible career service exempt employee on schedule AB, AD, AR or AT who is separated from state service through an action initiated by management, to include resignation in lieu of termination, shall receive at the time of severance a benefit equal to:

(a) one week of salary, up to a maximum of 12 weeks, for each year of consecutive exempt service in the executive branch; and

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

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

(a) whose statutory term has expired without reappointment;

(b) who is retiring from state service; or

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

(3) A benefits eligible career service exempt employee on schedule AB, AD, AR or AT who accepts reassignment to a position with a lower salary range, without a break in service, shall receive a severance benefit equal to the difference between the current actual wage and the new actual wage multiplied by the number of accrued annual leave, converted sick leave, and excess hours on the date of reassignment.

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

KEY: salaries, employee benefit plans, insurance, personnel management
Date of Enactment or Last Substantive Amendment: [~~July 1, 2007~~]2008
Notice of Continuation: June 9, 2007
Authorizing, and Implemented or Interpreted Law: 63F-1-106; 67-19-6; 67-19-12; 67-19-12.5; 67-19-15.1(4)

♦ ♦

Human Resource Management, Administration
R477-7
Leave

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 31192
FILED: 04/25/2008, 09:33

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments are made to clarify intent with regard to sick leave, remove expired provisions from the sick leave retirement benefit, and reconstruct language regarding military leave and leave of absence without pay for clearer application. Family Medical Leave Act (FMLA) provisions are added to comply with the National Defense Authorization Act and redundancies are removed. Clarifying language is added to Workers' Compensation Leave. Nonsubstantive changes are also made to correct punctuation and to comply with rulemaking style.

SUMMARY OF THE RULE OR CHANGE: In Section R477-7-4, confusing language is replaced with clarifying language and proper terminology. In Subsection R477-7-6(3), provisions limited to calendar year 2007 are deleted and "Program I" is inserted where appropriate. In Section R477-7-10, language was added to clarify that employees need have official military orders to receive paid military leave. Travel time was also inserted in compliance with Section 39-3-1. In Subsection R477-7-13(1), a sentence regarding continuous leave without pay was moved to Subsection R477-7-13(2)(a) and clarification language was added to Subsection R477-7-13(3)(b) regarding the definition of one year. Provisions are added to Section R477-7-15 regarding FMLA to address qualifying exigencies and family members of service members. Old Subsection R477-7-15(6)(b) was deleted as unnecessary. In Section R477-7-16, concerning Workers' Compensation language is added to clarify time frames as beginning on the last day worked in the "employee's regular position".

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 34-43-103, 49-9-203, 63-13-2, 67-19-6, 67-19-12.9, 67-19-14, 67-19-14.2, and 67-19-14.4

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Provisions added to FMLA could present significant cost to agencies as these provisions expand FMLA eligibility to service members and their families. Certain provisions also permit up to six months FMLA leave which would impact agency budgets. Other changes are administrative and add clarifying language only with no significant anticipated budget impact.

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AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.
R477-7. Leave.
R477-7-3. Annual Leave.

(1) An employee eligible for annual leave shall accrue leave based on the following years of state service:

(a) less than 5 years -- four hours per pay period;

(b) at least 5 and less than 10 years -- five hours per pay period;

(c) at least 10 and less than 20 years --six hours per pay period;

(d) 20 years or more -- seven hours per pay period.

(2) The accrual rate for an employee rehired to a position which receives leave benefits shall be based on all state employment in which the employee was eligible to accrue leave.

(3) The first eight hours of annual leave used by an employee in the calendar leave year shall be the employee's personal preference day.

(4) Agency management shall allow every employee the option to use annual leave each year for at least the amount accrued in the year.

(5) Unused accrued annual leave time in excess of 320 hours shall be forfeited during year end processing for each calendar year.

(6) The maximum annual leave accrual rate shall be granted to a certain employee under the following conditions:

(a) an employee described in Section 67-22-2, an employee in schedule AB, and agency deputy directors and division directors appointed to career service exempt positions.

(b) an employee who is schedule A, FLSA exempt and who has a direct reporting relationship to an elected official, executive director, deputy director, commissioner or board.

(c) The maximum accrual rate shall be effective from the day the employee is appointed through the duration of the appointment. Employees in these positions on July 1, 2003, shall have the leave accrual rate adjusted prospectively.

(d) The employee may not be eligible for any transfer of leave from other jurisdictions.

(e) Other provisions of leave shall apply [~~as defined in~~]under Section R477-7-1.

R477-7-4. Sick Leave.

(1) An employee shall accrue sick leave with pay in proportion to the time paid each pay period, not to exceed four hours. Sick leave shall accrue without limit.

(2) 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, children or parents living in the employee's home; or

(b) FMLA purposes under Section R477-7-15.

(3) Agency management may grant exceptions for other unique medical situations.

(4) An employee shall arrange for a telephone report to supervisors at the beginning of the scheduled workday 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) After filing a resignation notice, an employee must support a sick leave request with a [~~doctor's~~]health care provider's certificate.

(7) [~~An employee separating from state service may not receive compensation for accrued unused sick leave unless retiring.~~]Unless retiring, an employee separating from state employment shall forfeit any unused sick leave without compensation.

(a) [~~An employee who is rehired within 12 months of separation to a position that receives sick leave benefits shall have previously accrued unused sick leave credit reinstated.~~]An employee rehired within one year of separation shall have forfeited sick leave reinstated as Program II sick leave.

(b) An employee who retires from state service and is rehired may not reinstate [~~unused~~]forfeited sick leave[~~-credit~~].

R477-7-5. Converted Sick Leave.

An employee may convert sick leave hours to converted sick leave after the end of the last pay period of the calendar year in which the employee is eligible.

(1)(a) Converted sick leave hours accrued prior to January 1, 2006 shall be [~~p~~]Program I converted sick leave hours.

(b) Converted sick leave hours accrued after January 1, 2006 shall be [~~p~~]Program II converted sick leave hours.

(2) To be eligible, an employee must have accrued a total of 144 hours or more of sick leave in [~~p~~]Program I and [~~p~~]Program II combined at the beginning of the first pay period of the calendar year.

(a) At the end of the last pay period of a calendar year in which an employee is eligible, all unused sick leave hours accrued that year in excess of 64 shall be converted to [~~p~~]Program II converted sick leave.

(b) The maximum hours of converted sick leave an employee may accrue in [~~p~~]Program I and [~~p~~]Program II combined is 320.

(c) If the employee has the maximum accrued in converted sick leave, these hours will be added to the annual leave account balance.

(d) In order to prevent or reverse the conversion, an employee shall:

(i) notify agency management no later than the last day of the last pay period of the calendar year in order to prevent the conversion; or

(ii) notify agency management no later than the end of February in order to reverse the conversion.

(e) Upon separation, an eligible employee may convert any unused sick leave hours accrued in the current calendar leave year in excess of 64 to converted sick leave hours in [~~p~~]Program II.

(3) An employee may use converted sick leave as annual leave or as regular sick leave.

(4) Upon retirement, 25 percent of the value of the unused converted sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employee's 401[-](k) account as an employer contribution.

(a) Converted sick leave hours from [~~p~~]Program II shall be placed in the 401[-](k) account before hours from [~~p~~]Program I.

(b) The remainder shall be used for:

(i) the purchase of health care insurance and life insurance [~~as provided in~~]under Subsection R477-7-6(3)(c) if the converted sick leave was accrued in [~~p~~]Program I ; or

(ii) a contribution into the employees PEHP health reimbursement account [~~as provided in~~]under Subsection R477-7-6(4)(b) if the converted sick leave was accrued in [~~p~~]Program II.

R477-7-6. Sick Leave Retirement Benefit.

Upon retirement from active employment, an employee shall receive an unused sick leave retirement benefit under [~~the provisions of~~]Sections 67-19-14.2 and [~~Section~~]67-19-14.4.

(1)(a) Sick leave hours accrued prior to January 1, 2006 shall be [~~p~~]Program I sick leave hours.

(b) Sick leave hours accrued after January 1, 2006 shall be [~~p~~]Program II sick leave hours.

(2) An agency may offer the Unused Sick Leave Retirement Option Program I to an employee who is eligible to receive retirement benefits. However, any decision whether or not to participate in this program shall be agency wide and shall be consistent through an entire fiscal year.

(a) If an agency decides to withdraw for the next fiscal year after initially deciding to participate, the agency must notify all employees at least 60 days before the new fiscal year begins.

(3) An employee in a participating agency shall receive the following benefit provided by the Unused Sick Leave Retirement Options Program I.

(a) Continuing health and life insurance.

(i) The employing agency shall provide the same health and life insurance benefits as provided to current employees until the employee reaches the age eligible for Medicare or up to the following number of years, whichever comes first.[

~~(A) four years if the employee retires during calendar year 2007;~~]

([~~B~~]A) three years if the employee retires during calendar year 2008:

([~~C~~]B) two years if the employee retires during calendar year 2009:

([~~D~~]C) one year if the employee retires during calendar year 2010; or

([~~E~~]D) zero years if the employee retires after calendar year 2010.

(ii) 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.

(iii) Life insurance provided shall be the minimum authorized coverage provided for all state employees at the time the employee retires.

(iv) The retiree shall pay the same percentage of the premium as a current employee on the same plan. The premium amount shall be determined from the approved PEHP retiree rate and not the active employee rates.

(b) Twenty five percent of the value of the unused sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employees 401(k) account as an employer contribution.

(i) Sick leave hours from [~~p~~]Program II shall be placed in the 401(k) account before hours from [~~p~~]Program I.

(ii) After the 401(k) contribution is made, an additional amount shall be deducted from the employees remaining Program I sick leave balance as follows.[

~~(A) 384 hours if the employee retires during calendar year 2007;~~]

([~~B~~]A) 288 hours if the employee retires during calendar year 2008;

([~~C~~]B) 192 hours if the employee retires during calendar year 2009;

([~~D~~]C) 96 hours if the employee retires during calendar year 2010; or

([~~E~~]D) zero hours if the employee retires after calendar year 2010.

(c) The remaining Program I sick leave hours and converted sick leave hours from Subsection R477-7-5(4)(b)(i) shall be used to provide the following benefit.

(i) The purchase of PEHP health insurance, or a state approved program, and life insurance coverage for the employee until he reaches the age eligible for Medicare.

(A) Health insurance shall be the same coverage carried by the employee at the time of retirement; i.e., family, two-party, or single.

(B) The purchase rate shall be eight hours of sick leave or converted sick leave for the state paid portion of one month's premium.

(C) The employee shall pay the same percentage of the premium as a current employee on the same plan. The premium amount shall be determined from the approved PEHP retiree rate and not the active employee rates.

(D) Life insurance provided shall be the minimum authorized coverage provided for state employees at the time the employee retires.

(ii) When the employee reaches the age eligible for Medicare, he may purchase a Medicare supplement policy provided by PEHP for himself at the rate of eight hours of sick leave or converted sick leave for one month's premium.

(iii) After the employee reaches the age eligible for Medicare, he may purchase PEHP health insurance, or a state approved program for a spouse until the spouse reaches the age eligible for Medicare.

(A) The purchase rate shall be eight hours of sick leave or converted sick leave for one month's premium.

(B) The employee shall pay the same percentage of the premium as a current employee on the same plan. The premium amount shall be determined from the approved PEHP retiree rate and not the active employee rates.

(iv) When the spouse reaches the age eligible for Medicare, the employee may purchase a Medicare supplement policy provided by PEHP for the spouse at the rate of eight hours of sick leave or converted sick leave for one month's premium.

(v) 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~~]under Section 67-19-14.3.

(4) An employee shall receive the following benefit provided by the Unused Sick Leave Retirement Option Program II.

(a) Twenty five percent of the value of the unused sick leave, but not to exceed Internal Revenue Service limitations, shall be placed in the employee's 401(k) account as an employer contribution.

(b) After the 401(k) contribution the remaining sick leave hours and the converted sick leave hours from Subsection R477-7-5(4)(b)(ii) shall be deposited in the employees PEHP health reimbursement account at the greater of:

(i) the employees rate of pay at retirement, or

(ii) the average rate of pay of state employees who retired in the same retirement system in the previous calendar year.

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.

(iv) administrative leave given as a reward in lieu of cash may be given from one agency to employees of another agency if both agency heads agree in advance.

(d) student educational assistance.

(e) An employee who satisfies the criteria in this subsection shall be granted up to two hours of administrative leave to vote in an official election.

(i) The employee must:

(A) have fewer than three total hours off the job between the time the polls open and close, and;

(B) apply for the time in the previous 24 hours.

(ii) Management may specify the hours when the employee may be absent.

(f) Administrative leave shall be given for non-performance based purposes to employees who are on Family and Medical Leave or a military leave of absence if the leave would have been given had the employee been in a working status.

(2) With the exception of administrative leave used as a reward, [~~as described in~~]under Subsection 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) An employee is entitled to a leave of absence with full pay when, in obedience to a subpoena or direction by proper authority, the employee is required to:

(a) appear as a witness as part of the employee's position for the federal government, the State of Utah, or a political subdivision of the state; or

(b) serve as a witness in a grievance hearing [~~as provided in~~]under Section 67-19-31 and Title 67, Chapter 19a; or

(c) serve on a jury.

(2) An employee who is absent in order to litigate in matters unrelated to state employment shall use eligible accrued leave or leave without pay.

(3) An employee choosing to use paid 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.

R477-7-10. Military Leave.

[~~One day of military leave is the equivalent to the employee's normal workday but not to exceed eight hours.~~

~~(1)~~]An employee who is a member of the National Guard or Military Reserves and is on official military orders is entitled to paid military leave not to exceed [~~15 days~~]120 hours each [~~per~~]calendar year, including travel time, under Section 39-3-1.

(1) An employee [~~shall be on official military orders and~~]may not claim salary for nonworking 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 official military orders, including travel time, Section 39-3-1.~~

~~(a)~~]An employee may use any combination of military leave, accrued leave or leave without pay under Section R477-7-13[~~while on official military orders~~].

(i) Accrued sick leave may only be used if the reason for leave meets the conditions in Section R477-7-4.

(3) An employee on military leave is eligible for any service awards or non-performance administrative leave he would otherwise be eligible to receive.

(4) An employee shall give notice of official military orders as soon as possible.

(5) Upon release from official military orders under honorable conditions, an employee shall be placed in a position in the following order of priority.

(a) If the period of service was for less than 91 days, the employee shall be placed:

(i) in the same position the employee held on the date of the commencement of the service in the uniformed services; or

(ii) in the same position the employee would have held if the continuous employment of the employee had not been interrupted by the service.

(b) If the period of service was for more than 90 days, the employee shall be placed:

(i) in a position of like seniority, status and salary, of the position the employee held on the date of the commencement of the service in the uniformed services; or

(ii) in a position of like seniority, status, and salary the employee would have held if the continuous employment of the employee had not been interrupted by the service.

(c) When a disability is incurred or aggravated while on official military orders, the employing agency shall adhere to the Uniformed Services Employment and Reemployment Rights Act (USERRA), United States Code, Title 38, Chapter 43.

(d) The cumulative length of time allowed for reemployment may not exceed five years. This rule incorporates by reference 20CFR1002.103 for the purposes of calculating cumulative time.

(e) An employee is entitled to reemployment rights and benefits including increased pension and leave accrual. An employee entering military leave may elect to have payment for annual leave deferred.

(6) In order to be reemployed, an employee shall present evidence of military service, and:

(a) for service less than 31 days, return at the beginning of the next regularly scheduled work period on the first full day after release from service unless impossible or unreasonable through no fault of the employee;

(b) for service of more than 30 days but less than 181 days, submit a request for reemployment within 14 days of release from service, unless impossible or unreasonable through no fault of the employee; or

(c) for service of more than 180 days, submit a request for reemployment within 90 days of release from service.

R477-7-13. Leave of Absence Without Pay.

(1) An employee shall apply in writing to agency management for approval of a leave of absence without pay.[~~Approval may be granted for continuous leave for up to 12 months from the last day worked.~~]

(a) The employee shall be entitled to previously accrued annual and sick leave.

(b) If unable to return to work within the time period granted, the employee shall be separated from state employment unless prohibited by state or federal law to include but not limited to the Americans with Disabilities Act.

(2) Nonmedical Reasons

(a) Approval may be granted for continuous leave for up to one year from the last day worked.

([~~a~~]b) 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~~]c) 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~~]d) 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~~]e) An employee who returns to work on or before the expiration of leave without pay shall be placed in a position with comparable pay and seniority to the previously held position.

(3) Medical Reasons

(a) An employee who is ineligible for FMLA, Workers Compensation, or Long Term Disability may be granted continuous, reduced or intermittent leave without pay for medical reasons.

(b) Medical leave without pay may be granted for no more than [~~12 months~~]one year from the last day worked. 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.

R477-7-15. Family and Medical Leave.

(1) An employee is entitled to 12 weeks of family and medical leave each calendar year for any of the following reasons:

(a) birth of a child;

(b) adoption of a child;

(c) placement of a foster child;

(d) a serious health condition of the employee; or

(e) care of a spouse, dependent child, or parent with a serious medical condition.

(f) A qualifying exigency arising as a result of a spouse, son, daughter or parent being on active duty or having been notified of an impending call or order to active duty in the Armed Forces.

(2) An employee is entitled to 26 weeks of family and medical leave during a calendar year to care for a spouse, son, daughter, parent or next of kin who is a recovering service member as defined by the National Defense Authorization Act.

[~~(2)~~](3) An employee on FMLA leave shall continue to receive the same health insurance benefits the employee was receiving prior to the commencement of FMLA leave.

[~~(3)~~](4) An employee on FMLA leave shall receive any administrative leave given for non-performance based reasons if the leave would have been given had the employee been in a working status.

[~~(4)~~](5) To be eligible for family and medical leave, the employee must:

(a) be employed by the state for at least [~~12 months~~]one year;

(b) be employed by the state for a minimum of 1250 hours worked, as determined under FMLA, during the 12 month period immediately preceding the commencement of leave.

[~~(5)~~](6) When an employee chooses to use FMLA leave, the employee or an appropriate spokesperson, shall apply in writing for the initial leave and when the reason for requesting family medical leave changes:

(a) thirty days in advance for foreseeable needs; or

(b) as soon as possible in emergencies.

[~~(6)~~](7) An employee may use accrued annual leave, sick leave, converted sick leave, excess hours and compensatory time prior to going into leave without pay status for the family and medical leave period.

([~~a~~]8) An employee who chooses to use FMLA leave shall use FMLA leave for all absences related to that qualifying event.

[~~(b) An employee who takes family and medical leave in a leave without pay status must comply with Section R477-7-13.~~

~~(7)~~](9) Any period of leave without pay for an employee with a serious health condition who is determined by a health care provider to be incapable of applying for Family and Medical Leave and has no agent or designee shall be designated as FMLA leave.

[~~(8)~~](10) An employee with a serious health condition covered under workers' compensation may use FMLA leave concurrently with the workers' compensation benefit.

[~~(9)~~](11) An employee shall be eligible to return to work under Section R477-7-13.

(a) If an employee has gone into leave without pay status and fails to return to work after FMLA leave has ended, an agency may recover, with certain exceptions, the health insurance premiums paid by the agency on the employee's behalf. An employee is considered to have returned to work if the employee returns for at least 30 calendar days.

(b) Exceptions to this provision include:

(i) an FLSA exempt and schedule AB, AD and AR employee who has been denied restoration upon expiration of their leave time;

(ii) an employee whose circumstances change unexpectedly beyond the employee's control during the leave period preventing the return to work at the end of 12 weeks.

[~~(10)~~](12) Leave taken for purposes of childbirth, adoption, placement for adoption or foster care [~~shall~~]may not be taken

intermittently or on a reduced leave schedule unless the employee and employer mutually agree.

[~~(11)~~](13) Medical records created for purposes of FMLA and the Americans with Disabilities Act must be maintained in accordance with confidentiality requirements of Subsection R477-2-5(7).

R477-7-16. Workers Compensation Leave.

(1) An employee may use accrued leave benefits to supplement the workers compensation benefit.

(a) The combination of leave benefit and workers compensation benefit [~~shall~~]may not exceed the employee's gross salary. Leave benefits shall only be used in increments of one hour in making up any difference.

(b) The use of accrued leave to supplement the worker compensation benefit shall be terminated if:

(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) 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 able to return to work within one year of the last day worked in the employee's regular position, the agency shall place the employee in the previously held position or a similar position at a comparable salary range.

(5) If the employee is unable to return to work within [~~12 months~~]one year of the last day worked in the employee's regular position, the employee shall be separated from state employment unless prohibited by state or federal law to include but not limited to the Americans with Disabilities Act.

(6) An employee who files a fraudulent workers compensation claim shall be disciplined [~~according to the provisions of~~]under Rule R477-11.

R477-7-17. Long Term Disability Leave.

(1) An employee who 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 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 may use available sick and converted sick leave. When those balances are exhausted, an employee may use other leave balances available.

(b) An employee determined eligible for Long Term Disability benefits shall be eligible for health insurance benefits the day after the last day worked. The employee is responsible for 10% of the health insurance premium during the first year of disability, 20% during the second year of disability, and 30% thereafter until the employee is no longer covered by the long term disability program.

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 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 health and life insurance [~~as provided in~~]under Subsection 67-19-14(2)(b)(ii).

(v) Unused sick leave balance shall remain intact until the employee retires. At retirement, the employee shall be eligible for the 401(k) contribution and the purchase of health and life insurance [~~as provided in~~]under Subsection 67-19-14(2)(c)(i).

(2) 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 provides an administratively acceptable medical release allowing him to return to work within one year of the last day worked, the agency shall place the employee in the previously held position or similar position in a comparable salary range provided the employee is able to perform the essential functions of the job with or without a reasonable accommodation.

(b) 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 unless prohibited by state or federal law to include but not limited to the Americans with Disabilities Act.

(4) An employee who files a fraudulent long term disability claim shall be disciplined [~~according to the provisions of~~]under Rule R477-11.

R477-7-19. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to [~~the provisions of~~]this rule consistent with Subsection R477-2-3(1).

KEY: holidays, leave benefits, vacations
Date of Enactment or Last Substantive Amendment: [~~July 1, 2007~~]2008
Notice of Continuation: June 29, 2007
Authorizing, and Implemented or Interpreted Law: 34-43-103; 49-9-203; 63-13-2; 67-19-6; 67-19-12.9; 67-19-14; 67-19-14.2; 67-19-14.4

Human Resource Management, Administration
R477-8
Working Conditions

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31193
FILED: 04/25/2008, 09:34

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These amendments add language to allow agency management flexibility in establishing work schedules, lunch, and break periods. Unnecessary language is deleted and some language is moved or replaced for clarity. Changes are made to time reporting in order to comply with labor standards. Temporary Transitional Assignments are redefined for consistency and a new section on background checks has been added for increased security accountability. Nonsubstantive changes are also made to comply with rulemaking style.

SUMMARY OF THE RULE OR CHANGE: Language is added to Subsection R477-8-1(1)(a) to permit flexibility in the beginning and end date of the workweek. Language is changed in Section R477-8-4 permitting but not requiring management to enforce a minimum 30-minute noncompensated lunch period. In Section R477-8-5, overtime year choices are moved earlier in the paragraph for clarity and the phrase "when an employee transfers" is replaced with "upon assignment" in reference to lapsing compensatory time. In Subsection R477-8-5(7)(a), changes required compliance with time record completion and approval from FLSA nonexempt employees to all employees. Subsection R477-8-5(7)(d) is deleted because it is covered earlier in the section. In Subsection R477-8-5(10)(d), a fifth criterion is added for when excess hours may be paid out. In Section R477-8-9, Temporary Transitional Assignment is reworded slightly and "disability or medical restrictions" is replaced by "health restrictions". Transitional assignments for health reasons is separated and renumbered from other reasons to distinguish a difference. In Subsection R477-8-9(2)(d), redundant language is removed. Section R477-8-12 is added to the rule to introduce provisions for background check policies.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-19-6, 67-19-6.7, and 20A-3-103

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Background checks will increase costs for the state. It is anticipated that the security concerns will be a net savings, however. All other changes are administrative adjustments without any anticipated budgetary impact.
❖ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local governments.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This rule only affects the executive brand of state government and will have no impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule only affects agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business. Jeff Herring, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
Room 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
J.J. Acker or Tina Sweet at the above address, by phone at 801-537-9096 or 801-538-3761, by FAX at 801-538-3081 or 801-538-3081, or by Internet E-mail at jacker@utah.gov or tinasweet@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.
R477-8. Working Conditions.
R477-8-1. 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. If approved for a flexible work schedule the beginning and ending date of the workweek may be different from the standard.

(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~~]Section R477-8-[~~6~~]5.

(c) An employee may negotiate for flexible starting and quitting times with the immediate supervisor as long as scheduling is consistent with overtime provisions of [~~the rules~~]Section R477-8-[~~6~~]5.

(d) Agencies may implement alternative work schedules approved by the Director.

(e) An employee is required to be at work on time. An employee who 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 salary for hours worked and overtime hours worked. This rule incorporates by reference 29 CFR 785.48 for rounding practices when calculating time worked.

R477-8-4. Lunch and Break Periods.

(1) Management may require[~~Each full-time work day shall include~~] a minimum of 30 minutes noncompensated lunch period.[~~This lunch period is normally scheduled between 11:00 a.m. and 1:00 p.m. for a regular day shift.~~]

(2) An employee may take a 15 minute compensated break period for every four hours worked.

(3) [~~Lunch and b~~]Break periods [~~shall~~]may not be [~~adjusted or~~]accumulated to accommodate a shorter work day or longer lunch period.[~~Any exceptions must be approved in writing by the Executive Director, DHRM.~~]

R477-8-5. 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 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) An employee may appeal the FLSA designation to the agency human resource field 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, 67-19a-301 and Title 63, Chapter 46b [~~shall~~]may not [~~apply~~]be applied for FLSA appeals purposes.

(3) An FLSA nonexempt employee may not work more than 40 hours a week without management approval. Overtime shall accrue when the employee actually works more than 40 hours a week. Leave and holiday time taken within the work period [~~shall~~]may not be counted as hours worked when calculating overtime accrual. Hours worked over two or more weeks [~~shall~~]may not be averaged with the exception of certain types of law enforcement, fire protection, and correctional employees.

(a) An FLSA nonexempt employee shall sign a prior overtime agreement authorizing management to compensate the employee for overtime worked by actual payment or time off at time and one half.

(b) An FLSA nonexempt employee may receive compensatory time for overtime up to a maximum of 80 hours. Only with prior approval of the Executive Director, DHRM, may compensatory time accrue up to 240 hours for regular employees or up to 480 hours for peace or correctional officers, emergency or seasonal employees. Once an employee reaches the maximum, additional overtime shall be paid on the payday for the period in which it was earned.

(4) An FLSA exempt employee may not work more than 80 hours in a pay period without management approval. Compensatory time shall accrue when the employee actually works more than 80 hours in a work period. Leave and holiday time taken within the work period may not count as hours worked when calculating compensatory time. Each agency shall compensate an FLSA exempt employee who works overtime by granting time off. For each hour of overtime worked, an FLSA exempt employee shall accrue an hour of compensatory time.

(a) Agencies shall establish in written policy a uniform overtime year either for the agency as a whole or by [~~division~~]unit number and communicate it to employees. Overtime years shall be set at one of the following pay periods: Five, Ten, Fifteen, Twenty, or the last pay period of the calendar year. If an agency fails to establish a uniform overtime year, the Executive Director, DHRM, and the Director of Finance, Department of Administrative Services, will [~~determine~~]establish 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. An agency may change the established overtime year only after the current overtime year has lapsed, unless justifiable reasons exist and the Executive Director, DHRM, has granted a written exception.

(b) Any compensatory time earned by an FLSA exempt employee is not an entitlement, a benefit, nor a vested right.

(c) Any compensatory time earned by an FLSA exempt employee shall lapse upon occurrence of any one of the following events:

(i) at the end of the employee's established overtime year;

(ii) [~~when an employee transfers~~]upon assignment to another agency; or

(iii) when an employee terminates, retires, or otherwise does not return to work before the end of the overtime year.

(d) If an FLSA exempt employee's status changes to nonexempt, that employee's compensatory time earned while in exempt status shall lapse if not used by the end of the current overtime year.

(e) The agency head may approve overtime for career service exempt deputy and division directors, but overtime [~~shall~~]may not be compensated with actual payment. Schedule AB employees [~~shall~~]may not be compensated for compensatory time except with time off.

(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 shall be paid down to zero in the same pay period that the employee is transferred from one agency to a different agency, promoted, reclassified, reassigned, or transferred to an FLSA exempt position. The pay down for unused compensatory time balances shall be based on the employee's hourly rate of pay in the old position.

(7) Time Reporting

(a) [~~An FLSA nonexempt e~~]Employees shall[~~must~~] complete and sign a state approved biweekly time record that accurately reflects the hours actually worked, including:

(i) approved and unapproved overtime;

(ii) on-call time;

(iii) stand-by time;

(iv) meal periods of public safety and correctional officers who are on duty more than 24 consecutive hours; and

(v) approved leave time.

(b) An employee who fails to accurately record time [~~shall~~]may be disciplined.

(c) Time records developed by the agency shall have the same elements of the state approved time record and be approved by the Department of Administrative Services, Division of Finance.

[~~(d) An FLSA exempt employee who works more than 80 hours in a work period must record the total hours worked and the compensatory time used on a biweekly time record. All hours must be recorded in order to claim overtime. Completion of the time record is at agency discretion when no overtime is worked during the work period.~~

~~——~~]([~~e~~]d) A Supervisor who directs an employee to submit an inaccurate time record or knowingly approves an inaccurate time record shall be disciplined.

([~~f~~]e) A Non-exempt employee who believes FLSA rights have been violated may submit a complaint directly to the Executive Director, or designee, of the Department of Human Resource Management.

(8) Hours Worked: An FLSA nonexempt employee shall be compensated for all hours worked. An employee who works unauthorized overtime may be disciplined.

(a) All time that an FLSA nonexempt employee is required to wait for an assignment while on duty, before reporting to duty, or before performing activities is counted towards hours worked.

(b) Time spent waiting after being relieved from duty is not counted as hours worked if one or more of the following conditions apply:

(i) the employee arrives voluntarily before their scheduled shift and waits before starting duties;

(ii) the employee is completely relieved from duty and allowed to leave the job;

(iii) the employee is relieved until a definite specified time;

(iv) the relief period is long enough for the employee to use as the employee sees fit.

(c) On-call time: 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 a 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~~]pager 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: An employee restricted to stand-by at a specified location ready for work must be paid full-time or overtime, as appropriate. An employee must be paid for stand-by time if required to stand by the post ready for duty, even during lunch periods, equipment breakdowns, or other temporary work shutdowns.

(e) 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.

(9) Commuting and Travel Time for FLSA exempt and nonexempt employees:

(a) Normal commuting time from home to work and back [~~shall~~]may not count towards hours worked.

(b) Time an employee spends traveling from one job site to another during the normal work schedule shall count towards hours worked.

(c) Time an employee spends traveling on a special one day assignment shall count towards hours worked except meal time and ordinary home to work travel.

(d) Travel that keeps an employee away from home overnight does not count towards hours worked if it is time spent outside of regular working hours as a passenger on an airplane, train, boat, bus, or automobile.

(e) 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.

(10) Excess Hours for FLSA exempt and nonexempt employees: An employee may use excess hours the same way as annual leave.

(a) Agency management shall approve excess hours before the work is performed.

(b) Agency management may deny the use of any leave time, other than holiday leave, that results in an employee accruing excess hours.

(c) An employee may not accumulate more than 80 excess hours.

(d) Agency management may pay out excess hours under one of the following:

(i) paid off automatically in the same pay period accrued;

(ii) paid off at any time during the year as determined appropriate by a state agency or division;

(iii) all hours accrued above the limit set by DHRM;[~~or~~]

(iv) upon request of the employee and approval by the agency head; or

(v) upon assignment from one agency to another.

R477-8-6. 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~~]under Subsection R477-9-2(1).

R477-8-9. Temporary Transitional Assignment.

[~~Temporary transitional assignments may be part of any of the following:~~

~~——~~](1) Agency management may place an employee in a temporary transitional assignment when an employee is unable to perform essential job functions due to temporary [~~disability or medical~~]health restrictions[~~:~~].

(2) Temporary transitional assignments may also be part of any of the following:

([~~2~~]a) when management determines that there is a direct threat to the health or safety of self or others;

([~~3~~]b) in conjunction with an internal investigation, corrective action, performance or conduct issues, or discipline;

([~~4~~]c) where there is a bona fide occupational qualification for retention in a position;

([~~5~~]d) [~~as a temporary measure~~]while an employee is being evaluated to determine if reasonable accommodation is appropriate.

R477-8-11. Agency Policies and Exemptions.

(1) Each agency [~~shall~~]may write its own policies for work schedules, overtime, leave usage, and other working conditions consistent with these rules.

(2) The Executive Director, DHRM, may authorize exceptions to this rule, consistent with Subsection R477-2-2(1).

R477-8-12. Background Checks.

In order to protect the citizens of the State of Utah and state resources and with the approval of the agency head, agencies may establish background check policies requiring specific employees to submit to a criminal background check through the Department of Public Safety, Bureau of Criminal Identification.

(1) Agencies who have statewide responsibility for confidential information, sensitive financial information, or handle state funds may require employees to submit to a background check, including employees who work in other state agencies.

(2) The cost of the background check will be the responsibility of the employing agency.

KEY: breaks, telecommuting, overtime, dual employment
Date of Enactment or Last Substantive Amendment: [~~January 22~~], 2008
Notice of Continuation: June 9, 2007
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-6.7; 20A-3-103

♦ ——— ♦

Human Resource Management, Administration

R477-9

Employee Conduct

NOTICE OF PROPOSED RULE

(Amendment)
DAR FILE NO.: 31194
FILED: 04/25/2008, 09:35

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments add clarifying language and align Conflict of Interest rule with the Governor's Executive Order of 02/14/2007. Language is changed to specify new procedures for employees interested in filing for candidacy for a partisan Office. This aligns with the federal Hatch Act and establishes clear guidelines regarding the state's and employee's responsibilities. Nonsubstantive changes are also made to comply with rulemaking style.

SUMMARY OF THE RULE OR CHANGE: In Subsection R477-9-1(5), the word "personal" is inserted to clarify what is meant by current mailing address. Subsection R477-9-3(3) is changed to reflect language found in the Governor's Executive Order on Ethics of 2007 and eliminates exceptions for receipt of gifts or honoraria in accordance with the order. Section R477-9-4 is changed by iterating federal Hatch Act restrictions and adding procedural steps for employees to follow if they desire to file for candidacy for a partisan political office. The section also outlines dismissal consequences for violating these rules.

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

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is no direct budget impact to the state from these amendments as they merely outline administrative and procedural processes required for employees to comply with.

❖ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This rule only affects the executive brand of state government and will have no impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule only affects agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business. Jeff Herring, Executive Director

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

HUMAN RESOURCE MANAGEMENT
ADMINISTRATION
Room 2120 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:

J.J. Acker or Tina Sweet at the above address, by phone at 801-537-9096 or 801-538-3761, by FAX at 801-538-3081 or 801-538-3081, or by Internet E-mail at jacker@utah.gov or tinasweet@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.
R477-9. Employee Conduct.
R477-9-1. Standards of Conduct.

An employee shall comply with the standards of conduct established in these rules and the policies and rules established by agency management.

(1) Employees shall apply themselves to and shall fulfill their assigned duties during the full-time for which they are compensated.

(a) An employee shall:

(i) comply with the standards established in the individual performance plans;

(ii) maintain an acceptable level of performance and conduct on all other verbal and written job expectations;

(iii) report conditions and circumstances, including controlled substances or alcohol impairment, that may prevent the employee from performing their job effectively and safely;

(iv) inform the supervisor of any unclear instructions or procedures.

(2) An employee shall make prudent and frugal use of state funds, equipment, buildings, and supplies.

(3) An employee who reports for duty or attempts to perform the duties of the position while under the influence of alcohol or nonprescribed controlled substances shall be subject to corrective action or discipline in accordance with Section R477-10-2, Rule R477-11 and R477-14.

(a) The agency may decline to defend and indemnify an employee found violating this rule, in accordance with Subsection 63-30-36(c)(ii) of the Utah Governmental Immunity Act.

(4) An employee [~~shall~~]may not drive a state vehicle[~~,~~] or any other vehicle, on state time, while under the influence of alcohol or controlled substances.

(a) An employee who violates this rule shall be subject to corrective action or discipline [~~pursuant to~~]under Section R477-10-2, Rules R477-11 and R477-14.

(b) The agency may decline to defend or indemnify an employee who violates this rule, according to Subsection 63-30-36(3)(c)(i) of the Utah Governmental Immunity Act.

(5) An employee shall provide the agency with a current personal mailing address.

(a) The employee shall notify the agency in writing of any change in address.

(b) Mail sent to the current address on record shall be deemed to be delivered for purposes of these rules.

R477-9-3. 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~~]may not use his state position or any influence, power, authority or confidential information received in that position, or state time, equipment, property, or supplies for private gain.

(3) An employee [~~shall~~]may not accept economic benefit tantamount to a gift, under Section 67-16-5 and the Governor's Executive Order on Ethics dated February 14, 2007, or other compensation that might be intended to influence or reward the employee in the performance of official business.[~~receive outside compensation for performing state duties, except for the following:~~

~~(a) Gifts or compensation defined in the Governor's Executive Order on Ethics dated February 14, 2007; or~~

~~(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.~~]

(4) An employee shall declare a potential conflict of interest when required to do or decide something that could be interpreted as a conflict of interest. Agency management shall then excuse the employee from making decisions or taking actions that may cause a conflict of interest.

R477-9-4. Political Activity.

A state career service employee may voluntarily participate in political activity, except as restricted by this section or [~~according to the provisions in this rule or other federal laws. The employee shall comply with the provisions of~~]the federal Hatch Act, 5 U.S.C. Sec. 1501 through 1508.[~~The following rules apply to a career service employee in any salary range and position.~~]

(1) The federal Hatch Act restricts the political activity of state government employees who work in connection with federally funded programs.

(a) State employees in positions covered by the Hatch Act may run for public office in nonpartisan elections, campaign for and hold office in political clubs and organizations, actively campaign for candidates for public office in partisan and nonpartisan elections, contribute money to political organizations, and attend political fundraising functions.

(b) State employees in positions covered by the federal Hatch Act may not be candidates for public office in a partisan election, use official authority or influence to interfere with or affect the results of an election or nomination, or directly or indirectly coerce contributions from subordinates in support of a political party or candidate.

(c) Prior to filing for candidacy, a state employee who is considering running for a partisan office shall submit a statement of intent to become a candidate to the agency head.

(i) The agency head shall consult with DHRM.

(ii) DHRM shall determine whether the employee's intent to become a candidate is covered under the Hatch Act.

(iii) Employees in violation of section R477-9-4(1)(c) shall be disciplined up to termination of their employment.

(d) If a determination is made that the employee's position is covered by the Hatch Act, the employee may not run for a partisan political office.

(i) If it is determined that that the employee's position is covered by the Hatch Act, the state shall dismiss the employee if the employee files for candidacy.

([~~1~~]2) Any state career service employee elected to any partisan or full-time nonpartisan political office shall be granted a leave of absence without pay while being monetarily compensated for service in political office. An employee [~~shall~~]may not [~~receive~~]use annual leave while serving in a political office.

([~~2~~]3) 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 may voluntarily contribute to any party or any candidate.

([~~3~~]4) Decisions regarding employment, promotion, demotion or dismissal or any other human resource actions [~~shall~~]may not be based on partisan political activity.

([4]5) 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 who is restricted or prevented from engaging in political activity through the provisions of the federal Hatch Act. Agency management shall dismiss any employee whose employment is found to be in violation of the provisions of this law by the Merit Systems Protection Board.~~]

R477-9-7. Policy Exceptions.

The Executive Director, DHRM, may authorize exceptions to [~~the provisions of~~]this rule, consistent with Subsection R477-2-2(1).

KEY: conflict of interest, government ethics, Hatch Act, personnel management
Date of Enactment or Last Substantive Amendment: [~~July 1, 2007~~]2008
Notice of Continuation: June 9, 2007
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-19

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Human Resource Management, Administration
R477-10
Employee Development

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31195
FILED: 04/25/2008, 09:37

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments clarify intent and simplify language regarding required time frames for employee performance evaluations. Amendments also eliminate the need for employees to sign performance plans, corrective action plans, or written warnings, also removing the discipline penalty for refusal to sign. Changes expand the conditions under which agencies can require employees to repay educational assistance in order to prevent lost investment. Unnecessary language is also removed. Nonsubstantive changes are also made to comply with rulemaking style.

SUMMARY OF THE RULE OR CHANGE: In Subsection R477-10-1(1)(a), the date intended to be the last day of August is changed from 30 to 31. Subsection R477-10-1(2) is reworded to clarify which dates a performance plan is due. Subsection R477-10-1(3) is deleted, no longer requiring employees to sign evaluations. In Subsection R477-10-2(1), the requirement for employees to sign a corrective action plan or written warning is removed along with the associated penalty. In Subsection R477-10-5(1)(c), a new subsection is added to permit agencies to require employees to repay educational assistance if they transfer to another state agency within one year of completing educational work. Subsection R477-10-5(3) is deleted because it pertains only to law enforcement and is best articulated by agency policy rather than rule.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-19-6 and 67-19-12.4

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Changes to educational assistance rules permit agencies to recoup funds they may have invested in employees who leave agency employment within one year following their studies. This may be a significant cost containment for some agencies who suffer post-education turn over from employees who transfer to other agencies. All other changes are administrative and do not significantly impact state budgets.

❖ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This rule only affects the executive brand of state government and will have no impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule only affects agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business. Jeff Herring, Executive Director

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:
Tina Sweet or J.J. Acker at the above address, by phone at 801-538-3761 or 801-537-9096, by FAX at 801-538-3081 or 801-538-3081, or by Internet E-mail at tinasweet@utah.gov or jacker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.
R477-10. Employee Development.
R477-10-1. Performance Evaluation.

Agency management shall develop an employee performance management system consistent with these rules and subject to approval by the Executive Director, DHRM. The Executive Director, DHRM, may authorize exceptions to [~~provisions of~~]this rule consistent with Section R477-2-2. For this rule, the word employee refers to a career service employee, unless otherwise indicated.

(1) An acceptable performance management system shall satisfy the following criteria:

(a) Performance standards and expectations for each employee shall be specifically written in a performance plan by August 3[~~0~~]1 of each fiscal year.

(b) Managers or supervisors provide employees with regular verbal and written feedback based on the standards of performance and conduct outlined in the performance plan.

(c) Each employee shall be informed concerning the actions to be taken, time frames, and the supervisor's role in providing assistance to improve performance and increase the value of service.

(d) Each employee shall have the right to include written comment with his performance evaluation.

(e) Agency management shall select a performance management rating system or a combination of systems by August 31 to be effective for the entire fiscal year. The rating system shall be one or more of the following:

TABLE

SYSTEM	#	RATING	POINTS
1		Pass	2
		Fail	0
2		Exceptional	3
		Successful	2
		Unsuccessful	0
3		Exceptional	3
		Highly Successful	2.5
		Successful	2
		Unsuccessful	0
4		Exceptional	3
		Highly Successful	2.5
		Successful	2
		Marginal	1
		Unsuccessful	0

(2) Each fiscal year a state employee shall receive a performance evaluation effective on or before the beginning of the first pay period of [~~each fiscal year~~]the following fiscal year.

(a) A probationary employee shall receive an additional performance evaluation at the end of the probationary period[~~and again prior to the beginning of the first pay period of the fiscal year~~].

[~~(3) The employee shall sign the evaluation. Signing the evaluation only means that the employee has reviewed the evaluation. Refusal to sign the evaluation shall constitute insubordination, subject to discipline.~~

——]([~~a~~]b) The evaluation form shall include a space for the employee's comments. The employee may comment in writing, either in the space provided or on a separate attachment.

R477-10-2. Corrective Action.

When an employee's performance does not meet established standards due to failure to maintain skills, incompetence, or inefficiency, and after consulting with DHRM, agency management may take appropriate, and documented corrective action in accordance with the following rules:

(1) The supervisor shall discuss the substandard performance with the employee and determine appropriate corrective action.[~~ If a formal corrective action plan is developed or a written warning issued, the employee shall sign the plan or the warning to certify that it has been reviewed. Refusal to sign the corrective action plan or warning shall constitute insubordination subject to discipline.~~]

(2) An employee shall have the right to submit written comment to accompany the corrective action plan.

(3) Corrective action plans shall identify or provide for:

(a) a designated period of time for improvement;

(b) an opportunity for remediation;

(c) performance expectations;

(d) closer supervision to include regular feedback of the employee's progress;

(e) notice of disciplinary action for failure to improve; and,

(f) written performance evaluation at the conclusion of the corrective action plan.

(4) Corrective action plans may also identify or provide for the following based on the nature of the performance issue:

(a) training;

(b) reassignment;

(c) use of appropriate leave;

(5) Following successful completion of corrective action, the supervisor shall notify the employee of disciplinary consequences for a recurrence of the deficient work performance.

R477-10-5. Education Assistance.

State agencies may assist an employee in the pursuit of educational goals by granting administrative leave to attend classes, a subsidy of educational expenses, or both.

(1) Prior to granting education assistance, agencies shall establish policies which shall include the following conditions:

(a) The educational program will provide a benefit to the state.

(b) The employee shall successfully complete the required course work or the educational requirements of a program.

(c) The employee shall agree to repay any assistance received if the employee resigns from state employment within [~~12 months~~]one year of completing educational work.

(i) Agencies may require the employee to repay any assistance received if the employee transfers to another agency within one year of completing educational work.

(d) Education assistance [~~shall~~]may not exceed $5,250 per employee in any one calendar year unless approved in advance by the agency head.

(e) The employee shall disclose all scholarships, subsidies and grant monies provided to the employee for the educational program.

(i) Except for funding that must be repaid by the employee, the amount reimbursed by the State may not include funding received from sources in Subsection R477-10-5(1)(e).

(2) Agency management shall be responsible for determining the taxable or nontaxable status of educational assistance reimbursements.[

~~(3) Agencies may offer educational assistance to law enforcement and correctional officers consistent with section 67-19-12.2 and with these criteria:~~

~~(a) The program shall comply with Subsections R477-10-5(1) and R477-10-5(2).~~

~~(b) The program shall be published and available to all qualified employees. To qualify:~~

~~(i) The employee's job duties shall satisfy the conditions of subsection 67-19-12.2(1).~~

~~(ii) The employee shall have completed probation.~~

~~(iii) The employee shall maintain a grade point average of at least 3.0 or equivalent from an accredited college or university.~~

~~(c) The program may provide additional compensation for an employee who completes a higher degree on or after April 30, 2001, in a subject area directly related to the employee's duties. If this policy is adopted, then:~~

~~(i) Two steps shall be given for an associate's degree.~~

~~(ii) Two steps shall be given for a bachelor's degree.~~

~~(iii) Two steps shall be given for a master's degree.~~]

KEY: educational tuition, employee performance evaluations, employee productivity, training programs
Date of Enactment or Last Substantive Amendment: [~~July 1, 2007~~]2008
Notice of Continuation: June 9, 2007
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-12.4

♦ ♦

Human Resource Management, Administration
R477-11
Discipline

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31209
FILED: 04/25/2008, 13:29

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: These amendments add language to release agency heads from being bound by disciplinary decisions made prior to their administration. Nonsubstantive changes are also made to comply with rulemaking style, replace terms for consistency, and to correct references.

SUMMARY OF THE RULE OR CHANGE: Subsection R477-11-3(1)(a)(i) is added to release agency heads from being bound by disciplinary decisions made prior to their administration when considering the type and severity of discipline in a current situation.

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 rule is administrative and has no direct budget impact, but has the potential to reduce liability due to grievances.

❖ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This rule only affects the executive branch of state government and will have no impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule only affects agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business. Jeff Herring, Executive Director

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:
Tina Sweet or J.J. Acker at the above address, by phone at 801-538-3761 or 801-537-9096, by FAX at 801-538-3081 or 801-538-3081, or by Internet E-mail at tinasweet@utah.gov or jacker@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.
R477-11. Discipline.
R477-11-1. Disciplinary Action.

(1) Agency management may discipline any employee for any of the following causes or reasons:

(a) noncompliance with these rules, agency or other applicable policies, including but not limited to safety policies, agency professional standards, standards of conduct and workplace policies;

(b) work performance that is inefficient or incompetent;

(c) failure to maintain skills and adequate performance levels;

(d) insubordination or disloyalty to the orders of a superior;

(e) misfeasance, malfeasance, 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 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 shall receive a reduction in the current actual wage.

(ii) A demotion within the employee's current salary range may be accomplished by lowering the employee's current actual wage, 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 Section R477-11-2.

(4) If agency management determines that a career service employee endangers or threatens the peace and safety of others or poses a grave threat to the public service or is charged with aggravated or repeated misconduct, the agency may impose the following actions, [~~as provided by~~]under Subsection 67-19-18(4), pending an investigation and determination of facts:

(a) paid administrative leave; or

(b) temporary reassignment to another position or work location at the same current actual wage.

(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 [~~Sections~~]Subsection R477-10-2(3)(e) and Section R477-11-1, and through the process outlined in this rule.

(1) An agency head or appointing officer may dismiss or demote a probationary employee or career service exempt employee without right of appeal. Such dismissal or demotion may be for any reason or for no reason.

(2) No career service employee shall be dismissed or demoted from a career service position unless the agency head or designee has

observed the Grievance Procedure Rules and law cited in Section R137-1-13 and Title 67, Chapter 19a, and the following procedures:

(a) The agency head or designee shall notify the employee in writing of the specific reasons for the proposed dismissal or demotion.

(b) The employee shall have up to five working days to reply. The employee must reply within five working days for the agency head or designee to consider the reply before discipline is imposed.

(c) The employee shall have an opportunity to be heard by the agency head or designee. The hearing before the [~~department~~]agency head or designee shall be strictly limited to the specific reasons raised in the notice of intent to demote or dismiss.

(i) At the hearing the employee may present, either in person, in writing, or with a representative, comments or reasons as to why the proposed disciplinary action should not be taken. The agency head or designee is not required to receive or allow other witnesses on behalf of the employee.

(ii) The employee may present documents, affidavits or other written materials at the hearing. However, the employee is not entitled to present or discover documents within the possession or control of the department or agency that are private, protected or controlled under Title 63, Chapter 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 place an employee on paid administrative leave pending the administrative appeal to the agency head.

R477-11-3. Discretionary Factors.

(1) When deciding the specific type and severity of discipline, the agency head or representative may consider the following factors:

(a) consistent application of rules and standards;

(i) the agency head or representative need only consider those cases decided under the administration of the current agency head. Decisions in cases prior to the administration of the current agency head are not binding upon the current agency head and are not relevant in determining consistent application of rules and standards.

(b) prior knowledge of rules and standards;

(c) the severity of the infraction;

(d) the repeated nature of violations;

(e) prior disciplinary/corrective actions;

(f) previous oral warnings, written warnings and discussions;

(g) the employee's past work record;

(h) the effect on agency operations;

(i) the potential of the violations for causing damage to persons or property.

KEY: discipline of employees, dismissal of employees, grievances, government hearings
Date of Enactment or Last Substantive Amendment: [~~July 1, 2006~~]2008
Notice of Continuation: June 9, 2007
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-18; 63-2

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Human Resource Management, Administration
R477-12
Separations

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31210
FILED: 04/25/2008, 13:29

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments are made to clarify terms and to remove the unnecessary requirement for an employee to sign a waiver of appeal rights regarding a reduction in force (RIF). Nonsubstantive changes are also made to simplify terms and comply with rulemaking style.

SUMMARY OF THE RULE OR CHANGE: In Subsection R477-12-3(9)(d), the requirement for a RIF'd employee to sign a waiver of appeal rights is removed because it is unnecessary.

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: These changes are administrative and do not directly impact state budgets.

❖ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This rule only affects the executive branch of state government and will have no impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule only affects agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business. Jeff Herring, Executive Director

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INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.
R477-12. Separations.
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 categories of work, agency management shall develop a work force adjustment plan (WFAP). A career service employee 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;

(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) An employee covered by USERRA and in a leave without pay status must be identified, assigned retention points, and notified of the RIF of the previous position in the same manner as a career service employee.

(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) 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~~]under Subsection 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 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) temporary employees;

(b) probationary employees;

(c) career service employees with the lowest retention 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) An employee, including one covered under USERRA in a leave without pay status, who 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. Section 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 [~~12 months~~]one year from the date of separation, unless reappointed sooner.

(b) During a statewide mandated freeze on hiring wherein the Governor disallows increases in each agency's budgeted 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 career service salary range to the current career service salary range maximum step is required. A RIF'd individual shall have RIF rights to any vacant position for which he qualifies. The basis for comparison shall be:

(i) The current salary range of a vacant position if it is equal to or lesser than the individual's previous salary range, or;

(ii) If the maximum step of the position previously held by the RIF'd individual has moved upward, the new range shall be used.

(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 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) A career service employee in an exempt position. 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~~]under these rules, shall be placed on the 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 salary 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.

(d) Prior to termination and in lieu of placement on the reappointment register, management may [~~place~~]reassign an employee [~~in~~]to a vacant career service position consistent with Subsection R477-12-3(7)(c) for which he qualifies.[~~- A memorandum of understanding waiving all appeal rights concerning the reassignment shall be signed by the employee.~~]

R477-12-4. Exceptions.

The Executive Director, DHRM, may authorize exceptions to [~~provisions of~~]this rule consistent with Subsection R477-2-2(1).

KEY: administrative procedures, employees' rights, grievances, retirement
Date of Enactment or Last Substantive Amendment: [~~July 1, 2007~~]2008
Notice of Continuation: June 9, 2007
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-17; 67-19-18

♦ ♦

Human Resource Management, Administration
R477-15
Unlawful Harassment Policy and Procedure

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31208
FILED: 04/25/2008, 13:29

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Amendments update language with present terminology, remove redundancies, and reorder and outline information for better clarity concerning harassment and discrimination. Nonsubstantive changes are also made to comply with rulemaking style.

SUMMARY OF THE RULE OR CHANGE: Rule R477-15 is renamed Workforce Harassment Policy and Discrimination and the term "workforce harassment" replaces "unlawful harassment" where appropriate in the rule. Subsections R477-15-1(2), R477-15-2(1), and R477-15-2(3) are removed as they are redundant. In the new Subsection R477-15-2(2), the option of corrective action is removed from consequences for harassment and additional criteria are outlined. Subsections R477-15-2(5) and (6) and R477-15-3(2)(a) through (i) are removed because they are unnecessary. In Section R477-15-4, language is added to direct management in handling harassment complaints. In Subsection R477-15-4(2)(b) the word "verbal" is replaced by "oral". In Section R477-15-5 language is replaced with more succinct procedures for management to follow for investigative procedures. In Section R477-15-6 record keeping standards and procedures are revised and language subsections are reordered for clarity. Subsections R477-15-6(2) and R477-15-6(6) are removed because they are unnecessary.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 67-19-6 and 67-19-18, and Governor's Executive Order on Prohibiting Unlawful Harassment, dated 12/13/2006

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The changes to this rule are administrative and present no direct impact to state budgets.

❖ LOCAL GOVERNMENTS: This rule only affects the executive branch of state government and will have no impact on local governments.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This rule only affects the executive branch of state government and will have no impact on other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This rule only affects agencies of the executive branch of state government.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Rules published by the Department of Human Resource Management (DHRM) have no direct effect on businesses or any entity outside state government. DHRM has authority to write rules only to the extent allowed by the Utah Personnel Management Act, Title 67, Chapter 19. This act limits the provisions of career service and these rules to employees of the executive branch of state government. The only possible impact may be a very slight, indirect effect if an agency passes costs or savings on to business through fees. However, it is anticipated that the minimal costs associated with these changes will be absorbed by agency budgets and will have no effect on business. Jeff Herring, Executive Director

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INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Jeff Herring, Executive Director

R477. Human Resource Management, Administration.
R477-15. [~~Unlawful~~]Workforce Harassment Policy and Procedure.
R477-15-1. Purpose.

It is the State of Utah's policy to[~~:~~

~~(1)~~] provide all employees a working environment that is free from unlawful discrimination and harassment based on race, religion, national origin, color, sex, age, disability, or protected activity under state and federal law.[~~the anti-discrimination statute; and~~

~~(2) comply with state and federal laws regarding discrimination based on unlawful harassment.~~]

R477-15-2. Policy.

[~~(1) Unlawful harassment means discriminatory treatment based on race, religion, national origin, color, sex, age, protected activity or disability. Discrimination based on unlawful harassment will not be tolerated. Violators shall be subject to corrective action or disciplined and may be referred for criminal prosecution. Discipline may include termination of employment.~~

~~(~~]([~~2~~]1) [~~Unlawful~~]Workplace harassment includes the following subtypes:

(a) behavior or conduct in violation of [~~Subs~~]Section R477-15-[~~2(1)~~]1 that is unwelcome, pervasive, demeaning, ridiculing, derisive, or coercive, and results in a hostile, offensive, or intimidating work environment;

(b) behavior or conduct in violation of [~~Subs~~]Section R477-15-[~~2(1)~~]1 that results in a tangible employment action being taken against the harassed employee.

[~~(3) The imposition of corrective action and discipline is governed by Section R477-10-2 and Rule R477-11.~~

~~(~~]([~~4~~]2) An employee shall be subject to [~~corrective action or~~]discipline up to and including termination of employment for [~~unlawful~~]workplace harassment towards another employee[~~, even if that harassment occurs outside of scheduled work time or work location,~~] provided that the harassment meets the requirements of [~~Subs~~]Section R477-15-[~~2(2)~~]1[~~.~~], even if:

(a) the harassment is not sufficiently severe to warrant a finding of unlawful harassment, or

(b) the harassment occurs outside of scheduled work time or work location.

(3) Once a complaint has been filed, the accused may not communicate with the complainant regarding allegations of harassment.[

~~(5) Individuals affected by alleged unlawful harassment may, but shall not be required to, confront the accused harasser before filing a complaint.~~

~~(6) Once a complaint has been filed, the accused shall not communicate with the complainant regarding allegations of harassment.~~]

R477-15-3. Retaliation.

(1) No person may retaliate against any employee who opposes a practice forbidden under this policy, or has filed a charge, testified, assisted or participated in any manner in an investigation, proceeding or hearing under this policy, or is otherwise engaged in protected activity.

(2) Any act of retaliation toward the complainant, witnesses or others involved in the investigation shall be subject to [~~corrective action or~~]disciplinary action.[~~Prohibited actions include:~~

~~(a) open hostility to complainant, participant or others involved;~~

~~(b) exclusion or ostracism of the complainant, participant or others;~~

~~(c) creation of or the continued existence of a hostile work environment;~~

~~(d) discriminatory remarks about the complainant, participant or others;~~

~~(e) special attention to or assignment of the complainant, participant or others to demeaning duties not otherwise performed;~~

~~(f) tokenism or patronizing behavior;~~

~~(g) discriminatory treatment;~~

~~(h) subtle harassment; or~~

~~(i) unreasonable supervisory imposed time restrictions on employees in preparing complaints or compiling evidence of unlawful harassment activities or behaviors.~~]

R477-15-4. Complaint Procedure.

Management shall permit individuals[~~Individuals~~] affected by [~~unlawful~~]workplace harassment [~~may~~]to file complaints and engage in an administrative process free from bias, collusion, intimidation or retaliation. Complainants shall be provided a reasonable amount of work time to prepare for and participate in internal complaint processes.

(1) Individuals who feel they are being subjected to [~~unlawful~~]workplace harassment should do the following:

(a) document the occurrence;

(b) continue to report to work; and

(c) identify a witness, if applicable.

(2) An employee may file an oral or written complaint of [~~unlawful~~]workplace harassment with their immediate supervisor, any other supervisor within their direct chain of command, or the [~~agency human resource office or the~~] Department of Human Resource Management, including the agency human resource field office.

[~~(3) Any complaint of unlawful harassment shall be acted upon following receipt of the complaint.~~

~~——~~](a) Complaints may be submitted by any individual, witness, volunteer or other employee.

(b) Complaints may be made through either [~~verbal~~]oral or written notification and shall be handled in compliance with confidentiality guidelines.

(c) Any supervisor who has knowledge of [~~unlawful~~]workplace harassment shall take immediate, appropriate action and document the action.

(3) All complaints of workplace harassment shall be acted upon following receipt of the complaint.

(4) If an immediate investigation by [~~the~~]agency management is [~~not~~]deemed unwarranted, the complainant shall be notified.[~~a meeting shall be held with the complainant, the supervisor or manager of the appropriate division, and others as appropriate to communicate the findings and management's resolution of the complaint.~~]

R477-15-5. Investigative Procedure.

(1) Preliminary reviews and formal investigations shall be conducted by qualified individuals based on DHRM standards and business practices.[~~The investigative procedures established by agencies shall allow the complainant to make specific requests relating to the investigation process and about the person or persons who will conduct the investigation. The agency shall attempt to comply with these requests, but may take whatever action necessary and appropriate to resolve the complaint.~~

~~(2) Preliminary reviews and investigations must be conducted in accordance with procedures issued by the Department of Human Resource Management.~~]

([~~3~~]2) Results of Investigation

(a) If the investigation [~~reveals that disciplinary action is warranted, the~~]finds the allegations to be sustained, agency [~~head~~]management shall take appropriate action [~~as provided in~~]under Rule R477-11.

(b) If an investigation reveals evidence of criminal conduct in [~~unlawful~~]workplace harassment allegations, the agency head or Executive Director, DHRM, may refer the matter to the[~~Attorney General's Office or County or District Attorney as appropriate.~~]appropriate law enforcement agency.

(c) At the conclusion of the investigation,[~~If an investigation of unlawful harassment reveals that the accusations are unfounded,~~] the findings shall be documented[~~, the investigation terminated,~~] and the appropriate parties notified.[

~~(d) Investigations shall be conducted by qualified individuals based on DHRM standards.~~]

R477-15-6. Records.

(1) A separate [~~protected~~]confidental file[~~record~~] of all [~~unlawful~~]workplace harassment complaints shall be maintained and stored in the agency['~~s~~] human resource field office, [~~DHRM office~~]or in the possession of an authorized official.[~~Removal or disposal of records in the protected file may only be done with the approval of the agency head or Executive Director, DHRM, and only after minimum timelines specified herein have been met. Records shall be kept for: a minimum of three years from the resolution of the complaint or investigative proceeding.~~]

(a) Removal or disposal of these files shall only be done with the approval of the agency head or Executive Director, DHRM.

(b) Files shall be retained in accordance with the retention schedule after the active case ends.

[~~(2) Supervisors shall not keep separate files related to complaints of unlawful harassment.~~

~~——~~](([~~3~~]c) All information contained in the complaint file shall be classified as protected [~~pursuant to~~]under [~~requirements of~~]Section 63-2-304, Government Records Access and Management Act.

([~~4~~]d) Information contained in the [~~unlawful~~]workplace harassment [~~protected~~]file shall only be released by the agency head or Executive Director, DHRM, when [~~in compliance with the requirements of~~]required by law.

(2) Supervisors may not keep separate files related to complaints of workplace harassment.

([~~5~~]3) Participants in any [~~unlawful~~]workplace harassment proceeding shall treat all information pertaining to the case as confidential, [~~protected~~].[

~~(6) Final disposition of unlawful harassment cases shall be communicated to appropriate parties.~~]

R477-15-7. Training.

(1) Agencies shall comply with the [~~Unlawful~~]Workplace Harassment Prevention Training Standards [~~set~~]established by DHRM. As a minimum, these shall contain:

(a) course curriculum standards;

(b) training presentation requirements;

(c) trainer qualifications; and

(d) training records management criteria.

KEY: administrative procedures, hostile work environment
Date of Enactment or Last Substantive Amendment: [~~July 3, 2001~~]2008
Notice of Continuation: June 9, 2007
Authorizing, and Implemented or Interpreted Law: 67-19-6; 67-19-18; Governor's Executive Order on Prohibiting Unlawful Harassment, December 13, 2006

♦ ——————————————— ♦

Human Services, Substance Abuse and Mental Health

R523-23-9

Alcohol Training and Education Seminar Provider Standards

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31166
FILED: 04/21/2008, 09:55

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment is being proposed to ensure that all websites administering online training materials to alcohol servers are secure, thus providing proper protection of personal information for trainees. Secure websites will also provide assurances that the integrity of the testing and certification processes has not been compromised.

SUMMARY OF THE RULE OR CHANGE: The division has added the requirement that all online training courses be provided on a secure website.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 62A-15-401(5)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This requirement is imposed on service agencies that provide online server training and does not increase or decrease the cost to the state for monitoring and certifying online training organizations.

❖ LOCAL GOVERNMENTS: Certification of online training agencies is not a function of local governments; therefore, cost or savings for this amendment would not be incurred.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This amendment only applies to online alcohol server training organizations and will have no effect on small businesses in general. A cost will be incurred if the company applying for certification is a small business. The division is not able to identify a cost or even an approximation. The Department of Technology Services has been consulted on possible costs, and the division was informed that the creation of a secure web site could start at $2,000, but the type of program used to create the site and the cost of hiring or using in-house programmers make it impossible to establish a reliable average cost. There is also no way of knowing how many online training companies will seek certification within the state or nationwide that are small businesses and would be affected by this change in rule, so providing an aggregate cost is not possible.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This requirement will impact the cost of developing an online server training program for internet service agencies that are seeking certification and do not already have a secure website. The division is not able to identify a cost or even an approximation. The Department of Technology Services has been consulted on possible costs, and the division was informed that the creation of a secure web site could start at $2,000, but the type of program used to create the site and the cost of hiring or using in-house programmers make it impossible to establish a reliable average cost. Currently, no certified online training companies are out of compliance with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department of Human Services acknowledges that this amendment could impose a cost for website development on Utah businesses seeking certification for online training, but which do not have a secure website on which to provide those services. Reasonable steps have been taken to ascertain an approximate cost, but due to the nature of website development, a reliable average cost cannot be provided for this filing. Lisa-Michele Church, Executive Director

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

HUMAN SERVICES
SUBSTANCE ABUSE AND MENTAL HEALTH
Room 209
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Thom Dunford at the above address, by phone at 801-538-4519, by FAX at 801-538-9892, or by Internet E-mail at TDUNFORD@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Mark I Payne, Director

R523. Human Services, Substance Abuse and Mental Health.
R523-23. On-Premise Alcohol Training and Education Seminar Rules of Administration.
R523-23-9. Alcohol Training and Education Seminar Provider Standards.

(1) The Division may certify an applicant who has a program course that:

(a) does not have a history of liquor law violations or any convictions showing disregard for laws related to being a responsible liquor provider;

(b) identifies all program instructors and instructor trainers and certifies in writing that they have been trained to present the course material and that they have not been convicted of a felony or of any violation of the laws or ordinances concerning alcoholic beverages, within the last five years;

(c) agrees to notify the Division in writing of any changes in instructors and submit the assurances called for in Subsection R523-23-9(1)(b) for all new instructors;

(d) can show adequate facilities, instructional equipment and materials, personnel, and financial resources to provide a successful program for the length of time the license is in effect; and

(e) will establish and maintain course completion records.

(2) All online training courses shall be provided on a secure website.

KEY: substance abuse, server training
Date of Enactment or Last Substantive Amendment: [~~January 30, 2007~~]2008
Notice of Continuation: June 22, 2007
Authorizing, and Implemented or Interpreted Law: 62A-15-401

Human Services, Substance Abuse and Mental Health
R523-24-7
Approved Curriculum

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31164
FILED: 04/21/2008, 09:52

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: Some beverages are not labeled as "beer," but still contain alcohol thus making them illegal for a minor to purchase and consume. This amendment is being proposed to ensure that all individuals who sell alcohol for off-premise consumption are aware of labeling and which beverages contain alcohol.

SUMMARY OF THE RULE OR CHANGE: This amendment will require all service agencies that provide training for retail clerks who sell alcohol to the public to provide information that will help retail clerks to recognize all beverages containing alcohol, and provided examples of those beverages.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 62A-15-401(5)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This requirement is imposed on service agencies that provide train for retail clerks who sell alcohol to the public and does not increase or decrease costs to the state for monitoring or certifying these organization.

❖ LOCAL GOVERNMENTS: Certification of training agencies is not a function of local governments; therefore, a cost for this amendment would not be incurred.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This amendment only applies to organizations seeking certification to train retail clerks who sell alcohol to the public and will have no effect on small businesses in general. A cost may be incurred if the company applying for certification is a small business. The division is not able to identify an aggregate cost but does recognize that time to research laws regulating alcohol sales in retail stores and time developing the curriculum might be required. The amendment mandates training on all types of alcoholic beverages available for purchase in retail stores, not all labels, so the list of beverages would be very limited. Companies providing this training should already have that list, and incorporating the information and examples into their curriculum should be a simple task.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This amendment may impose a cost for the development of a curriculum that meets program standards. The division is not able to estimate the cost to each provider agency, but anticipates the cost to be a onetime occurrence with simple yearly updates based on legislative action that would increase or decrease the types of alcoholic beverages allowed to be sold in retail stores for off premise consumption.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This amendment may impose a cost to businesses seeking trainer certification from the Division of Substance Abuse and Mental Heath for the development of a curriculum that meets program standards. The department is not able to estimate this cost but does recognize that time to research laws regulating alcohol sales in retail stores and time developing the curriculum might be required. Lisa-Michele Church, Executive Director

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

HUMAN SERVICES
SUBSTANCE ABUSE AND MENTAL HEALTH
Room 209
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Thom Dunford at the above address, by phone at 801-538-4519, by FAX at 801-538-9892, or by Internet E-mail at TDUNFORD@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Mark I Payne, Director

R523. Human Services, Substance Abuse and Mental Health.
R523-24. Off Premise Retailer (Clerk, Licensee and Manager) Alcohol Training and Education Seminar Rules of Administration.
R523-24-7. Approved Curriculum.

(1) Each provider must have a curriculum approved by the Division. This curriculum must provide at least sixty minutes of classroom instruction both for original certification and for any and all re-certifications. The contents of an approved curriculum shall include the following components:

(a) alcohol as a drug;

(b) alcohol's effect on the body and behavior including education on the effects of alcohol on the developing youth brain, which information shall be provided by the Division;

(c) recognizing the problem drinker or signs of intoxication;

(d) an overview of state laws related to responsible beverage sale as determined in consultation with the Department of Alcoholic Beverage Control, which information shall be provided by the Division;

(e) statistics identifying the underage drinking problem, which information provided by the Division;

(f) discussion of criminal and administrative penalties for salesclerks and retail stores for selling beer to underage and intoxicated persons;

(g) strategies commonly used by minors to gain access to alcohol;

(h) process for checking ID, for example the FLAG system: Feel Look, Ask, Give Back);

(i) policies and procedures to prevent beer purchases by intoxicated individuals;[~~ and~~]

(j) techniques for declining a sale including rehearsal and practice of these techniques using face-to-face role play[~~-~~]; and

(k) recognition of beverages containing alcohol including examples of such beverages.

KEY: off-premise, training, seminars
Date of Enactment or Last Substantive Amendment: [~~August 22, 2006~~]2008
Authorizing, and Implemented or Interpreted Law: 62A-15-401

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Human Services, Substance Abuse and Mental Health

R523-24-9

Alcohol Training and Education Seminar Provider Standards

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31165
FILED: 04/21/2008, 09:54

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This amendment is being proposed to ensure that all websites administering online training materials to retail clerks that sell alcohol for off-premise use are secure, thus providing proper protection of personal information for trainees. Secure websites will also provide assurances that the integrity of the testing and certification processes has not been compromised.

SUMMARY OF THE RULE OR CHANGE: The division has added the requirement that all online training courses be provided on a secure website.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsection 62A-15-401(5)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This requirement is imposed on service agencies that provide online server training and does not increase or decrease the cost to the state for monitoring and certifying online training organizations.

❖ LOCAL GOVERNMENTS: Certification of online training agencies is not a function of local governments; therefore, cost or savings for this amendment would not be incurred.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This amendment only applies to online alcohol server training organizations and will have no effect on small businesses in general. A cost will be incurred if the company applying for certification is a small business. The division is not able to identify a cost or even an approximation. The Department of Technology Services has been consulted on possible costs, and the division was informed that the creation of a secure web site could start at $2,000, but the type of program used to create the site and the cost of hiring or using in-house programmers make it impossible to establish a reliable average cost. There is also no way of knowing how many online training companies will seek certification within the state or nationwide that are small businesses and would be affected by this change in rule, so providing an aggregate cost is not possible.

COMPLIANCE COSTS FOR AFFECTED PERSONS: This requirement will impact the cost of developing an online server training program for internet service agencies that are seeking certification and do not already have a secure website. The division is not able to identify a cost or even an approximation. The Department of Technology Services has been consulted on possible costs, and the division was informed that the creation of a secure web site could start at $2,000, but the type of program used to create the site and the cost of hiring or using in-house programmers make it impossible to establish a reliable average cost. Currently, no certified online training companies are out of compliance with this amendment.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The Department of Human Services acknowledges that this amendment could impose a cost for website development on Utah businesses seeking certification for online training, but which do not have a secure website on which to provide those services. Reasonable steps have been taken to ascertain an approximate cost, but due to the nature of website development, a reliable average cost cannot be provided for this filing. Lisa-Michele Church, Executive Director

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

HUMAN SERVICES
SUBSTANCE ABUSE AND MENTAL HEALTH
Room 209
120 N 200 W
SALT LAKE CITY UT 84103-1500, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Thom Dunford at the above address, by phone at 801-538-4519, by FAX at 801-538-9892, or by Internet E-mail at TDUNFORD@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Mark I Payne, Director

R523. Human Services, Substance Abuse and Mental Health.
R523-24. Off Premise Retailer (Clerk, Licensee and Manager) Alcohol Training and Education Seminar Rules of Administration.
R523-24-9. Alcohol Training and Education Seminar Provider Standards.

(1) The Division may certify a provider applicant who:

(a) identifies all program instructors and instructor trainers and certifies in writing that they:

(i) have been trained to present the course material, and

(ii) that they have not been convicted of a felony or of any violation of the laws or ordinances concerning alcoholic beverages, within the past five years;

(b) agrees to notify the Division in writing of any changes in instructors and submit the assurances called for in Subsection R523-24-9(a) for all new instructors;

(c) can show adequate facilities, instructional equipment and materials, personnel, and financial resources to provide a successful program for the length of time the license is in effect; and

(d) will establish and maintain course completion records.

(2) All online training courses shall be provided on a secure website.

KEY: off-premise, training, seminars
Date of Enactment or Last Substantive Amendment: [~~August 22, 2006~~]2008
Authorizing, and Implemented or Interpreted Law: 62A-15-401

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Human Services, Recovery Services
R527-300
Income Withholding

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31158
FILED: 04/18/2008, 12:01

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This rule is being amended to add the section identifying the authority of the Office of Recovery Services (ORS) for rulemaking and the purpose of the rule and to correct two nonsubstantive citation errors.

SUMMARY OF THE RULE OR CHANGE: Section R527-300-1 is being added to provide the legal authority for rulemaking that has been granted to the Office of Recovery Services/Child Support Services (ORS/CSS) and a statement describing the purpose of this specific rule. The rest of the rule has been renumbered due to the addition of Section R527-300-1. The citation for Subsection 62A-11-401(5) has been updated to Subsection 62A-11-401(6). The citation for the implemented or interpreted law formerly found at Section 78-45f-506 has been updated to Section 78B-14-506 due to the recodification of Title 78 (H.B. 78 (2008)). The words "as cited in" have been added to Section R527-300-6 to clarify the reference to U.S. Code. (DAR NOTE: H.B. 78 (2008) is found at Chapter 3, Laws of Utah 2008, and was effective 02/07/2008.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-11-107, 62A-11-401, 62A-11-404, 62A-11-405, 62A-11-406, 62A-11-413, 62A-11-414, and 78B-14-506 (formerly 78-45f-506)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The proposed changes to the rule are for clarification purposes only and do not affect the current procedures; therefore, there are no anticipated costs or savings for any state programs due to this amendment.

❖ LOCAL GOVERNMENTS: Administrative rules of the ORS/CSS do not apply to local government; therefore, there are no anticipated costs or savings for any local businesses due to this amendment.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The proposed changes to the rule are for clarification purposes only and do not affect the current procedures; therefore, there are no anticipated costs or savings for small businesses due to this amendment. The proposed changes to the rule are for clarification purposes only and do not affect the current procedures; therefore, there are no anticipated costs or savings for persons other than businesses due to this amendment.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No person or entity affected by this rule should incur any additional costs as a result of the proposed changes because the basic procedures remain the same.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses are not addressed in the rule or the proposed changes and it is not anticipated the changes will create any fiscal impact on them. Lisa-Michele Church, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
RECOVERY SERVICES
515 E 100 S
SALT LAKE CITY UT 84102-4211, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Liesa Corbridge at the above address, by phone at 801-536-8986, by FAX at 801-536-8833, or by Internet E-mail at lcorbri2@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Mark Brasher, Director

R527. Human Services, Recovery Services.
R527-300. Income Withholding.
R527-300-1. Authority and Purpose.

1. Section 62A-11-107 requires that the Office of Recovery Services/Child Support Services (ORS/CSS) provide certain services and allows ORS/CSS to adopt, amend and enforce rules as needed to carry out its duties.

2. The purpose of this rule is to outline ORS/CSS procedures to determine when income withholding is appropriate, define the limits on income withholding, and specify how to contest and terminate income withholding actions.

R527-300-[~~1~~]2. Income Withholding Definition and Criteria.

1. Income withholding is defined as withholding child support from an obligor's income. The payor of income forwards the amount withheld to [~~the Office of Recovery Services/Child Support Services (~~]ORS/CSS[~~)~~].

2. Income withholding may be initiated in a IV-D case, with concurrent notice to the obligor:

a. in a case which has an order issued prior to October 13, 1990, which has not been modified since October 13, 1990, even though the obligor is not delinquent as defined in Section 62A-11-401([~~5~~]6) or R527-300-[~~2~~]3, if the obligor and the obligee have signed a subsequent agreement which the obligor has failed to meet; for example, while the order does not require payment by a specific date, there is a written agreement that payment will be made on the first day of each month, or

b. in a case which has an order issued or modified after October 13, 1990, which found a demonstration of good cause or entered a written agreement that immediate income withholding is not required, if the obligor and the obligee have signed a subsequent agreement which the obligor has failed to meet; for example, while the order does not require payment by a specific date, there is a written agreement that payment will be made on the first day of each month.

R527-300-[~~2~~]3. Determining Delinquency.

1. If current support has been ordered but is not presently in effect; for example, the children are 18 years old, the children have been adopted, custody has changed, or the obligor is paying current support to the obligee; delinquency has occurred when the obligor has accrued a debt in an amount equal to or greater than the previously ordered current support for one month.

2. If there was not a previous current support order but there is a judgment for arrears, delinquency has occurred when the obligor fails to pay as agreed, provided the judgment was for at least one month's current support amount used to compute the judgment for arrears. If the judgment was by default and the judgment amount was for at least one month's current support amount used to compute the judgment, income withholding may begin immediately upon entry of the judgment.

3. A delinquency could be the result of an underpayment for several months that totals at least one month's current support.

4. A delinquency can occur prior to the end of the month if the obligor was ordered to pay on specific days of the month and failed to do so.

R527-300-[~~3~~]4. Affidavit of Delinquency.

The Non-IV-A applicant prepares a month-by-month computation of the support debt, which is referred to as a statement of arrears. The statement of arrears is part of the application packet. As part of the statement of arrears, the applicant attests that the statement is true and accurate to the best knowledge and belief of the applicant. This signed statement shall satisfy the verified statement requirement of Section 62A-11-405.

R527-300-[~~4~~]5. Administrative Review.

1. Section 62A-11-405(2)(b)(ii)(B) requires the obligor to file a written request for review with the office within 15 days to contest withholding. This written request for review shall state the obligor's basis for contesting the withholding.

2. If an administrative review is conducted pursuant to Section 62A-11-405(3), the notice of decision required may be mailed or delivered to the obligor in the ordinary course of business.

R527-300-[~~5~~]6. Percentage of Income Subject To Withholding.

Section 62A-11-406 limits the total amount of the income withheld for child support to the maximum permitted under Section 303(b) of the Consumer Credit Protection Act as cited in 15 U.S.C. Section 1673(b). In general, income withholding will be limited to withholding 50% of the obligor's disposable income. However, if 50% does not result in withholding enough to cover the current support obligation, the office may review an obligor's circumstances under the provisions of the Consumer Credit Protection Act to determine whether a higher percentage is permitted.

R527-300-[~~6~~]7. Modification of Withholding Amounts.

1. Once a Notice to Withhold Income for Child Support has been sent to the obligor's payor of income, any changes to the withholding amount will be made by sending the payor a modified Notice to Withhold Income for Child Support. The obligor will be provided concurrent notice of any changes.

2. If the obligor changes from one payor of income to another payor of income, a new Notice to Withhold Income for Child Support must be sent to the new payor in accordance with ORS/CSS assessment procedures.

R527-300-[~~7~~]8. Income Withholding Termination.

1. Income withholding should be terminated if:

a. the obligor no longer has an obligation for current child support, and no longer has a debt to Utah or another state on whose behalf Utah is acting or to a Non-IV-A obligee on whose behalf Utah is acting;

b. the Non-IV-A obligee terminates the ORS/CSS case, income withholding was administratively implemented and the obligor no longer owes child support to Utah or other state on whose behalf Utah is acting, and the obligee does not want withholding to continue;

c. the obligor successfully contests the withholding which is currently in effect through the court or administrative review process. If income withholding was terminated based on a court or administrative order and the obligor later becomes delinquent, income withholding will be reinstated.

R527-300-[~~8~~]9. Contesting an Income Withholding Order Issued by Another State.

The Obligor may contest the validity or enforcement of an income-withholding order issued by another state in this state by registering and filing a contest to that order in the appropriate Utah court.

KEY: child support, income, wages
Date of Enactment or Last Substantive Amendment: [~~November 30, 2004~~]2008
Notice of Continuation: September 7, 2007

Authorizing, and Implemented or Interpreted Law: 62A-11-401; 62A-11-404; 62A-11-405; 62A-11-406; 62A-11-413; 62A-11-414; [~~78-45f-506~~]78B-14-506

Human Services, Recovery Services
R527-302
Income Withholding Fees

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31163
FILED: 04/21/2008, 08:38

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to add the office authority for creating this rule and the rule's purpose. Also to renumber Section 78-7-44 to Section 78A-2-216.

SUMMARY OF THE RULE OR CHANGE: The first section for this rule has been moved to Section R527-302-2 and the authority and purpose have been added to the first section. The reference to Section 78-7-44 within the rule has been amended to Section 78A-2-216.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-11-406 and 78A-2-216, and Rule 64D, Utah Rules of Civil Procedure

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The proposed changes to the rule are only to add the authority and purpose for this rule and do not affect the current procedures. Therefore, no additional financial impact on any state programs is anticipated.

❖ LOCAL GOVERNMENTS: There are no anticipated costs to the local government because administrative rules of the Office of Recovery Services/Child Support Services (ORS/CSS) do not apply to local government.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The proposed changes to the rule are only to add the authority and purpose for this rule and do not affect the current procedures; therefore, no additional financial impact is anticipated on small businesses.

The proposed changes to the rule do not affect the current procedures; therefore, no additional financial impact is anticipated on persons other than businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No person or entity affected by this rule should incur any additional costs as a result of the proposed changes because the procedures remain the same.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Passage of this proposed rule amendment will have no fiscal impact on local businesses. Lisa-Michele Church, Executive Director

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
HUMAN SERVICES
RECOVERY SERVICES
515 E 100 S
SALT LAKE CITY UT 84102-4211, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
LeAnn Wilber at the above address, by phone at 801-536-8950, by FAX at 801-536-8833, or by Internet E-mail at lwilber@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Mark Brasher, Director

R527. Human Services, Recovery Services.
R527-302. Income Withholding Fees.
R527-302-1. Purpose and Authority.

1. The Office of Recovery Services is authorized to create rules necessary for the provision of social services by Section 62A-1-107.

2. This rule establishes procedures for a payor of income to withhold a one-time fee to offset administrative costs incurred when processing a withholding order pursuant to Rule 64D, Subsection(d)(ii), Utah Rules of Civil Procedure, and Section 78A-2-216(1)(b).

R527-302-2. Income Withholding Fees.

1. When the Office of Recovery Services/Child Support Services (ORS/CSS) initiates income withholding against a payor of income for payment of an obligor's child support, the payor of income may deduct a one-time $25.00 fee to offset the administrative costs it incurs to process the withholding pursuant to Rule 64D, Subsection(d)(ii), Utah Rules of Civil Procedure, and Subsection [~~78-7-44~~]78A-2-216(1)(b), Utah Code.

2. A payor of income may choose to deduct the entire $25.00 in the first month of withholding, or, pursuant to Subsection 62A-11-406(4), Utah Code, a payor may choose to deduct the $25.00 in monthly increments (for example, $5.00 per month for 5 months) until the full amount has been deducted, provided the total amount withheld does not exceed the maximum amount permitted under Subsection 303(b) of the Consumer Credit Protection Act, 15 U.S.C. Subsection 1673(b).

KEY: child support, income withholding fees
Date of Enactment or Last Substantive Amendment: [~~December 3, 1999~~]
Notice of Continuation: April 21, 2004
Authorizing, Implemented or Interpreted Law: [~~Section~~]62A-11-406; [~~Section 78-7-44~~]78A-2-216; Rule 64D, Utah Rules of Civil Procedure

Human Services, Recovery Services
R527-475
State Tax Refund Intercept

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31162
FILED: 04/21/2008, 08:31

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to add the office authority for creating this rule and its purpose. Also to renumber Section 78-45-9.3 to Section 78B-12-112.

SUMMARY OF THE RULE OR CHANGE: The first section for this rule has been moved to Section R527-475-2 and the authority and purpose have been added to the first section. The word "taxes" has been added as a new keyword. The reference to Section 78-45-9.3 has been amended to Section 78B-12-112 due to the re-codification of Title 78 (H.B. 78 (2008)). (DAR NOTE: H.B. 78 (2008) is found at Chapter 3, Laws of Utah 2008, and was effective 02/07/2008.)

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 59-10-529 and 78B-12-112

ANTICIPATED COST OR SAVINGS TO:

- THE STATE BUDGET: The proposed changes to the rule are only to add the authority and purpose for this rule and do not affect the current procedures. Therefore, no additional financial impact on any state programs is anticipated.
- LOCAL GOVERNMENTS: There are no anticipated costs to the local government because administrative rules of the Office of Recovery Services/Child Support Services (ORS/CSS) do not apply to local government.
- SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The proposed changes to the rule are only to add the authority and purpose for this rule and do not affect the current procedures; therefore, no additional financial impact is anticipated on small businesses.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No person or entity affected by this rule should incur any additional costs as a result of the proposed changes because the procedures remain the same.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Passage of this proposed rule amendment will have no fiscal impact on local businesses. Lisa-Michelle Church, Executive Director

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

HUMAN SERVICES
RECOVERY SERVICES
515 E 100 S
SALT LAKE CITY UT 84102-4211, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
LeAnn Wilber at the above address, by phone at 801-536-8950, by FAX at 801-536-8833, or by Internet E-mail at lwilber@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Mark Brasher, Director

R527. Human Services, Recovery Services.
R527-475. State Tax Refund Intercept.
R527-475-1. Purpose and Authority.

1. The Office of Recovery Services is authorized to create rules necessary for the provision of social services by Section 62A-1-107.

2. This rule establishes procedures for the Office of Recovery Services/Child Support Services (ORS/CSS) to intercept a state tax refund to recover delinquent child support pursuant to Section 59-10-529(1).

R527-475-2. State Tax Refund Intercept.

1. [~~Pursuant to Section 59-10-529(1), the Office of Recovery Services/Child Support Services (ORS/CSS) may intercept a state tax refund to recover delinquent child support.~~]For a state tax refund to be intercepted, there must be an administrative or judicial judgment with a balance owing. An installment of child support is considered a judgment for purposes of Section 59-10-529 on and after the date it becomes due as provided in Section [~~78-45-9.3~~]78B-12-112.

2. State tax refunds intercepted will first be applied to current support, second to Non-IV-A arrearages, and third to satisfy obligations owed to the state and collected by ORS/CSS.

3. ORS/CSS shall mail prior written notice to the obligor who owes past-due support and the unobligated spouse that the state tax refund may be intercepted. The notice shall advise the unobligated spouse of his/her right to receive a portion of the tax refund if the unobligated spouse has earnings and files jointly with the obligor. If the unobligated spouse does not want his/her share of the tax refund to be applied to the obligated spouse's child support debt, the unobligated spouse shall make a written request and submit a copy of the tax return and W-2's to ORS/CSS at any time after prior notice, but in no case later than 25 days after the date ORS/CSS intercepts the tax refund. If W-2s are unavailable, ORS/CSS may use amounts of incomes as reported on the joint tax return. The unobligated spouse's portion of the joint tax refund will be prorated according to the percentage of income reported on the W-2 forms or the joint tax return for the tax year. If the unobligated spouse does not make a written request to ORS/CSS to obtain his share of the tax refund within the specified time limit, ORS/CSS shall not be required to pay any portion of the tax refund to the unobligated spouse.

KEY: child support, taxes
Date of Enactment or Last Substantive Amendment: [~~July 21, 2004~~]2008

Notice of Continuation: January 6, 2005
Authorizing, Implemented or Interpreted Law: 59-10-529; 78B-12-112[~~78-45-9.3~~]

Human Services, Recovery Services
R527-920
Mandatory Disbursement to Obligee through Electronic Funds Transfer

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 31159
FILED: 04/18/2008, 12:10

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this rule is to outline the procedures for establishing electronic funds transfers to obligees and to specify appropriate exceptions to the requirement for Office of Recovery Services/Child Support Services (ORS/CSS) to make distributions by electronic funds transfer as allowed in Section 62A-11-704.

SUMMARY OF THE RULE OR CHANGE: Section R527-920-1 includes the legal authority for rulemaking that has been granted to ORS/CSS and a statement describing the purpose of this specific rule. Section R527-920-2 outlines the procedures that ORS/CSS will follow to notify obligees of the options available for receiving payments by electronic funds transfer and to allow obligees the chance to select from the available options. Section R527-920-3 lists the exceptions to receiving payments by electronic funds transfer, as specified in Subsection 62A-11-704(3).

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 62A-1-111, 62A-11-107, and 62A-11-704

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: Anticipated savings to be realized through required electronic funds transfers were detailed in the fiscal note attached to H.B. 265 passed by the Utah State Legislature in the 2008 General Session. There are some anticipated costs related to implementing this clarifying rule as a result of providing written notification of the electronic funds transfer options as follows: Providing a mass mailing to eligible clients upon implementation of Section 62A-11-704: ORS/CSS plans to send approximately 20,000 letters to eligible clients as Section 62A-11-704 is implemented. The cost for each letter, printing and postage, will be $0.35, totaling an estimated $7,000 for this initial mass mailing. Providing written notification of options at the time a case is opened: No additional cost. Other documents are already sent to the applicant at this time, so adding the electronic funds transfer notification to the other documents will not represent an additional cost. Providing written notification of options at the time of first-time order establishment: No additional cost. Other documents are already sent to the obligee at this time, so including the electronic funds transfer notification will not represent an additional cost. Providing written notification of options to previously-enrolled obligees when a previously - established account is no longer available: The exact cost is not predictable because it will depend on the number of obligees who request ORS/CSS to change the account that is being used for electronic funds transfers. If the obligee can provide the new account information at the time of the request, the cost will be zero since the accounting office can simply make the changes without providing the written notification. If the obligee cannot provide the new account information, the cost will be postage for a two-page notice to be mailed to that obligee requesting the new account information. Providing written notification of options when ORS/CSS no longer offers a particular electronic funds transfer option: The cost is not predictable at this point, as it will depend on the number of obligees affected by any potential change of available option. For each affected obligee, the cost would be that of a mass-mailing, meaning the postage costs for a two page document providing the new available options. For each response received, there is a small personnel cost involved with establishing each account for electronic funds transfers that was not addressed in fiscal note attached to H.B. 265. It is not possible to accurately predict the number of responses that will be received, but past experience indicates we can expect a 15-20% response rate. Processing costs per request vary based on the method of payment selected as follows: Direct Deposit request: $10.54 per request (20 minutes per request x $31.64 average hourly wage and benefit package) EPPICard request $5.27 per request (10 minutes per request x $31.64 average hourly wage and benefit package). (DAR NOTE: H.B. 265 (2008) is found at Chapter 73, Laws of Utah 2008, and was effective 05/05/2008.)

❖ LOCAL GOVERNMENTS: Administrative rules of the ORS/CSS do not apply to local government; therefore, there are no anticipated costs or savings for any local government due to this rule.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The procedures contained in this rule do not affect small businesses; therefore, there are no anticipated costs or savings for small businesses due to this rule. The provisions outlined in this proposed rule will affect obligee parents who have not previously enrolled in electronic funds transfers with ORS/CSS. For each of these obligees, the anticipated cost is for postage at $0.41 to return the form indicating his/her preferred method for receiving electronic payments. There are minimal fees associated with the selection of EPPICard as the method of receiving payments, but those fees are related to specific types of financial transactions (such as balance checks at an ATM) which are not required for successful use of the card or access to the funds deposited there. Those fees are outlined in the written notice of electronic funds transfer options, and all fees can be completely avoided by selecting Direct Deposit as the method for receiving electronic funds transfers. Use of electronic funds transfers will represent an aggregate savings to obligee parents in the form of saved fuel as they will no longer have to deposit or cash a paper check at their financial institutions; however, the amounts of this savings per parent are highly variable and cannot be estimated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The provisions outlined in this proposed rule will affect obligee parents who have not previously enrolled in electronic funds transfers with ORS/CSS. For each of these obligees, the anticipated cost is for postage at $0.41 to return the form indicating his/her preferred method for receiving electronic payments. There are minimal fees associated with the selection of EPPICard as the method of receiving payments, but those fees are related to specific types of financial transactions (such as balance checks at an ATM) which are not required for successful use of the card or access to the funds deposited there. Those fees are outlined in the written notice of electronic funds transfer options, and all fees can be completely avoided by selecting Direct Deposit as the method for receiving electronic funds transfers. There are no other anticipated compliance costs for affected persons.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: Businesses are not addressed in the proposed rule and it is not anticipated the rule will create any fiscal impact on them. Lisa-Michele Church, Executive Director

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

HUMAN SERVICES
RECOVERY SERVICES
515 E 100 S
SALT LAKE CITY UT 84102-4211, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Liesa Corbridge at the above address, by phone at 801-536-8986, by FAX at 801-536-8833, or by Internet E-mail at lcorbri2@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Mark Brasher, Director

R527. Human Services, Recovery Services.
R527-920. Mandatory Disbursement to Obligee Through Electronic Funds Transfer.
R527-920-1. Authority and Purpose.

(1) Section 62A-11-107 authorizes the Office of Recovery Services/Child Support Services (ORS/CSS) to adopt, amend and enforce rules. Section 62A-11-704 authorizes ORS/CSS to make rules to allow exceptions to mandatory disbursements by electronic funds transfer.

(2) The purpose of this rule is to outline the procedures for establishing electronic funds transfers to obligees and to specify appropriate exceptions to the requirement for ORS/CSS to make disbursements by electronic funds transfer as allowed in Section 62A-11-704.

R527-920-2. Procedures.

(1) ORS/CSS will notify obligees that have enforceable support orders of the available options for receiving electronic funds transfers. Written information about electronic funds transfer options will be sent to the best available addresses for eligible obligees.

(2) Written information about electronic funds transfer options will be sent at the following points in time if an obligee has not already arranged for electronic funds transfers:

(a) When Section 62A-11-704, mandating disbursement through electronic funds transfers, is implemented by ORS/CSS;

(b) When a new case is opened with ORS/CSS that is accompanied by an enforceable support order;

(c) When a first-time support order is established for an open case with ORS/CSS;

(d) When an established account for receiving electronic funds transfers is no longer appropriate for future transfers; or,

(e) When a previously-selected method for receiving electronic funds transfers will no longer be offered by ORS/CSS.

(3) Written information about electronic funds transfer options will be sent to obligees that have previously enrolled in this service in the following situations:

(a) When a previously-established account for receiving electronic funds transfers is no longer available to the obligee for future transfers; or,

(b) When a previously-selected method for receiving electronic funds transfers will no longer be offered by ORS/CSS.

(4) Upon receiving the written information about electronic funds transfer options, each obligee will be allowed to select from the available options and return the form to ORS/CSS to indicate his or her preferred method for receiving electronic payments. If an obligee fails to indicate a preference or fails to provide the necessary information to establish the preferred method of electronic funds transfer within sixty days of the date on the written notice, ORS/CSS has the option of enrolling that obligee in a plan to receive payments in an account that may be accessed through the use of an electronic access card.

(5) Payments will be disbursed by paper checks while the method of electronic funds transfer is established.

R527-920-3. Exceptions.

(1) Exceptions to mandatory disbursements through electronic funds transfer are allowed as follows:

(a) For a period of no more than 60 days after a case is opened with an enforceable support order;

(b) For a period of no more than 60 days after a first-time support order is established;

(c) For a period of no more than 60 days while an obligee changes the account to be used for receiving future electronic funds transfers; or,

(d) For an indefinite time period if an obligee resides in a foreign country and an electronic funds transfer cannot be facilitated;

(2) The ORS or ORS/CSS Director may approve additional exceptions to mandatory disbursements through electronic funds transfers on a case-by-case basis if the obligee presents a request in writing and can demonstrate that electronic funds transfers would result in an undue hardship to that obligee. The ORS or ORS/CSS Director will determine the duration of the exception based on the individual circumstances.

(3) Disbursements through electronic funds transfer will not be mandatory for ORS/CSS if technical problems prevent successful electronic disbursement within the federally-mandated disbursement time frames found in 45 CFR 302.32.

KEY: electronic funds transfer, child support
Date of Enactment or Last Substantive Amendment: 2008
Authorizing, and Implemented or Interpreted Law: 62A-1-111; 62A-11-107; 62A-11-704

Insurance, Administration
R590-247
Universal Individual Health Insurance Application Rule

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 31335
FILED: 04/30/2008, 13:23

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this new rule is to establish a universal individual application for accident and health insurers doing business in Utah

SUMMARY OF THE RULE OR CHANGE: This rule makes it possible for an individual to complete one application for individual health insurance and submit that application to several individual health insurance insurers instead of completing a separate application for each insurer.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 31A-30-102

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: There is no cost to the state budget because this application is used by individuals seeking individual insurance from commercial health insurance insurers.

❖ LOCAL GOVERNMENTS: There is no cost to local government because this application is used by individuals seeking individual insurance from commercial health insurance insurers.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There is no impact on small business. Individuals may save time and effort by being able to complete and submit one application to several insurers rather than completing a separate application for each insurer.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs for affected persons because the use of a universal application by an individual saves time and effort. Rather than filling out an individual application for each commercial insurer offering individual insurance, an individual will be able to complete one application and submit it to multiple insurers.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on business. D. Kent Michie, Commissioner

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
INSURANCE
ADMINISTRATION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Jilene Whitby, Information Specialist

R590. Insurance, Administration.
R590-247. Universal Individual Health Insurance Application Rule.
R590-247-1. Authority.
This rule is promulgated pursuant to Subsection 31A-30-102 which directs the Insurance Department to create a universal individual health insurance application.

R590-247-2. Purpose and Scope.
(1) The purpose of this rule is to establish a universal individual application for accident and health insurance insurers doing business in Utah.
(2) This rule applies to all accident and health insurers doing business in Utah.

R590-247-3. General Instructions.
(1) Use of the Utah Universal Individual Health Insurance Application by insurers or by health insurance producers is voluntary.
(2) The Utah Universal Individual Health Insurance Application will be used without insurer identifying logos or addresses to facilitate multiple insurer submissions using a single application.
(3) The Utah Universal Individual Health Insurance Application can be downloaded from the Department's website (www.insurance.utah.gov).
(4) The Utah Universal Individual Health Insurance Application may not be altered.

R590-247-4. 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 31A-2-308.

R547-247-5. Enforcement Date.
The commissioner will begin enforcing this rule 45 days from the rule's effective date.

R590-247-5. Severability.

If any provision of this rule or its application to any person or circumstance is, for any reason, held to be invalid, the remainder of this rule and its application to other persons and circumstances are not affected.

KEY: universal individual health application
Date of Enactment or Last Substantive Amendment: 2008
Authorizing, and Implemented or Interpreted Law: 31A-2-308; 31A-30-102

Insurance, Title and Escrow Commission
R592-7
Title Insurance Continuing Education Program

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 31337
FILED: 04/30/2008, 13:58

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this new rule is to delegate authority from the Title and Escrow Commission to the Insurance Commissioner to provisionally approve continuing education programs related to title insurance and to establish procedures for the commission to approve continuing education programs related to title insurance provisionally approved by the commissioner.

SUMMARY OF THE RULE OR CHANGE: This rule grants authority to the Insurance Commissioner to provisionally approve continuing education programs related to title insurance so these programs can be processed in the same manner as all other insurance related continuing education programs. Without this rule, the commission would have to develop processes and procedures, hire staff, and create on-line systems to provide approval for title related continuing education courses. With this rule the commission is able to utilize the existing processes, procedures, and staff of the Insurance Department to provide a title related continuing education program.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Subsections 31A-2-404(2)(a) and (g)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: No additional cost will be incurred by state government because the existing staff of the Insurance Department is currently handling the title related continuing education program.

❖ LOCAL GOVERNMENTS: There is no cost to local government because local government is not affected by transactions between a state agency (the Insurance Department) and a subsidiary commission to that state agency (the Title and Escrow Commission).

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: Small businesses (title insurance agencies) and individual title insurance producers currently incur costs to take title-related continuing education courses. This rule does not impact those costs because the rule does not change the current processes and procedures for the title-related continuing education program. The rule merely codifies the approval process between the Title and Escrow Commission and the Insurance Commissioner.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no costs for affected persons because the existing staff of the Insurance Department is currently handling the title related continuing education program.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule has no fiscal impact on businesses. D. Kent Michie, Commissioner

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

INSURANCE
TITLE AND ESCROW COMMISSION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Jilene Whitby, Information Specialist

R592. Insurance, Title and Escrow Commission.
R592-7. Title Insurance Continuing Education Program.
R592-7-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-404(2)(a) and (g), which direct the Title and Escrow Commission to make rules for the administration of the provisions in this title related to title insurance and the approval of continuing education programs related to title insurance.

R592-7-2. Purpose and Scope.

(1) The purposes of this rule are to:

(a) delegate authority from the Commission to the commissioner to provisionally approve continuing education programs related to title insurance; and

(b) establish procedures for the Commission to approve continuing education programs related to title insurance provisionally approved by the commissioner.

(2) This rule applies to all title licensees, applicants for a title insurance license, unlicensed persons doing business as a title licensee, and continuing education providers submitting continuing education programs related to title insurance for approval pursuant to 31A-2-404.

R592-7-3. Definitions.

"Title licensee" has the same meaning as found in Section 31A-2-402(3).

R592-7-4. Program Approval.

(1) The Commission hereby delegates to the commissioner provisional authority to approve continuing education programs related to title insurance including:

(a) continuing education course providers; and

(b) continuing education courses.

(2) The commissioner will report to the Commission on all continuing education programs related to title insurance provisionally approved by the commissioner. This report will include approved:

(a) continuing education course providers; and

(b) continuing education courses added to the Department's list of approved continuing education courses.

(3) The Commission will review the report and

(a) concur with and thus approve the continuing education course providers and continuing education courses provisionally approved by the commissioner; or

(b) disapprove the provisionally approved continuing education course providers or continuing education courses.

(4) If the Commission disapproves a provisionally approved continuing education provider or continuing education course, the commissioner will:

(a) remove the provider or the course from the Department's approved provider or course list; and

(b) notify the provider of the disapproval.

R592-7-5. Program Submission.

(1) Title insurance related continuing education providers shall submit initial and renewal provider approval information to the commissioner in accordance with 31A-23a-202 and R590-142.

(2) Approved title insurance related continuing education providers shall submit requests for continuing education course approval to the commissioner in accordance with 31A-23a-202 and R590-142.

R592-7-6. 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 31A-2-308.

R592-7-7. Enforcement Date.

The commissioner will begin enforcing this rule upon the rule's effective date.

R592-7-8. Severability.

If any section, term, or provision of this rule shall be adjudged invalid for any reason, such judgment shall not affect, impair or invalidate any other section, term, or provision of this rule and the remaining sections, terms, and provisions shall be and remain in full force.

KEY: title insurance continuing education
Date of Enactment or Last Substantive Amendment: 2008
Authorizing, and Implemented or Interpreted Law: 31A-2-308; 31A-2-402; 31A-2-404; 31A-23a-202

Insurance, Title and Escrow Commission
R592-8
Application Process for an Attorney Exemption for Title Agency Licensing

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 31339
FILED: 04/30/2008, 14:43

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purposes of this new rule are: 1) to delegate to the Insurance Commissioner preliminary approval or denial of a request for exemption; 2) to provide a description of the types of real estate experience that could be used by an attorney seeking to qualify for the exemption; 3) to provide a process to apply for a request for exemption; and 4) to provide a process to appeal a denial of a request for exemption.

SUMMARY OF THE RULE OR CHANGE: This rule delegates authority to the Insurance Commissioner to do preliminary approval or denial of a request for exemption. The rule provides a description of real estate experience that may be used to qualify for the exemption and a process to request an exemption. The rule also provides for due process by providing a process to appeal a denial of a request for exemption.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-2-404, 31A-23a-204, 31A-1-301, 31A-2-308, 31A-2-402, and 31A-23a-102

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The anticipated workload is less than 20 requests for exemption per year. This minimal workload will be absorbed by the Insurance Commissioner's individual licensing staff without impacting the state budget.

❖ LOCAL GOVERNMENTS: There is no cost to local government because local government is not involved in the licensing of title insurance agencies.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There is no cost to small business or individuals other than the minimal costs associated with requesting an exemption.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs to affected persons other than the minimal costs associated with requesting an exemption.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no fiscal impact on businesses. D. Kent Michie, Commissioner

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

INSURANCE
TITLE AND ESCROW COMMISSION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 6/09/2008 at 9:00 AM, State Capitol Complex, East Building, 420 N State St, Beehive Room, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Jilene Whitby, Information Specialist

R592. Insurance, Title and Escrow Commission.
R592-8. Application Process for an Attorney Exemption for Title Agency Licensing.
R592-8-1. Authority.

This rule is promulgated by the Title and Escrow Commission pursuant to Section 31A-2-404 which authorizes the Commission to make rules for the administration of the provisions in this title related to title insurance and Section 31A-23a-204 which authorizes the Commission to make a rule to exempt attorneys with real estate experience from the three year licensing requirement to license a title agency.

R592-8-2. Purpose and Scope.

(1) The purposes of this rule are:

(a) to delegate to the Commissioner preliminary approval or denial of a request for exemption;

(b) to provide a description of the types of real estate experience that could be used by an attorney seeking to qualify for the exemption;

(c) to provide a process to apply for a request for exemption; and

(d) to provide a process to appeal a denial of a request for exemption.

(2) This rule applies to all attorneys seeking an exemption under the provisions of 31A-23a-204.

R592-8-3. Definitions.

In addition to the definitions of Sections 31A-1-301, 31A-2-402 and 31A-23a-102, the following definitions shall apply for the purposes of this rule:

(1) "Attorney" means a person licensed and in good standing with the Utah State Bar.

(2) "Real estate experience" includes:

(a) law firm transactional experience consisting of any or all of the following:

(i) real estate transactions, including drafting documents, reviewing and negotiating contracts of sale, including real estate purchase contracts (REPC), commercial transactions, residential transactions;

(ii) financing and securing construction and permanent financing;

(iii) title review, due diligence, consulting and negotiations with title companies, researching and drafting opinions of title, coordinating with title companies, pre-closing;

(iv) zoning, development, construction, homeowners associations, subdivisions, condominiums, planned unit developments;

(v) conducting closings; and

(vi) estate planning and probate-related transactions and conveyances.

(b) law firm litigation experience consisting of any or all of the following:

(i) foreclosures;

(A) judicial and non-judicial;

(B) homeowner association (HOA) lien foreclosure;

(ii) either side of homeowner vs HOA litigation;

(iii) state construction registry litigation - mechanics lien filing and litigation;

(iv) real estate disputes or litigation involving:

(A) a real estate contract;

(B) a boundary line;

(C) a rights of way and/or easement;

(D) a zoning issue;

(E) a property tax issue;

(F) a title issue or claim;

(G) a landlord/tenant issue; and

(F) an estate and/or probate litigation involving real property assets, claims, and disputes.

(c) non-law firm experience consisting of any or all of the following:

(i) real estate agent, broker, developer, investor;

(ii) mortgage broker;

(iii) general contractor;

(iv) professor or instructor teaching real estate licensing, real estate contracts, or real estate law;

(v) lender involved with any or all of the following real estate lending activities:

(A) lending;

(B) escrow; or

(C) foreclosure;

(vi) private lender;

(vii) in-house counsel involved in real estate transactions for bank, mortgage lender, credit union, title company, or title agency;

(viii) employment with or counsel to a government agency involved in regulation of real estate, such as HUD, FHA, zoning, tax assessor, county recorder, insurance department, and Federal or state legislatures;
(ix) escrow officer;
(x) title searcher; or
(xi) surveyor; and
(d) other experience with real estate not included in (a), (b), and (c) above.

R592-8-4. Delegation of Authority.
The Commission hereby grants its preliminary concurrence to the approval or denial of a request for exemption requested by an attorney pursuant to 31A-23a-204 to the Utah Insurance Commissioner.

R592-8-5. Request for Exemption Process.
(1) An individual title licensee, who is an attorney as defined in this rule desiring to obtain an agency license under the exemption provided in 31A-23A-204(1)(c), shall make a request for exemption to the Commissioner in accordance with the requirements of this subsection.
(2) The applicant will submit a letter addressed to the Commission:
(a) requesting exemption from the licensing time period requirements in 31A-23a-204(1)(a)(i); and
(b) providing the following information:
(i) the applicant's name, mailing address and email, telephone number, and title license number;
(ii) a description of the applicant's real estate experience; and
(iii) why the applicant feels that experience qualifies the applicant for the exemption.
(3) The Commissioner will review the request for exemption within five business days of its receipt and
(a) request additional information from the applicant;
(b) preliminarily approve the request for exemption; or
(c) preliminarily disapprove the request for exemption.
(4) The Commissioner will report monthly to the Commission all preliminarily approved or denied requests for exemption received and reviewed since the previous Commission meeting.
(5) The Commission will concur or non-concur with the Commissioner's preliminary approval or denial of a request for exemption.
(6) If the Commissioner's preliminary denial of a request for exemption is concurred with by the Commission, the Commissioner will:
(a) notify the applicant of the denial; and
(b) inform the applicant of his right to agency review pursuant to R590-160.
(7) If the Commissioner's preliminary approval of a request for exemption is concurred with by the Commission, the Commissioner will expeditiously notify the applicant to submit an electronic license application and pay the required fees and assessments.

R592-8-7. 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.

R592-8-8. Enforcement Date.
The Commission will begin enforcing this rule on the rule's effective date.

R592-8-9. Severability.
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 remaining provisions to other persons or circumstances shall not be affected.

KEY: attorney exemption application process
Date of Enactment or Last Substantive Amendment: 2008
Authorizing, and Implemented or Interpreted Law: 31A-1-301; 31A-2-308; 31A-2-402; 31A-2-404; 31A-23a-102; 31A-23a-204

♦ ♦

Insurance, Title and Escrow Commission
R592-9
Title Insurance Recovery, Education, and Research Fund Assessment Rule

NOTICE OF PROPOSED RULE
(New Rule)
DAR FILE NO.: 31341
FILED: 04/30/2008, 15:08

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purposes of this new rule are to: 1) establish the amounts for individual title insurance producer assessments; and 2) establish the amounts for title insurance agency assessments.

SUMMARY OF THE RULE OR CHANGE: The rule provides a process for the Title and Escrow Commission to set the individual producer and agency assessment amounts for the on-going funding of the Title Insurance Recovery, Education, and Research Fund.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 31A-41-202 and 31A-2-308

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: The costs to state government are one-time minimal costs to establish the Fund in the Insurance Department's accounting system and in the state's accounting system. The minimal costs associated with the day-to-day operation of the Fund will be absorbed by the existing staff of the Insurance Department.
❖ LOCAL GOVERNMENTS: There is no cost to local government because this rule does not affect local government.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There should be minimal cost, if any, to small businesses (title agencies) because the annual assessment will be offset by the deletion of the requirement to maintain a reserve account of 1% of the title agency's written title insurance premium.

COMPLIANCE COSTS FOR AFFECTED PERSONS: The statute provides a maximum assessment ceiling and directs the Title and Escrow Commission to set the actual assessment each year. The statute repeals the current requirement for a title agency to set aside 1% of its written title insurance premium each year. In many cases, the annual assessment for a title agency for the Recovery Fund will be less than 1% of their written title insurance premium. Individual title insurance producers will pay their assessment of less than $20 once every 2 years when they renew their license.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: This rule should have a minimal impact on businesses (title insurance agencies) because the annual assessment will be offset by the deletion of the requirement to maintain a reserve account of 1% of the title agency's written title insurance premium. D. Kent Michie, Commissioner

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

INSURANCE
TITLE AND ESCROW COMMISSION
Room 3110 STATE OFFICE BLDG
450 N MAIN ST
SALT LAKE CITY UT 84114-1201, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jilene Whitby at the above address, by phone at 801-538-3803, by FAX at 801-538-3829, or by Internet E-mail at jwhitby@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008

INTERESTED PERSONS MAY ATTEND A PUBLIC HEARING REGARDING THIS RULE: 6/09/2008 at 10:00 AM, State Capitol Complex, East Building, 420 N State St, Beehive Room, Salt Lake City, UT.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Jilene Whitby, Information Specialist

R592. Insurance, Title and Escrow Commission.
R592-9. Title Insurance Recovery, Education, and Research Fund Assessment Rule.
R592-9-1. Authority.

This rule is promulgated pursuant to Section 31A-41-202 which requires the Title and Escrow Commission to determine the amount of required assessments from individual title insurance producers and title insurance agencies to provide funding for the recovery, education, and research fund.

R592-9-2. Purpose and Scope.

(1) The purpose of this rule is:

(a) to establish the amounts for individual title insurance producer assessments; and

(b) to establish the amounts for title insurance agency assessments.

(2) This rule applies to all individual title insurance producer applicants and licensees and all title insurance agency license applicants and licensees and any unlicensed person doing the business of title insurance.

R592-9-3. Establishing Assessment Amounts.

(1) Prior to July 1 of each year, the Commission shall establish the assessment amounts for:

(a) an initial producer license for an individual title insurance producer applicant;

(b) a renewal license for a licensed individual title insurance producer;

(c) an initial agency license for a title insurance agency applicant; and

(d) an annual assessment for a licensed title insurance agency.

(2) Annual licensed title insurance agency assessment amounts shall be established for the following four premium bands of title insurance premiums:

(a) Band A: $0 to $1 million;

(b) Band B: more than $1 million to $10 million;

(c) Band C: more than $10 million to $20 million; and

(d) Band D: more than $20 million.

(3) The individual producer and agency assessment amounts shall be adopted by motion of the Commission.

(4) The adopted assessment amounts shall be posted on the Insurance Department's web page.

R592-9-4. Individual Title Insurance Producer Assessment.

(1) Beginning July 1, 2009:

(a) A person applying for an initial individual title insurance producer license or a licensed individual title producer adding an additional title insurance line of authority shall pay an assessment not to exceed $20.00 at the time of application; and

(b) a licensee renewing an individual title insurance producer license shall pay an assessment not to exceed $20.00 at the time of application.

(2) An individual title insurance producer assessment will be paid in accordance with R590-102, Insurance Department Fee Payment Rule.

R592-9-5. Title Insurance Agency Assessment.

(1) Beginning July 1, 2008, a person applying for an initial title insurance agency license shall pay an assessment of $1,000 at the time of application.

(2) Beginning January 1, 2009, a licensed title insurance agency shall pay an annual assessment.

(3) An agency's placement in one of the four assessment bands will be determined by an agency's title insurance written premium volume for the preceding calendar year as of December 31 of that calendar year.

(4) An agency's annual assessment will be paid in accordance with R590-102, Insurance Department Fee Payment Rule.

R592-9-6. 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.

R592-9-7. Enforcement Date.
The commissioner will begin enforcing this rule July 1, 2008.

R592-9-8. Severability.
If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: title recovery fund assessment
Date of Enactment or Last Substantive Amendment: 2008
Authorizing, and Implemented or Interpreted Law: 31A-2-308; 31A-41-202

Labor Commission, Industrial Accidents
R612-2-5
Regulation of Medical Practitioner Fees

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31333
FILED: 04/30/2008, 13:15

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to adopt, with modifications, the 2008 Resource-Based Relative Value Schedule (RBRVS) and the 2008 American Medical Association Current Procedural Terminology (CPT) coding standards.

SUMMARY OF THE RULE OR CHANGE: The proposed amendment updates the existing rule by incorporating the 2008 versions of the RBRVS and CPT. The amendment also assigns a relative value of $46 for the evaluation and management of medical care provided to injured workers.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Sections 34A-2-101 et seq., 34A-3-101 et seq., and 34A-1-104

THIS RULE OR CHANGE INCORPORATES BY REFERENCE THE FOLLOWING MATERIAL: National Centers for Medicare and Medicaid Service (CMS) for the Medicare Physician Fee Schedule (MPF)"Resource-Based Relative Value Scale" (RBRVS) 2008 edition; and the American Medical Association's CPT, 2008 edition coding guidelines

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: The proposed amendment will impose no additional administrative or enforcement costs on the state budget. The minimal increase in workers' compensation medical expense that will result from this amendment is unlikely to affect workers' compensation premiums. Consequently, the amendment will not result in any measurable increase in the state's cost of workers' compensation insurance.

❖ LOCAL GOVERNMENTS: The minimal increase in workers' compensation medical expense that will result from this amendment is unlikely to affect workers' compensation premiums. Consequently, the amendment will not result in any measurable increase in local governments' cost of workers' compensation insurance.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: The minimal increase in workers' compensation medical expense that will result from this amendment is unlikely to affect workers' compensation premiums. Consequently, the amendment will not result in any measurable increase in the cost of workers' compensation insurance for small businesses or other persons.

COMPLIANCE COSTS FOR AFFECTED PERSONS: Currently workers' compensation benefits cost Utah employers and insurance carriers approximately $200,000,000 per year. The proposed amendment will increase these costs by $225,000 or approximately one-tenth of one percent.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The minimal increase to workers' compensation medical costs provided by this rule are relatively insignificant and unlikely to have any fiscal impact on the businesses subject to the rule. Sherrie Hayashi, Commissioner

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
LABOR COMMISSION
INDUSTRIAL ACCIDENTS
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:
Larry Bunkall at the above address, by phone at 801-530-6988, by FAX at 801-530-6844, or by Internet E-mail at lbunkall@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Sherrie Hayashi, Commissioner

R612. Labor Commission, Industrial Accidents.
R612-2. Workers' Compensation Rules-Health Care Providers.
R612-2-5. Regulation of Medical Practitioner Fees.
Pursuant to Section 34A-2-407:
A. The Labor Commission of Utah:
1. Establishes and regulates fees and other charges for medical, surgical, nursing, physical and occupational therapy, mental health, chiropractic, naturopathic, and osteopathic services, or any other area of the healing arts as required for the treatment of a work-related injury or illness.

2. Adopts and by this reference incorporates the National Centers for Medicare and Medicaid Services (CMS) for the Medicare Physician Fee Schedule (MPFS) "Resource-Based Relative Value Scale" (RBRVS), 200[~~7~~]8 edition, as the method for calculating reimbursement and the American Medical Association's CPT-4, 200[~~7~~]8 edition, coding guidelines. The non-facility total unit value will apply in calculating the reimbursement, except that procedures provided in a facility setting shall be reimbursed at the facility total unit value and the facility may bill a separate facility charge. The CPT-4 coding guidelines and RBRVS are subject to the Utah Labor Commission's Medical Fee Guidelines and Codes and the following Labor Commission conversion factors for medical care rendered for a work-related injury or illness, effective July 1[~~1~~], 200[~~7~~]8: (Conversion Rates below EFFECTIVE July 1[~~1~~], 200[~~7~~]8, to be used with the RBRVS procedural Unit value as per specialty.)

Anesthesiology $41.00 (1 unit per 15 minutes of anesthesia);

[~~Medicine E and M $44.00;~~

~~——~~]Evaluation and Management [~~Codes 99201-99204 and 99211-99214 $45~~]$46.00

Pathology and Laboratory [~~150% of Utah's published Medicare carrier~~]The current RBRVS identifies values for specific codes that require Pathologist services. All other reimbursement rates for laboratory and pathology codes will be determined by the Ingenix ga-filled methodology. $52.00;

Radiology $53.00;

Restorative Services $4[~~4~~]6.00, with Utah code 97001 and 97003 at a 1.5 relative value unit and Utah code 97002 and 97004 at a 1.0 of relative value unit.

Surgery $37.00;

All 20000 codes, codes 49505 thru 49525 and all 60000 codes of the CPT-4 coding guidelines $58.00.

3. Adopts and incorporates by this reference the Utah Labor Commission's Medical Fee Guidelines and Codes, as of July 1[~~1~~], 200[~~7~~]8. The Utah Medical Fee Guidelines and Codes can be obtained from the division for a fee sufficient to recover costs of development, printing, and mailing or can be downloaded at the Labor Commission's website at [~~www.laborcommission.utah.gov/indacc/indacc.htm~~]http://laborcommission.utah.gov/IndustrialAccidents/pdfs/Med%20Fee%20Guidelines%20%202007%2008-07.pdf.

4. Decides appropriate billing procedure codes when disputes arise between the medical practitioner and the employer or its insurance carrier. In no instance will the medical practitioner bill both the employer and the insurance carrier.

B. Employees cannot be billed for treatment of their work-related injuries or illnesses.

C. Discounting from the fees established by the Labor Commission is allowed only through specific contracts between a medical provider and a payor for treatment of work-related injury or illness.

D. Restocking fee 15%. Rule R612-2-16 covers the restocking fee.

E. Dental fees are not published. Rule R612-2-18 covers dental injuries.

F. Ambulance fees are not published. Rule R612-2-19 covers ambulance charges.

KEY: workers' compensation, fees, medical practitioner
Date of Enactment or Last Substantive Amendment: [~~October 9, 2007~~]2008
Notice of Continuation: May 28, 2003
Authorizing, and Implemented or Interpreted Law: 34A-2-101 et seq.; 34A-3-101 et seq.; 34A-1-104

Natural Resources, Forestry, Fire and State Lands
R652-70
Sovereign Lands

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31276
FILED: 04/28/2008, 14:46

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The reason for the change of this rule is to accommodate the changes in S.B. 138 from the 2007 General Session which repeals the authority in state land's statutes to specify by administrative rule conduct that may constitute a misdemeanor or a felony. (DAR NOTE: S.B. 138 (2007) is found at Chapter 322, Laws of Utah 2007, and was effective 04/30/2007.)

SUMMARY OF THE RULE OR CHANGE: The rule removes references to any misdemeanors on state lands and also realigns references to renumbered code.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Article XX of the Utah Constitution, and Section 65A-10-1

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This rule merely changes language and references in code but does not fiscally impact the budget.

❖ LOCAL GOVERNMENTS: This rule does not impact local governments, so no budget impacts are anticipated.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This rule does not impact small businesses, so no budget impacts are anticipated.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There is no compliance costs for affected persons since there are no changes in compliance or regulations in the rule.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There is no compliance or regulatory costs to businesses as a result of this rule amendment, therefore, there is no budgetary impact to businesses. Mike Styler, Executive Director

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

NATURAL RESOURCES
FORESTRY, FIRE AND STATE LANDS
1594 W NORTH TEMPLE
SUITE 3520
SALT LAKE CITY UT 84116-3154, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Jennifer Wiglama at the above address, by phone at 801-538-5495, by FAX at 801-533-4111, or by Internet E-mail at jenniferwiglama@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Richard J. Buehler, Director

R652. Natural Resources; Forestry, Fire and State Lands.
R652-70. Sovereign Lands.
R652-70-1900. Camping and Motor Vehicles.

1. The division may restrict camping on the beds of navigable lakes and rivers. Except as provided elsewhere in this rule, motor vehicles are prohibited from driving or parking on these lands at all times, except that those areas supervised by the Division of Parks and Recreation or other enforcement entity, and posted as open to vehicle use, will be open to vehicle use.

2. Persons found in violation of[~~In accordance with Subsections 65A-3-1(1)(b)~~] 65A-3-1(1)(g-h) are subject to the criminal penalties set forth in [~~and~~]76-3-204[~~,~~] and 76-3-301 as determined by the court.[~~those found in violation of this rule will be charged with a class B misdemeanor, with sentence, fine, or both to be determined by the local magistrate.~~]

R652-70-2200. Violations.

The following acts or omissions shall subject a person to a civil penalty as provided in Section[~~s~~] [~~65A-3-1(2)~~] 65A-3-1(3)[~~and 76-3-204~~]:

1. A violation of the provisions of Section [~~65A-3-1(1)~~]65A-3-1(1-2);

2. A violation of any special order of the director applicable to the bed of a navigable water; or

3. Refusal to cease and desist from any violation in regards to the bed of a navigable water after having been notified to do so, in writing, by the director by personal service or certified mail, within the time provided in the notice, or within 30 days of service of the notice if no time is provided.

R652-70-2300. Management of Bear Lake Sovereign Lands.

(1) Lands lying below the ordinary high water mark of Bear Lake as of the date of statehood are owned by the state of Utah and shall be administered by the division as sovereign lands.

(2) Upon application for a specific use of state lands near the boundary of Bear Lake, or in the event of a dispute as to the ownership of the sovereign character of the lands near the boundary of Bear Lake, the division may evaluate all relevant historical evidence of the lake elevation, the water erosion along the shoreline, the topography of the land, and other relevant information to determine the relationship of the land in question to the ordinary high water mark.

(3) In the absence of evidence establishing the ordinary high water mark as of the date of statehood, the division shall administer all the lands within the bed of Bear Lake and lying below the level of 5,923.68 feet above mean sea level, Utah Power and Light datum, as being sovereign lands.

(4) The division, after notice to affected state agencies and any person with an ownership in the land, may enter into agreements to establish boundaries with owners of land adjoining the bed of Bear Lake; provided that the agreements shall not set a boundary for sovereign lands below the level of 5,923.68 feet above mean sea level.

(5) From October 1 through April 30, motor vehicle use and camping or picnicking will be allowed on the exposed lake bed with the following restrictions:

(a) Motor vehicles will not be allowed on lands administered by the Division of Parks and Recreation.

(b) The established speed limit is 20 miles per hour.

(c) Except as necessary to launch or retrieve watercraft, motor vehicles are not allowed within 100 feet of the water's edge. Travel parallel to the water's edge is allowed, outside of the 100 foot zone.

(d) Camping and use of motorized vehicles are prohibited between the hours of 10 p.m. and 6 a.m.

(e) No campfires or fireworks are allowed.

(6) From May 1 through September 30, motor vehicle use and camping or picnicking will be allowed on the exposed lake bed with the following restrictions:

(a) Areas posted by the division are off limits to motorized vehicles.

(b) The established speed limit is 15 miles per hour.

(c) Except as necessary to launch or retrieve watercraft, motor vehicles are not allowed within 100 feet of the waters edge.

(d) Unless posted otherwise, or to access a camping or picnicking spot, no motor vehicles may travel parallel to the waters edge.

(e) Camping and use of motorized vehicles are prohibited between the hours of 10 p.m. and 7 a.m.

(f) No campfires or fireworks are allowed.

(7) Persons found in violation of[~~In accordance with Subsections 65A-3-1(1)(b)~~] 65A-3-1(1) and 65A-3-1(2) are subject to the criminal penalties set forth in 76-3-204 and 76-3-301[~~,~~] as determined by the court as well as civil damages set forth in 65A-3-1(3).[~~those found in violation of this rule will be charged with a class B misdemeanor, with sentence, fine, or both to be determined by the local magistrate.~~]

KEY: sovereign lands, permits, administrative procedures
Date of Enactment or Last Substantive Amendment: [~~May 20, 2005~~]2008
Notice of Continuation: April 2, 2007
Authorizing, and Implemented or Interpreted Law: 65A-10-1

♦ ♦

Tax Commission, Auditing
R865-19S-105
Procedures for Refund of Sales and Use Taxes Paid on Food Donated to a Qualified Emergency Food Agency Pursuant to Utah Code Ann. Section 59-12-902

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31258
FILED: 04/28/2008, 10:40

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This section is removed because the underlying statutory authority was repealed by H.B. 304 (2008). (DAR NOTE: H.B. 304 (2008) is found at Chapter 192, Laws of Utah 2008, and was effective 05/05/2008.)

SUMMARY OF THE RULE OR CHANGE: The section is removed.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 59-12-902

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--Any revenue impacts were taken into account in H.B. 304 (2008).
❖ LOCAL GOVERNMENTS: None--Any revenue impacts were taken into account in H.B. 304 (2008).
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--Any revenue impacts were taken into account in H.B. 304 (2008).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--The credit will no longer be available.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts. D'Arcy Dixon, Commissioner

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TAX COMMISSION
AUDITING
210 N 1950 W
SALT LAKE CITY UT 84134, 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 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: D'Arcy Dixon, Commissioner

R865. Tax Commission, Auditing.
R865-19S. Sales and Use Tax.
[~~R865-19S-105. Procedures for Refund of Sales and Use Taxes Paid on Food Donated to a Qualified Emergency Food Agency Pursuant to Utah Code Ann. Section 59-12-902.~~
~~A. A qualified emergency food agency may apply to the Tax Commission for a refund of Utah sales and use taxes paid on food donated to that entity no more often than on a monthly basis. Refund applications should be submitted to the Tax Commission by the tenth day of the month for a timely refund.~~
~~B. Applications for refund of sales and use taxes shall be made on forms provided by the Tax Commission.~~
~~C. Original records supporting the refund claim must be maintained by the qualified emergency food agency for three years following the date of refund.~~
~~D. Failure to pay any penalties and interest assessed by the Tax Commission may subject the qualified emergency food agency to a deduction from future refunds of amounts owed.~~]

KEY: charities, tax exemptions, religious activities, sales tax
Date of Enactment or Last Substantive Amendment: [~~February 25~~], 2008
Notice of Continuation: March 13, 2007
Authorizing, and Implemented or Interpreted Law: 9-2-1702; 9-2-1703; 10-1-303; 10-1-306; 10-1-307; 10-1-405; 19-6-808; 26-32a-101 through 26-32a-113; 59-1-210; 59-12; 59-12-102; 59-12-103; 59-12-104; 59-12-105; 59-12-106; 59-12-107; 59-12-108; 59-12-118; 59-12-301; 59-12-352; 59-12-353

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Tax Commission, Motor Vehicle
R873-22M-41
Issuance of Salvage Certificate in Certain Circumstances Pursuant to Utah Code Ann. Section 41-1a-1005

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31264
FILED: 04/28/2008, 11:08

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The proposed section is necessary for implementation of S.B. 179 (2008). (DAR NOTE: S.B. 179 (2008) is found at Chapter 270, Laws of Utah 2008, and was effective 05/05/2008.)

SUMMARY OF THE RULE OR CHANGE: The proposed section indicates the evidence that any insurance company must submit to the Division of Motor Vehicle (DMV) in order to obtain a salvage vehicle title when: 1) the owner of the salvage vehicle does not provide the title to the insurance company; and 2) the owner of the salvage vehicle provides the insurance company an improperly endorsed title.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 41-1a-1005

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--Any revenue impacts were taken into account in S.B. 179 (2008).
❖ LOCAL GOVERNMENTS: None--Any revenue impacts were taken into account in S.B. 179 (2008).
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--Any revenue impacts were taken into account in S.B. 179 (2008).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Under these procedures, an insurance company may receive a salvage title where otherwise it was unable, because of the registered owner's failure to comply with the law.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts. D'Arcy Dixon, Commissioner

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TAX COMMISSION
MOTOR VEHICLE
210 N 1950 W
SALT LAKE CITY UT 84134, 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 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: D'Arcy Dixon, Commissioner

R873. Tax Commission, Motor Vehicle.
R873-22M. Motor Vehicle.
R873-22M-41. Issuance of Salvage Certificate in Certain Circumstances Pursuant to Utah Code Ann. Section 41-1a-1005.

(1) Subject to Subsection (3), an insurance company shall receive a salvage certificate in the insurance company's name if the insurance company provides the commission:

(a) evidence that the insurance company has declared a particular vehicle a salvage vehicle;

(b) a copy of the check issued to the registered owner of the vehicle; and

(c) a copy of at least two letters the insurance company has mailed to the registered owner of the vehicle requesting:

(i) in the case of an insurance company that has not received a certificate of title from the registered owner of the vehicle, a copy of the certificate of title or other evidence of ownership; or

(ii) in the case of an insurance company that has received an improperly endorsed certificate of title from the registered owner of the vehicle, correction of the improperly endorsed certificate of title.

(2) The information described in Subsection (1) shall accompany the Application for Utah Title.

(3) If the requirements of Subsections (1) and (2) are satisfied, the Motor Vehicle Division shall issue a salvage certificate to an insurance company:

(a) in the case of an insurance company that has not received a certificate of title from the registered owner of the vehicle, no sooner than 30 days from the settlement of the loss; or

(b) in the case of an insurance company that has received an improperly endorsed certificate of title from the registered owner of the vehicle, no sooner than 30 days from the insurance company's receipt of an improperly endorsed certificate of title.

KEY: taxation, motor vehicles, aircraft, license plates
Date of Enactment or Last Substantive Amendment: [~~February 25~~], 2008
Notice of Continuation: March 12, 2007
Authorizing, and Implemented or Interpreted Law: 41-1a-102; 41-1a-104; 41-1a-108; 41-1a-116; 41-1a-211; 41-1a-215; 41-1a-214; 41-1a-401; 41-1a-402; 41-1a-411; 41-1a-413; 41-1a-414; 41-1a-416; 41-1a-418; 41-1a-419; 41-1a-420; 41-1a-421; 41-1a-422; 41-1a-522; 41-1a-701; 41-1a-1001; 41-1a-1002; 41-1a-1004; 41-1a-1005; 41-1a-1009 through 41-1a-1011; 41-1a-1101; 41-1a-1209; 41-1a-1211; 41-1a-1220; 41-6-44; 53-8-205; 59-12-104; 59-2-103; 72-10-109 through 72-10-112; 72-10-102

Tax Commission, Motor Vehicle Enforcement

R877-23V-19

Disclosure of Vehicles Initially Delivered for Sale in a Country Other than the United States Pursuant to Utah Code Ann. Section 41-1a-712

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31255
FILED: 04/28/2008, 10:09

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: This section is removed because the language was codified in H.B. 80 (2008). (DAR NOTE: H.B. 80 (2008) is found at Chapter 305, Laws of Utah 2008, and was effective 05/05/2008.)

SUMMARY OF THE RULE OR CHANGE: The section is removed.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 41-1a-712

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: None--Any revenue impact was taken into account in H.B. 80 (2008).

❖ LOCAL GOVERNMENTS: None--Any revenue impact was taken into account in H.B. 80 (2008).
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: None--Any revenue impact was taken into account in H.B. 80 (2008).

COMPLIANCE COSTS FOR AFFECTED PERSONS: None--Since the repealed language has been codified, all procedures remain the same.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no anticipated fiscal impacts. D'Arcy Dixon, Commissioner

THE FULL TEXT OF THIS RULE MAY BE INSPECTED, DURING REGULAR BUSINESS HOURS, AT:
TAX COMMISSION
MOTOR VEHICLE ENFORCEMENT
210 N 1950 W
SALT LAKE CITY UT 84134, 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 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: D'Arcy Dixon, Commissioner

R877. Tax Commission, Motor Vehicle Enforcement.
R877-23V. Motor Vehicle Enforcement.
[~~R877-23V-19. Disclosure of Vehicles Initially Delivered for Sale in a Country Other than the United States Pursuant to Utah Code Ann. Section 41-1a-712.~~

~~The written notice required under Section 41-1a-712 for a vehicle sold or offered for sale in this state that was initially delivered for sale in a country other than the United States shall contain language substantially similar to the following statements.~~

~~A. The odometer for this vehicle may have been converted to miles.~~

~~B. This vehicle meets U.S. Department of Transportation safety standards.~~

~~C. This vehicle may have manufacturer warranty exclusions if sold or offered for sale in this country.~~]

KEY: taxation, motor vehicles
Date of Enactment or Last Substantive Amendment: [~~October 12, 2007~~]2008
Notice of Continuation: March 14, 2007
Authorizing, and Implemented or Interpreted Law: 41-1a-712; 41-3-105; 41-3-201; 41-3-202; 41-3-210; 41-3-301; 41-3-302; 41-3-305; 41-3-503; 41-3-505; 41-3-506; 41-3-507

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Workforce Services, Employment Development
R986-200-240
Additional Payments Available Under Certain Circumstances

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31365
FILED: 05/01/2008, 17:45

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to provide incentives for schooling.

SUMMARY OF THE RULE OR CHANGE: The department will make a small amount of funding available for some people who participate in high school or GED programs.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Subsections 35A-1-104(4) and 35A-3-302(5)(b)

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: This applies to federally-funded programs so there are no costs or savings to the state budget.
❖ LOCAL GOVERNMENTS: This is a federally-funded program so there are no costs or savings to the local government.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There will be no costs to small businesses to comply with this change because This is a federally-funded program. There will be no costs of any persons to comply with this change because there are no costs or fees associated with this proposed change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There are no compliance costs associated with these changes for any persons because this is a federally-funded program and there are no fees or costs associated with this proposed change.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. There are no fees associated with this change. There will be no cost to anyone to comply with these changes. There will be no fiscal impact on any business. Kristen Cox, Executive Director

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

WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

INTERESTED PERSONS MAY PRESENT THEIR VIEWS ON THIS RULE BY SUBMITTING WRITTEN COMMENTS TO THE ADDRESS ABOVE NO LATER THAN 5:00 PM on 06/16/2008.

THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Kristen Cox, Executive Director

R986. Workforce Services, Employment Development.
R986-200. Family Employment Program.
R986-200-240. Additional Payments Available Under Certain Circumstances.

(1) Each parent eligible for financial assistance in the FEP or FEPTP programs who takes part in at least one enhanced participation activity may be eligible to receive $60 each month in addition to the standard financial assistance payment. Enhanced participation activities are limited to:

(a) work experience sites of at least 20 hours a week and other eligible activities that together total 30 hours per week;

(b) full-time attendance in an education or employment training program; or

(c) employment of 20 hours or more a week and other eligible activities that together total 30 hours per week.

(2) An additional payment of $15 per month for a pregnant woman in the third month prior to the expected month of delivery. Eligibility for the allowance begins in the month the woman provides medical proof that she is in the third month prior to the expected month of delivery. The pregnancy allowance ends at the end of the month the pregnancy ends.

(3) A limited number of funds are available to individuals for work and training expenses. The funds can only be used to alleviate circumstances which impede the individual's ability to begin or continue employment, job search, training, or education. The payment of these funds is completely discretionary by the Department. The individual does not need to meet any eligibility requirements to request or receive these funds.

(4) Limited funds are available, up to a maximum of $300, to pay for burial costs if the individual is not entitled to a burial paid for by the county.

(5) A Department Regional Director or designee may approve assistance, as funding allows, for the emergency needs of a non-resident who is transient, temporarily stranded in Utah, and who does not intend to stay in Utah.

(6) A limited number of funds are available for enhanced payments to parents who are eligible for financial assistance in the FEP program and who participate in the HS/GED Pilot Program. The payment of these funds is completely discretionary by the Department and may differ from region to region.

KEY: family employment program
Date of Enactment or Last Substantive Amendment: [~~February 26~~], 2008
Notice of Continuation: September 14, 2005
Authorizing, and Implemented or Interpreted Law: 35A-3-301 et seq.

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Workforce Services, Employment Development
R986-700
Child Care Assistance

NOTICE OF PROPOSED RULE
(Amendment)
DAR FILE NO.: 31364
FILED: 05/01/2008, 17:37

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this amendment is to reflect changes in the statute from H.B. 73 in the 2008 legislative session. (DAR NOTE: H.B. 73 (2008) is found at Chapter 59, Laws of Utah 2008, and was effective 05/05/2008.)

SUMMARY OF THE RULE OR CHANGE: The legislature passed H.B. 73 in the 2008 General Session which requires background checks for child care providers not otherwise exempt. These proposed amendments define the procedure for obtaining those background checks. Also proposes amendments to the requirements for these child care providers to reflect current procedures.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 35A-1-104 and Subsections 35A-1-104(4) and 35A-3-310(3)

ANTICIPATED COST OR SAVINGS TO:

❖ THE STATE BUDGET: This applies to federally-funded programs so there are no costs or savings to the state budget. If a provider does not meet the new qualifications, the client will just choose a different provider.

❖ LOCAL GOVERNMENTS: This is a federally-funded program so there are no costs or savings to the local government.

❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: There will no costs to small businesses or other persons to comply with these changes. Although there will be a small fee for criminal background checks for some providers, that is in the legislation and was not created by this rule change.

COMPLIANCE COSTS FOR AFFECTED PERSONS: There will be a small cost to some providers who have not lived in Utah for five years to comply with the legislative changes in H.B. 73. These proposed amendments do not add any costs for affected persons beyond what is in the legislation.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: There are no compliance costs associated with this change. The small fee for a criminal background check for providers is the same fee most all other child care providers pay if the provider is licensed. Because the fee was mandated in H.B. 73 and not created in these proposed amendments, this proposed rule change will have no fiscal impact on businesses. Kristen Cox, Executive Director

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

WORKFORCE SERVICES
EMPLOYMENT DEVELOPMENT
140 E 300 S
SALT LAKE CITY UT 84111-2333, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Suzan Pixton at the above address, by phone at 801-526-9645, by FAX at 801-526-9211, or by Internet E-mail at spixton@utah.gov

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THIS RULE MAY BECOME EFFECTIVE ON: 06/23/2008

AUTHORIZED BY: Kristen Cox, Executive Director

R986. Workforce Services, Employment Development.
R986-700. Child Care Assistance.
R986-700-705. Eligible Providers and Provider Settings.

(1) The Department will only pay CC to clients who select eligible providers. The only eligible providers are:

(a) licensed and accredited providers:

(i) licensed homes;

(ii) licensed family group homes; and

(iii) licensed child care centers.

(b) license exempt providers who are not required by law to be licensed and are either;

(i) license exempt centers; or

(ii) related to at least one of the children for whom CC is provided. Related under this paragraph means: siblings who are at least 18 years of age and who live in a different residence than the parent, grandparents, step grandparents, aunts, step aunts, uncles, step uncles or people of prior generations of grandparents, aunts, or uncles, as designated by the prefix grand or, great, or persons who meet any of the above relationships even if the marriage has been terminated.

(c) homes with a Residential Certificate obtained from the Bureau of Licensing.

(2) The Department may, on a case by case basis, grant an exception and pay for CC when an eligible provider is not available:

(a) within a reasonable distance from the client's home. A reasonable distance, for the purpose of this exception only, will be determined by the transportation situation of the parent and child care availability in the community where the parent resides;

(b) because a child in the home has special needs which cannot be otherwise accommodated; or

(c) which will accommodate the hours when the client needs child care.

(d) However, the child's sibling, living in the same home, can never be approved even under the exceptions in this subsection.

(3) If an eligible provider is available, an exception may be granted in the event of unusual or extraordinary circumstances but only with the approval of a Department supervisor.

(4) If an exception is granted under paragraph (2) or (3) above, the exception will be reviewed at each of the client's review dates to determine if an exception is still appropriate.

(5) License exempt providers must register with the Department and agree to maintain minimal health and safety criteria by signing a certification before payment to the client can be approved. The minimum criteria are that:

(a) the provider be at least 18 years of age and be legally able to work in the United States[~~physically and mentally capable of providing care to children~~];

(b) the provider's home is [~~equipped with hot and cold running water, toilet facilities, and is~~]clean and safe from hazardous items which could cause injury to a child. This applies to outdoor areas as well;

(c) there are working smoke detectors[~~and fire extinguishers on all floors of the house~~] where children are provided care;

(d) the provider and all individuals 12 years old or older living in the home where care is provided submit to and pass a background check as provided in R986-700-751 et seq.[~~there are no individuals residing in the home who have a conviction for a misdemeanor which is an offense against a person, or any felony conviction, or have been subject to a supported finding of child abuse or neglect by the Utah Department of Human Services, Division of Child and Family Services or a court~~];

(e) there is a telephone in operating condition with a list of emergency numbers[~~located next to the phone which includes the phone numbers for poison control and for the parents of each child in care~~];

(f) food will be provided to the child in care[~~of sufficient amount and nutritional value to provide the average daily nutrient intake required~~]. Food supplies will be maintained to prevent spoilage or contamination[~~. Any allergies will be noted and care given to ensure that the child in care is protected from exposure to those items~~];[~~and~~]

(g) the child in care will be immunized as required for children in licensed day care and;

(h) good hand washing practices will be maintained to discourage infection and contamination.

(6) The following providers are not eligible for receipt of a CC payment:

(a) a member of a household assistance unit who is receiving one or more of the following assistance payments: FEP, FEPTP, diversion assistance or food stamps for any child in that household assistance unit. The person may, however, be paid as a provider for a child in a different household assistance unit;

(b) a sibling of the child living in the home;

(c) household members whose income must be counted in determining eligibility for CC;

(d) a parent, foster care parent, stepparent or former stepparent, even if living in another residence;

(e) illegal aliens;

(f) persons under age 18;

(g) a provider providing care for the child in another state;

(h) a provider who has committed fraud as a provider, as determined by the Department or by a court;

(i) any provider disqualified under R986-700-718;

(j) a provider who does not cooperate with a Department investigation of a potential overpayment

(k) a provider living in the same home as the client unless one of the exceptions in subsection (2) of this section are met.

R986-700-751. Background Checks.

(1) Sections R986-700-751 through 756 apply to child care providers identified in Utah Code Section 35A-3-310.5(1).

(2) The provider and each person age 12 years old or older living in the household where the child care is provided must submit to a background check.

(3) If child care is provided in the child's home, a background check must be done on each person age 12 years old or older living in the child's home who is not on the client's child care case.

(4) A client is not eligible for a subsidy if the client chooses a provider and the provider or any person age 12 years old or older living in the household where the child care is provided has:

(a) a supported finding of severe abuse or neglect by the Department of Human Services, a substantiated finding by a Juvenile court under Subsection 78-3a-320 or a criminal conviction related to neglect, physical abuse, or sexual abuse of any person; or

(b) a conviction for an offense as identified in R986-700-754; or

(c) an adjudication in juvenile court of an act which if committed by an adult would be an offense identified in R986-700-754.

R986-700-752. Definitions.

Terms used in the section R986-700-751 through 756 are defined as followed:

(1) "Convicted" includes a conviction by a jury or court, a guilty plea or a plea of no contest, an adjudication in juvenile court or an individual who is currently subjected to a deferred judgment and sentence agreement, a deferred prosecution agreement, a deferred adjudication agreement, or a plea in abeyance.

(2) "Covered Individual" means:

(a) each person providing child care;

(b) all individuals 12 years old or older residing in a residence where child care is provided.

(3) "Supported" means a finding by the Utah Department of Human Services (DHS), at the completion of an investigation by DHS, that there is a reasonable basis to conclude that one or more of the following severe types of abuse or neglect has occurred:

(a) if committed by a person 18 years of age or older;

(i) severe or chronic physical abuse;

(ii) sexual abuse;

(iii) sexual exploitation;

(iv) abandonment;

(v) medical neglect resulting in death, disability, or serious illness;

(vi) chronic or severe neglect; or

(vii) chronic or severe emotional abuse

(b) if committed by a person under the age of 18:

(i) serious physical injury, as defined in Subsection 76-5-109(1)(d) to another child which indicates a significant risk to other children, or

(ii) sexual behavior with or upon another child which indicates a significant risk to other children.

R986-700-753. Criminal Background Screening.

(1) Each client requesting approval of a covered child care provider must submit to the Department a form, which will include a waiver and certification, completed and signed by the child care provider before the client's application for child care assistance can be approved. A fingerprint card and fee, prepared either by the local law enforcement agency or an agency approved by local law enforcement, shall also be submitted unless an exception is granted under subsection (3) of this section. Normally, child care subsidy will not be delayed pending completion of the background check.

(2) The provider must state in writing, based upon the provider's best information and belief, that no covered person, including the provider's own children, has ever been convicted of a felony, misdemeanor or had a supported finding from DHS or a substantiated finding from a juvenile court of severe abuse or neglect of a child. If the provider is aware of any such conviction or supported or substantiated finding, but is not certain it will result in a disqualification, the Department will obtain information from the provider to assess the threat to children. If the provider knowingly makes false representations or material omissions to the Department regarding a covered individual's record, the provider will be responsible for repayment to the Department of the child care subsidy paid by the Department prior to the background check. If a provider signs an attestation, a disqualification based on a covered individual who no longer lives in the home can be cured under certain conditions.

(3) Fingerprint cards are not required if the Department is reasonably satisfied that the covered individual has resided in Utah for the last five years. A fingerprint card may be required, even if the individual has resided in Utah for the last five years, if requested by the Department.

(4) The Department will contract with the Department of Health (DOH) to perform a criminal background screening, which includes a review of the Bureau of Criminal Identification, (BCI) database maintained by the Department of Public Safety pursuant to Part 2 of Chapter 10, Title 53; and if a fingerprint card, waiver and fee are submitted, the Department or DOH will forward the fingerprint card, waiver and fee to the Utah Department of Public Safety for submission to the FBI for a national criminal history record check.

(5) If the Department takes an action adverse to any covered individual based upon the background screening, the Department will send a written decision to the client explaining the action and the right of appeal. DOH will send a denial letter to the provider and the covered individual.

R986-700-754. Exclusion from Child Care Due to Criminal Convictions.

(1) As required by Utah Code Subsection 35A-3-310.5(4), if the criminal conviction was a felony, or is a misdemeanor that is not excluded under paragraphs (2) or (3) below, the covered individual may not provide child care or reside in a home where child care is provided.

(2) As allowed by Utah Code Subsection 35A-3-310.5(5), the Department hereby excludes the following misdemeanors and determines that a misdemeanor conviction listed below does not disqualify a covered individual from providing child care:

(a) any class B or C conviction under Chapter 6, Title 76, Offenses Against Property, Utah Criminal Code;

(b) any class B or C conviction under Chapter 6a, Title 76, Pyramid Schemes, Utah Criminal Code;

(c) any class B or C conviction under Chapter 8, Title 76, Offenses Against the Administration of Government, Utah Criminal

Code except 76-8-1201 through 1207, Public Assistance Fraud; and 76-8-1301 False statements regarding unemployment compensation;

(d) any class B or C conviction under Chapter 9, Title 76, Offenses Against Public Order and Decency, Utah Criminal Code, except for 76-9-301.8, Bestiality; 76-9-702, Lewdness; and 76-9-702.5, Lewdness Involving Child; and

(e) any class B or C conviction under Chapter 10, Title 76, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code, except for 76-10-1201 to 1229.5, Pornographic and Harmful Materials and Performances; 76-10-1301 to 1314, Prostitution; and 76-10-2301, Contributing to the Delinquency of a Minor.

(3) The Executive Director or designee may consider and approve individual cases where a covered individual will be allowed to provide child care who would otherwise be excluded by this section.

(4) The Department will rely on the criminal background screening as conclusive evidence of the conviction and the Department may revoke or deny approval for a provider based on that evidence.

(5) If a covered individual causes a provider to be disqualified as a provider based upon the criminal background screening and the covered individual disagrees with the information provided by BCI, the covered individual may challenge the information by contacting BCI directly. If the information causing the disqualification came from a Utah court, the covered individual must contact that court or seek an expungement as provided in Utah Code Ann. Sections 77-18-10 through 77-18-15.

(6) All child care providers must report all felony and misdemeanor arrests, charges or convictions of covered individuals to DOH within ten calendar days of the arrest, notice of the charge, or conviction. All child care providers must also report a person aged 12 or older moving into the home where child care is provided within ten calendar days of that person moving in. A release for a background check must also be provided for that person within the time requested by the Department or DOH.

R986-700-755. Covered Individuals with Arrests or Pending Criminal Charges.

(1) If the Department determines there exists credible evidence that a covered individual has been arrested or charged with a felony or a misdemeanor that would not be excluded under R986-700-754, the Department will act to protect the health and safety of children in child care that the covered individual may have contact with. The Department may revoke or suspend approval of the provider if necessary to protect the health and safety of children in care.

(2) If the Department denies or revokes approval based upon the arrest or felony or misdemeanor charge, the Department will send a written decision to the client notifying the client that a hearing with the Department may be requested.

(3) The Department may hold the revocation or denial in abeyance until the arrest or felony or nonexempt misdemeanor charge is resolved.

R986-700-756. Exclusion From Child Care Due to Finding of Abuse, Neglect, or Exploitation.

(1) Pursuant to Utah Code Subsection 62A-4a-1005(2)(a)(v) the Department or DOH will screen all covered individuals, including children residing in a home where child care is provided, for a history of a supported finding of severe abuse, neglect, or exploitation from the licensing information system maintained by the Utah Department of Human Services (DHS) and the juvenile court records.

(2) If a covered individual appears on the licensing information system, the threat to the safety and health of children will be assessed. The Department may revoke any existing approval and refuse to permit child care in the home until the Department is reasonably convinced that the covered individual no longer resides in the home.

(3) If the Department denies or revokes approval of a child care subsidy based upon the licensing information system, the Department will send a written decision to the client.

(4) If the DHS determines a covered individual has a supported finding of severe abuse, neglect or exploitation after the Department approves a child care subsidy, the covered individual has ten calendar days to notify DOH. Failure to notify DOH may result in the child care provider being liable for an overpayment for all subsidy amounts paid to the client between the finding and when it is reported or discovered.

KEY: child care
Date of Enactment or Last Substantive Amendment: 2008
Notice of Continuation: September 14, 2005
Authorizing, and Implemented or Interpreted Law: 35A-3-310

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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 (Subsection 63G-3-304(1)).

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 Section 63G-3-304; and Section R15-4-8.

Administrative Services, Finance
R25-14
Payment of Attorneys' Fees in Death Penalty Cases

NOTICE OF 120-DAY (EMERGENCY) RULE
DAR FILE NO.: 31363
FILED: 05/01/2008, 17:03

RULE ANALYSIS

PURPOSE OF THE RULE OR REASON FOR THE CHANGE: The purpose of this emergency rule is to establish the method in which attorneys receive compensation in compliance with Section 78B-9-202 which was amended by S.B. 277 (2008). (DAR Note: S.B. 277 (2008) is found at Chapter 288, Laws of Utah 2008, and is effective 05/05/2008.)

SUMMARY OF THE RULE OR CHANGE: The requirement of a submission of written approval from the court certifying that fees and expenses were reasonable. The maximum compensation rate was increased from $100 per hour to $125 per hour, not to exceed $60,000.

STATE STATUTORY OR CONSTITUTIONAL AUTHORIZATION FOR THIS RULE: Section 78B-9-202

ANTICIPATED COST OR SAVINGS TO:
❖ THE STATE BUDGET: Cost to the state budget is dependent upon the number of death penalty cases in the system. This amendment removes benchmark payments in favor of an hourly compensation with additional funds available for reasonable litigation expenses. With this method of payment, moderately higher costs are likely to be incurred.

❖ LOCAL GOVERNMENTS: This rule does not affect local government because local government does not compensate attorneys in death penalty cases.
❖ SMALL BUSINESSES AND PERSONS OTHER THAN BUSINESSES: This rule may increase profit for small law firms with attorneys representing clients in death penalty cases. The exact increase is impossible to predict because the number of attorneys from small firms who will be involved in these post-conviction cases is unknown.

COMPLIANCE COSTS FOR AFFECTED PERSONS: No associated compliance costs because this amendment does not require further action on the part of any person. It simply changes the rate at which attorneys are compensated.

COMMENTS BY THE DEPARTMENT HEAD ON THE FISCAL IMPACT THE RULE MAY HAVE ON BUSINESSES: The rule will have no net cost to businesses; however, attorneys who serve as counsel in post-conviction cases will see a possible increase in payment from the state. Kimberly Hood, Executive Director

EMERGENCY RULE REASON AND JUSTIFICATION: REGULAR RULEMAKING PROCEDURES WOULD place the agency in violation of federal or state law.
The amended Section 78B-9-202 increasing attorney compensation will become law on 05/05/2008.

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:
Marilee Richins at the above address, by phone at 801-538-3450, by FAX at 801-538-3244, or by Internet E-mail at MPRICHINS@utah.gov

THIS RULE IS EFFECTIVE ON: 05/05/2008

AUTHORIZED BY: Kimberly K Hood, Executive Director

R25. Administrative Services, Finance.
R25-14. Payment of Attorneys Fees in Death Penalty Cases.
R25-14-1. Authority and Purpose.

(1) This rule is [~~implemented~~]enacted pursuant to Section [~~78-35a-202~~]78B-9-202.

(2) The purpose of the rule is to establish the procedures [~~and maximum compensation amounts to be paid for~~]for payment of attorneys' fees and litigation expenses by the Division of Finance to legal counsel appointed by [~~district~~]courts to represent indigent persons sentenced to death who request representation to file an action under Title 78B, Chapter [~~35a~~]9, Post-Conviction Remedies Act.

(3) All payments under this rule are subject to the availability of funds appropriated by the Utah State Legislature for the purpose of making these payments.

(4) This rule applies to fees and expenses incurred on and following the effective date of this rule.

(5) This rule is effective May 5, 2008.

R25-14-2. Request for Payment.

[~~In order to~~]To obtain payment for attorney's fees and litigation expenses, counsel appointed by a [~~district~~] court, pursuant to Section [~~78-35a-202(2)(c)~~]78B-9-202, shall:

(1) P[~~p~~]resent to the Division of Finance a certified copy of the [~~district~~]court order of appointment [~~of legal counsel and a signed Request for Payment verifying the work has been performed as provided in Section R25-14-4 pursuant to the schedule of payments set forth in that section.~~]before or at the time the first request for payment is submitted.

(2) Obtain the court's review and written approval certifying that the fees and expenses were reasonable in accordance with Section 78B-9-202 and this rule.

(3) Submit the court's written approval and a request for payment to the Division of Finance.

(4) The request for payment must verify that the work has been performed as provided by this rule and Section 78B-9-202 and be signed by the appointed counsel. The request for payment must be sufficiently itemized to describe the services performed and such other information as may be reasonably required by the Division of Finance to properly review and process the payment. Original invoices must be submitted for all litigation expenses for which payment is requested.

(5) Before making payment, the Division of Finance may request additional supporting documentation.

(6) The Division of Finance may withhold payment for any item in a request for payment when such item conflicts with this rule or the Post-Conviction Remedies Act pending resolution of the amount requested.

R25-14-3. Scope of Services.

(1) All appointed counsel, by accepting the court appointment to represent an indigent client sentenced to death and by presenting a [~~R~~]request for [~~P~~]payment to the Division of Finance, agree in accordance with the Post-Conviction Remedies Act to provide all reasonable and necessary post-conviction legal services for the client, [~~including timely filing an action under the provisions of Title 78, Chapter 35a, Post-Conviction Remedies Act and representing the client in all legal proceedings conducted thereafter including, if requested by the client, an appeal to the Utah Supreme Court.~~]and represent the client in all legal proceedings conducted thereafter including, if requested by the client, an appeal to the Utah Supreme Court.

(2) [~~All appointed counsel agree to accept as full compensation for the legal services performed and litigation costs incurred the amounts provided in the Schedule of Payments of Attorneys Fees found in Section R25-14-4.~~]Full compensation for the legal services performed and litigation costs incurred shall be the amounts provided in the Post-Conviction Remedies Act and this rule.

R25-14-4. Schedule of Payments of Attorneys Fees.

[~~All counsel appointed to jointly represent a single client shall be paid, in the aggregate, according to the following schedule of payments upon certification to the Division of Finance that the specified legal service was performed or the specified events have occurred:~~

~~(1) $5,000.00 upon appointment by the district court and presentation of a signed Request for Payment to the Division of Finance.~~

~~(2) $5,000.00 upon timely filing a petition for post-conviction relief.~~

~~(3) $10,000.00 after all discovery has been completed, all prehearing motions have been ruled upon, and a date for an evidentiary hearing has been set.~~

~~(4) If an evidentiary hearing is required, $5,000.00 on the date the first witness is sworn.~~

~~(5) $7,500.00 if an appeal is filed from a final order of the district court. $5,000.00 of the total shall be paid when the brief on behalf of the indigent person is filed and $2,500.00 when the Utah Supreme Court finally remits the case to the district court.~~

~~(6) An additional fee of $100 per hour, but in no event to exceed $5,000.00 in the aggregate, shall be paid if:~~

~~(a) counsel satisfy the requirements of Rule 4-505, Utah Code of Judicial Administration; and~~

~~(b) the district court finds:~~

~~(i) that the appointed counsel provided extraordinary legal services that were not reasonably foreseeable at the time of accepting the appointment, such as responding to or filing a petition for interlocutory appeal, and~~

~~(ii) the services were both reasonable and necessary for the presentation of the client's claims.~~

~~(c) These additional fees shall be paid upon approval by the district court and compliance with the provisions of this rule.~~](1) The Division of Finance shall pay reasonable attorney fees for appointed counsel up to the maximum rate of $125 per billable hour not to exceed a total amount of $60,000, except as provided in subsection (2).

(2) The Division of Finance shall pay amounts exceeding the total amount if:

(a) before services are performed, appointed counsel files a request with the court to exceed the total amount allowed by subsection (1);

(b) appointed counsel serves the request upon the Division of Finance before or on the date of filing the request with the court;

(c) the Division of Finance is allowed to respond to the request; and

(d) the court determines there is sufficient cause to exceed the amount in accordance with Section 78B-9-202.

R25-14-5. Payment of Reasonable Litigation Expenses.

(1) The Division of Finance shall pay reasonable litigation expenses not to exceed a total amount of $20,000[~~.00~~] [~~in any one case for court approved investigators, expert witnesses, and consultants. Before payment is made for litigation expenses, the appointed counsel must submit a request for payment to the Division of Finance including:~~

~~(1) a detailed invoice of all expenses for which payment is requested; and~~

~~(2) written approval of the district court certifying that the expenses were both reasonable and necessary for the presentation of the client's claims.~~]except as provided in subsection (2).

(2) The Division of Finance shall pay amounts exceeding the total amount if:

(a) before services are performed or expenses are incurred, appointed counsel files a request with the court to exceed the total amount;

(b) appointed counsel serves the request upon the Division of Finance before or on the date of filing the request with the court;

(c) the Division of Finance is allowed to respond to the request; and

(d) the court determines there is sufficient cause to exceed the total amount in accordance with Section 78B-9-202.

(3) Travel costs, including mileage, per diem for meals, and lodging will be reimbursed based on state rates and criteria published in rule or policy by the Division of Finance. Travel is not reasonable when the purpose of the travel can reasonably be accomplished in another way, such as by telephone or correspondence.[

~~**R25-14-6. Withdrawal of Counsel.**~~

~~(1) If an attorney appointed under Section 78-35a-202 is permitted to withdraw by the court or, due to death or disability, is unable to continue, the attorney shall be paid only for the actual work performed to the date of withdrawal as certified by the court.~~

~~(2) If withdrawal is ordered by the court because of counsel's improper conduct or the court finds that a foreseeable conflict of interest which should have been disclosed prior to appointment existed, all compensation received by the attorney shall be repaid to the Division of Finance.~~]

KEY: attorneys, fees, capital punishment, post-conviction[~~*~~]
Date of Enactment or Last Substantive Amendment: May 5, 2008
Notice of Continuation: January 17, 2007
Authorizing, and Implemented or Interpreted Law: [~~78-35a-202~~]78-9-202

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End of the Notices of 120-Day (Emergency) Rules Section

FIVE-YEAR NOTICES OF REVIEW AND STATEMENTS OF CONTINUATION

Within five years of an administrative rule's original enactment or last five-year review, the responsible agency is required to review the rule. This review is designed to remove obsolete rules from the *Utah Administrative Code*.

Upon reviewing a rule, an agency may: repeal the rule by filing a PROPOSED RULE; continue the rule as it is by filing a NOTICE OF REVIEW AND STATEMENT OF CONTINUATION (NOTICE); or amend the rule by filing a PROPOSED RULE and by filing a NOTICE. By filing a NOTICE, the agency indicates that the rule is still necessary.

NOTICES are not followed by the rule text. The rule text that is being continued may be found in the most recent edition of the *Utah Administrative Code*. The rule text may also be inspected at the agency or the Division of Administrative Rules. NOTICES are effective when filed. NOTICES are governed by Section 63G-3-305.

Administrative Services, Finance
R25-5
Payment of Per Diem to Boards

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 31317
FILED: 04/29/2008, 15:45

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 63A-3-106 authorizes the Division of Finance to establish per diem rates for all state officers and employees of the executive branch, except officers and employees of higher education, to meet subsistence expenses for attendance at official meetings.

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 from any interested persons concerning this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: It is necessary to continue this rule because it is required by statute. It sets the rates for per diem paid to board members and establishes the conditions under which the per diem will be paid. No opposing comments have been received.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Marilee Richins at the above address, by phone at 801-538-3450, by FAX at 801-538-3244, or by Internet E-mail at MPRICHINS@utah.gov

AUTHORIZED BY: Kimberly K Hood, Executive Director

EFFECTIVE: 04/29/2008

Administrative Services, Finance
R25-6
Relocation Reimbursement

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 31316
FILED: 04/29/2008, 15:38

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is enacted under the authority of Subsection 63A-3-103(1) which authorizes the Director of Finance to define fiscal procedures relating to approval and allocation of funds. This rule details under what conditions funds may be allocated for relocation reimbursement.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received from any interested persons concerning this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: A division review determined that this rule should be continued because it sets the requirements for reimbursing relocation expenses to state employees. No opposing comments have been received.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Marilee Richins at the above address, by phone at 801-538-3450, by FAX at 801-538-3244, or by Internet E-mail at MPRICHINS@utah.gov

AUTHORIZED BY: Kimberly K Hood, Executive Director

EFFECTIVE: 04/29/2008

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

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 31319
FILED: 04/29/2008, 16:19

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is enacted under the authority of Section 63A-3-107, which authorizes the Division of Finance to adopt rules governing in-state and out-of-state travel. In addition, S.B. 1, Line Item 60 of the 2000 legislative session (Chapter 344, Laws of Utah 2000), as continued by H.B. 1, Item 57 of the 2001 legislative session (Chapter 334, Laws of Utah 2001); S.B. 1, Item 49 of the 2002 legislative session (Chapter 277, Laws of Utah 2002); and H.B. 1, Item 52 of the 2003 legislative session contains intent language directing that the mileage reimbursement rate authorized in Section R25-7-10 also be applied to legislative staff, the judicial branch, and to the Utah System of Higher Education.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received for this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: A division review determined that this rule should be continued because it is required by statute.

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Marilee Richins at the above address, by phone at 801-538-3450, by FAX at 801-538-3244, or by Internet E-mail at MPRICHINS@utah.gov

AUTHORIZED BY: Kimberly K Hood, Executive Director

EFFECTIVE: 04/29/2008

Environmental Quality, Drinking Water
R309-352
Capacity Development Program

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 31157
FILED: 04/18/2008, 10:55

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Subsection 19-4-104(1)(a)(v) grants the Drinking Water Board authority to implement the Capacity Development Program and govern the allotment of federal funds to public water systems to assist their compliance with the Federal 1996 Reauthorized Safe Drinking Water Act (SDWA).

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The Division of Drinking Water (DDW) received one set of comments regarding the rule. The commenter questioned several aspects of the rule, namely: who should prepare the Capacity Assessment Plan and/or Worksheets, the cost to property owners/developers to prepare the plan, whether or not personal financial information is required by the rule, disclosing the location of system sources and/or storage facilities, the size of system the rule was written for, and duplication of information to be provided to DDW and again to the Public Utilities Commission.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The 1996 SDWA amendments outlined the requirements of the Capacity Development Program. The program mandates that states ensure that all new Community Water Systems and Non-

Transient, Non-Community Water Systems demonstrate the technical, managerial, and financial capacity (capability) to comply with SDWA and the National Primary Drinking Water Regulations (NPDWR). In addition, states must ensure that existing water systems demonstrate these capabilities before they can be awarded federal drinking water financial assistance from the federal Drinking Water State Revolving Fund. Each year the states are granted capitalization funds from EPA to finance their individual Federal SRF programs. If a state does not have an acceptable Capacity Development Program, 20% of those funds will be withheld (SDWA Section 1452(a)(1)(G)(i)). The State of Utah is currently granted over $8,000,000 annually for its federal SRF program, losing more than $1,600,000 of those funds each year would seriously impair the ability of the SRF Program to achieve its goal of providing water systems with funding and technical assistance to aid them in supplying their customers with sufficient quantities of quality drinking water, as well as complying with SDWA and the NPDWR. Reauthorization and continuation of Rule R309-352 Capacity Development Program is key to maintaining Utah's ability to meet the requirements of the 1996 SDWA amendments and receive its full allotment of federal capitalization funds. The division finds the submitted comments nonsubstantive. The rule does not specify who is to prepare the Capacity Assessment Plan and/or Worksheets and does not require that engineers or accountants be hired to do so. The information to be included in the plan or worksheets should be readily available and easily transferable into the documentation required by rule. This information would be necessary for any business entity to determine financial viability, both current and future. Personal financial information of the owner/developer is not required by the rule, only pertinent O&M cost data is required so DDW can ascertain the system's long-term viability. There is also no requirement that specific system infrastructure locations be divulged in the plan or worksheets. The rule requires sufficient information to determine that the system has sufficient source and storage capacity to meet state rules. The rule does not apply to systems that do not fit the definition of "public water system" (PWS), namely at least 15 service connections or 25 individuals. However, where it is obvious that the development has at least 15 lots and will be a PWS in the future, a capacity assessment is required. The type of information required by the rule is the same for very small systems as for large systems. There may be some areas where information required by the rule and included in the plan or worksheets is duplicated elsewhere, either in division rules or with other agencies. However, it is minimal and the EPA has determined that any additional cost incurred during the capacity assessment review process should not be overly burdensome. This EPA review is mandated any time EPA promulgates a new rule that potentially impacts a water system's financial viability. Therefore, this rule should be continued.

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

ENVIRONMENTAL QUALITY
DRINKING WATER
150 N 1950 W
SALT LAKE CITY UT 84116-3085, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Patti Fauver at the above address, by phone at 801-536-4196, by FAX at 801-536-4211, or by Internet E-mail at pfauver@utah.gov

AUTHORIZED BY: Ken Bousfield, Director

EFFECTIVE: 04/18/2008

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Health, Health Care Financing, Coverage and Reimbursement Policy

R414-6

Reduction in Certain Targeted Case Management Services

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR FILE NO.: 31169
FILED: 04/21/2008, 12:03

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: Section 26-1-5 grants the Department of Health the power to adopt, amend, or rescind rules that shall have the force and effect of law; in addition, Section 26-18-2.3 authorizes the department to utilize cost containment methods.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: The department did not receive any written or oral comments regarding this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule should be continued because it informs Medicaid clients of the restrictions in targeted case management services.

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:
Kimi McNutt at the above address, by phone at 801-538-6381, by FAX at 801-538-6099, or by Internet E-mail at KMCNUTT@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 04/21/2008

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Health, Center for Health Data, Health Care Statistics

R428-11

Health Data Authority Ambulatory Surgical Data Reporting Rule

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 31167
FILED: 04/21/2008, 11:50

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Subsection 26-33a-104(1) to "direct a statewide effort to collect, analyze, and distribute health care data to facilitate the promotion and accessibility of quality and cost-effective health care and also to facilitate interaction among those with concern for health care issues."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received since the last review of the rule. At its quarterly meeting on 04/08/2008, the Utah Health Data Committee reviewed the rule and requested its continuation.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes the reporting standards for ambulatory surgery data by licensed hospitals and ambulatory surgical facilities. The data are needed to develop and maintain a statewide ambulatory surgical database. Annual public reports on Utah hospital and freestanding ambulatory surgery center utilization and charge profile have been widely used to monitor outpatient surgery trends, costs, and quality of care for the people of Utah. The health care industry, researchers, and the Federal Agency for Healthcare Research and Quality have purchased the public use data files for their own uses. The uses of the data and reports are justifications for continuation of the rule.

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

HEALTH
CENTER FOR HEALTH DATA,
HEALTH CARE STATISTICS
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Mike Martin or Keely Cofrin Allen at the above address, by phone at 801-538-9205 or 801-538-6551, by FAX at 801-538-9916 or 801-538-9916, or by Internet E-mail at mikemartin@utah.gov or KCOFRINALLEN@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 04/21/2008

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Health, Center for Health Data, Health Care Statistics

R428-13

Health Data Authority, Audit and Reporting of HMO Performance Measures

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 31168
FILED: 04/21/2008, 11:51

NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

CONCISE EXPLANATION OF THE PARTICULAR STATUTORY PROVISIONS UNDER WHICH THE RULE IS ENACTED AND HOW THESE PROVISIONS AUTHORIZE OR REQUIRE THE RULE: This rule is authorized by Subsection 26-33a-104(1) to "direct a statewide effort to collect, analyze, and distribute health care data to facilitate the promotion and accessibility of quality and cost-effective health care and also to facilitate interaction among those with concern for health care issues."

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comment has been received since the last review of the rule. At its quarterly meeting on 04/08/2008, the Utah Health Data Committee reviewed the rule and requested its continuation.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: This rule establishes the process for the collection and audit of HMO and health plans' performance measures from all licensed health maintenance organizations in Utah. Annual public reports on HMO performance have been widely used to monitor the quality of care for the people of Utah by public health programs, HMOs, policy makers, and health care purchasers and consumers. The broad uses of the data and reports are justifications for continuation of the rule.

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

HEALTH
CENTER FOR HEALTH DATA,
HEALTH CARE STATISTICS
CANNON HEALTH BLDG
288 N 1460 W
SALT LAKE CITY UT 84116-3231, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
Keely Cofrin Allen or Mike Martin at the above address, by phone at 801-538-6551 or 801-538-9205, by FAX at 801-538-9916 or 801-538-9916, or by Internet E-mail at KCOFRINALLEN@utah.gov or mikemartin@utah.gov

AUTHORIZED BY: David N. Sundwall, Executive Director

EFFECTIVE: 04/21/2008

Human Services, Recovery Services
R527-302
Income Withholding Fees

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 31160
FILED: 04/21/2008, 08:19

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 62A-11-406 allows the payor of income to deduct a fee for income withholding in accordance with Rule 64D, Utah Rules of Civil Procedure. Section 78-7-44 (now numbered Section 78A-2-216) indicates that the fee is a one-time $25 fee. The administrative rule allows payors to deduct the fee in the first month or in monthly increments not to exceed the maximum amount permitted under Subsection 303(b) of the Consumer Credit Protection Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The statues under which this rule is enacted are still in effect and the rule is reflected in the current policy, practices, and procedures of the Office of Recovery Services/Child Support Services (ORS/CSS). Therefore, this rule should be continued. Section 78-7-44 has been renumbered as Section 78A-2-216 and will be addressed in a Notice of Proposed Rule amendment shortly. This rule will also be amended to add a statement outlining the department's rulemaking authority and the purpose for this rule.

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

HUMAN SERVICES
RECOVERY SERVICES
515 E 100 S
SALT LAKE CITY UT 84102-4211, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
LeAnn Wilber at the above address, by phone at 801-536-8950, by FAX at 801-536-8833, or by Internet E-mail at lwilber@utah.gov

AUTHORIZED BY: Mark Brasher, Director

EFFECTIVE: 04/21/2008

Human Services, Recovery Services
R527-475
State Tax Refund Intercept

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 31161
FILED: 04/21/2008, 08:23

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 59-10-529 authorizes crediting tax overpayments (refund) to any judgment or delinquent child support obligation after any income tax that may be due. It requires that the Office of Recovery Services/Child Support Services (ORS/CSS) make a determination of delinquency, give notice to the taxpayer of the past-due amount and that overpayment will be applied to the individual's past-due support amount, and provides an opportunity for him/her to contest the amount of past-due support. This rule states that before ORS/CSS can intercept a state tax refund, there must be a valid order for the child

support delinquency with a balance owing. Section 78-45-9.3 (renumbered to Section 78B-12-112) provides clarification and details that tax refund must be applied to certain categories of a support debt and also provides for an unobligated spouse who has filed jointly with the obligor to receive a portion of his/her tax refund.

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: The state laws upon which this rule is based are still in effect. The clarifications and procedures provided in the rule continue to be necessary for the appropriate implementation of those laws. Determination of delinquency, notice to the taxpayer, and application of the tax intercept are essential in the collection of child support. Therefore, this rule should be continued. Section 78-45-9.3 has been renumbered to Section 78B-12-112 and will be addressed in a Notice of Proposed Rule amendment shortly. The rule will also be amended to include a statement outlining the department's rulemaking authority and the purpose for this rule.

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

HUMAN SERVICES
RECOVERY SERVICES
515 E 100 S
SALT LAKE CITY UT 84102-4211, or
at the Division of Administrative Rules.

DIRECT QUESTIONS REGARDING THIS RULE TO:
LeAnn Wilber at the above address, by phone at 801-536-8950, by FAX at 801-536-8833, or by Internet E-mail at lwilber@utah.gov

AUTHORIZED BY: Mark Brasher, Director

EFFECTIVE: 04/21/2008

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Labor Commission, Administration
R600-1
Declaratory Orders

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 31232
FILED: 04/28/2008, 08:07

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 34A-1-104 authorizes the Labor Commission to adopt rules necessary to administer the Workers' Compensation Act, Occupational Disease Act, Safety Act, payment of wages and employment of minors laws, Antidiscrimination Act, and the Occupational Safety and Health Act. Pursuant to that authority, and as required by Section 63-46B-21, the commission has adopted Rule R600-1, which establishes the requirements and appeal rights for declaratory orders.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received during or since the last five-year review of this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: As required by Section 63-46b-21, this rule provides the procedures for submission, review, and disposition of petitions for agency declaratory orders on the applicability of statues, rules and orders governing or issued by the commission, and should be continued.

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

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

DIRECT QUESTIONS REGARDING THIS RULE TO:
Alan Hennebold at the above address, by phone at 801-530-6937, by FAX at 801-530-6390, or by Internet E-mail at ahennebold@utah.gov

AUTHORIZED BY: Sherrie Hayashi, Commissioner

EFFECTIVE: 04/28/2008

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Labor Commission, Industrial Accidents
R612-2
Workers' Compensation Rules-Health Care Providers

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 31234
FILED: 04/28/2008, 08:08

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 34A-1-104 gives the Labor Commission authority to establish rules to administer the Workers' Compensation Act and the Occupational Disease Act. Subsection 34A-2-407(8) requires health care providers, except hospitals, to comply with the commission's rules.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received during or since the last five-year review of this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: In light of the commission's continuing statutory responsibility to administer Utah's workers' compensation system, it remains necessary for the commission to address issues relating to health care providers, such as the proper codes to use in billing and the amount providers will be paid for their services. It is also necessary for the commission to establish rules to maintain consistency in the handling of injured workers claims so this rule should be continued.

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

LABOR COMMISSION
INDUSTRIAL ACCIDENTS
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:
Larry Bunkall at the above address, by phone at 801-530-6988, by FAX at 801-530-6844, or by Internet E-mail at lbunkall@utah.gov

AUTHORIZED BY: Sherrie Hayashi, Commissioner

EFFECTIVE: 04/28/2008

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Labor Commission, Industrial Accidents
R612-3
Workers' Compensation Rules - Self Insurance

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 31230
FILED: 04/28/2008, 08:06

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 34A-1-104 gives the Labor Commission authority to establish rules to administer the Workers' Compensation Act and the Occupational Disease Act. Section 34A-2-201 authorizes the commission to approve employers' requests for permission to self-insure their workers' compensation obligations.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received during and since the last five-year review of this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: The Labor Commission has been given the responsibility to see that all employers in the state have workers' compensation insurance. This rule establishes the method by which a Utah employer can provide its own insurance in the areas of workers' compensation and occupational diseases. This rule also sets forth the method for review of a denial of self-insured status and should be continued.

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

LABOR COMMISSION
INDUSTRIAL ACCIDENTS
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:
Larry Bunkall at the above address, by phone at 801-530-6988, by FAX at 801-530-6844, or by Internet E-mail at lbunkall@utah.gov

AUTHORIZED BY: Sherrie Hayashi, Commissioner

EFFECTIVE: 04/28/2008

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Labor Commission, Industrial Accidents
R612-5
Employee Leasing Company Workers' Compensation Insurance Policy Endorsements

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 31229
FILED: 04/28/2008, 08:05

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 34A-1-104 gives the Labor Commission authority to establish rules to administer the Workers' Compensation Act and the Occupational Disease Act. Subsection 34A-2-103(3) requires employee leasing companies to comply with commission rules for purposes of obtaining workers' compensation coverage.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received during and since the last five-year review of this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: Utah law requires all Utah employers to have workers' compensation insurance. This rule establishes the method by which employee leasing companies notify the commission of the employers covered by the leasing company's policy and should be continued.

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

LABOR COMMISSION
INDUSTRIAL ACCIDENTS
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:
Larry Bunkall at the above address, by phone at 801-530-6988, by FAX at 801-530-6844, or by Internet E-mail at lbunkall@utah.gov

AUTHORIZED BY: Sherrie Hayashi, Commissioner

EFFECTIVE: 04/28/2008

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Labor Commission, Industrial Accidents
R612-7
Impairment Ratings for Industrial Injuries and Diseases

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 31231
FILED: 04/28/2008, 08:07

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 34A-1-104 gives the Labor Commission authority to establish rules to administer the Workers' Compensation Act and the Occupational Disease Act.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received during and since the last five-year review of this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: In light of the commission's continuing responsibility to administer Utah's workers' compensation system, it remains necessary for the commission to address the method of rating impairments of injured workers, so this rule should be continued.

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

LABOR COMMISSION
INDUSTRIAL ACCIDENTS
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:
Larry Bunkall at the above address, by phone at 801-530-6988, by FAX at 801-530-6844, or by Internet E-mail at lbunkall@utah.gov

AUTHORIZED BY: Sherrie Hayashi, Commissioner

EFFECTIVE: 04/28/2008

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Labor Commission, Safety
R616-1
Coal, Gilsonite, or other Hydrocarbon Mining Certification

FIVE YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION
DAR FILE NO.: 31233
FILED: 04/28/2008, 08:08

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 34A-1-104 gives the Labor Commission authority to establish rules to administer and enforce all laws for the protection of the life, health, and safety of employees.

SUMMARY OF WRITTEN COMMENTS RECEIVED DURING AND SINCE THE LAST FIVE YEAR REVIEW OF THE RULE FROM INTERESTED PERSONS SUPPORTING OR OPPOSING THE RULE: No written comments have been received during and since the last five-year review of this rule.

REASONED JUSTIFICATION FOR CONTINUATION OF THE RULE, INCLUDING REASONS WHY THE AGENCY DISAGREES WITH COMMENTS IN OPPOSITION TO THE RULE, IF ANY: In light of the commission's continuing responsibility to ensure the protection of life, health, and safety of employees it remains necessary for the commission to address issues relating to the safety of employees in coal mine operations so this rule should be continued.

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

LABOR COMMISSION
SAFETY
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:
Pete Hackford at the above address, by phone at 801-530-7605, by FAX at 801-530-6390, or by Internet E-mail at phackford@utah.gov

AUTHORIZED BY: Sherrie Hayashi, Commissioner

EFFECTIVE: 04/28/2008

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 (Section 63G-3-305). 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 Subsection 63G-3-305(4) and (5).

Health

Community and Family Services, Immunization

No. 31173: R396-100. Immunization Rule for Students.
ENACTED OR LAST REVIEWED: 04/24/2003 (No. 26187, 5YR, filed 04/24/2003 at 1:43 p.m., published 05/15/2003).
EXTENDED DUE DATE: 08/22/2008

End of the Notices of Five-Year Review Extensions Section

NOTICES OF EXPIRED RULES

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

The rules listed below were not reauthorized by the "Reauthorization of Administrative Rules" bill considered by the legislature during its last General Session.

The expiration of administrative rules that are not reauthorized by the Legislature is governed by Section 63G-3-502. The Administrative Rules Review Committee is created by Section 63G-3-501.

Human Services

Substance Abuse and Mental Health, State Hospital

No. 31348: R525-6. Prohibited Items and Devices.
Chapter 359, Laws of Utah 2008 (S.B. 43)
EXPIRED: 05/01/2008

(DAR NOTE: A proposed new Rule R525-6 that was published in the March 15, 2008, Bulletin under DAR No. 31031 (2008-6, pg. 7) went into effect on 05/01/2008 to replace the one that was expired by S.B. 43.)

Public Safety

Criminal Investigations and Technical Services, Criminal Identificaiton

No. 31349: R722-300. Concealed Firearm Permit Rule.
Chapter 359, Laws of Utah 2008 (S.B. 43)
EXPIRED: 05/01/2008

End of the Notices of Expired Rules Section

NOTICES OF RULE EFFECTIVE DATES

These are the effective dates of PROPOSED RULES or CHANGES IN PROPOSED RULES published in earlier editions of the *Utah State Bulletin*. Statute permits an agency to make a rule effective "on any date specified by the agency that is no fewer than seven calendar days after the close of the public comment period . . . , nor more than 120 days after the publication date." Subsection 63G-3-301(9).

Abbreviations
AMD = Amendment
CPR = Change in Proposed Rule
NEW = New Rule
R&R = Repeal and Reenact
REP = Repeal

Education
Administration
No. 31014 (REP): R277-721. Deadline for CACFP Sponsor Participation in Food Distribution Program.
Published: March 15, 2008
Effective: April 21, 2008

No. 31015 (REP): R277-722. Withholding Payments and Commodities in the CACFP.
Published: March 15, 2008
Effective: April 21, 2008

Human Services
Substance Abuse and Mental Health, State Hospital
No. 31031 (NEW): R525-6. Prohibited Items and Devices.
Published: March 15, 2008
Effective: May 1, 2008

Recovery Services
No. 31025 (AMD): R527-305. High-Volume, Automated Administrative Enforcement in Interstate Child Support Cases.
Published: March 15, 2008
Effective: April 21, 2008

Professional Practices Advisory Commission
Administration
No. 31016 (REP): R686-103. Professional Practices and Conduct for Utah Educators.
Published: March 15, 2008
Effective: April 21, 2008

Sports Authority (Utah)
Pete Suazo Utah Athletic Commission
No. 31028 (AMD): R859-1. Pete Suazo Utah Athletic Commission Act Rule.
Published: March 15, 2008
Effective: May 1, 2008

No. 31029 (AMD): R859-1-302. Renewal Cycle - Procedure.
Published: March 15, 2008
Effective: May 1, 2008

Workforce Services
Employment Development
No. 31032 (AMD): R986-200. Family Employment Program.
Published: March 15, 2008
Effective: May 1, 2008

No. 31034 (AMD): R986-400-406. Failure to Comply with the Requirements of an Employment Plan.
Published: March 15, 2008
Effective: May 1, 2008

No. 31033 (AMD): R986-700. Child Care Assistance.
Published: March 15, 2008
Effective: May 1, 2008

End of the Notices of Rule Effective Dates Section

RULES INDEX
BY AGENCY (CODE NUMBER)
AND
BY KEYWORD (SUBJECT)

The *Rules Index* is a cumulative index that reflects all effective changes to Utah's administrative rules. The current *Index* lists changes made effective from January 2, 2008, including notices of effective date received through May 1, 2008, the effective dates of which are no later than May 15, 2008. 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					
Administration					
R13-1	Public Petitions for Declaratory Orders	31342	NSC	05/05/2008	Not Printed
R13-2	Access to Records	31343	NSC	05/05/2008	Not Printed
Administrative Rules					
R15-1	Administrative Rule Hearings	31143	NSC	05/05/2008	Not Printed
R15-2	Public Petitioning for Rulemaking	31144	NSC	05/05/2008	Not Printed
R15-3	Definitional Clarification of Administrative Rule	31145	NSC	05/05/2008	Not Printed
R15-4	Administrative Rulemaking Procedures	31146	NSC	05/05/2008	Not Printed
R15-5	Administrative Rules Adjudicative Proceedings	31147	NSC	05/05/2008	Not Printed
Facilities Construction and Management					
R23-13	State of Utah Parking Rules for Facilities Managed by the Division of Facilities Construction and Management	31063	5YR	03/17/2008	2008-8/50

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
R23-14	Management of Roofs on State Buildings	31064	5YR	03/17/2008	2008-8/50
Finance					
R25-2	Finance Adjudicative Proceedings	31318	NSC	05/05/2008	Not Printed
R25-5	Payment of Per Diem to Boards	31317	5YR	04/29/2008	2008-10/145
R25-6	Relocation Reimbursement	31316	5YR	04/29/2008	2008-10/145
R25-7	Travel-Related Reimbursements for State Employees	31319	5YR	04/29/2008	2008-10/146
R25-14	Payment of Attorneys' Fees in Death Penalty Cases	31363	EMR	05/05/2008	2008-10/142
Fleet Operations					
R27-4	Vehicle Replacement and Expansion of State Fleet	30618	AMD	03/06/2008	2007-22/9
Fleet Operations, Surplus Property					
R28-3	Utah State Agency for Surplus Property Adjudicative Proceedings	31117	5YR	04/04/2008	2008-9/52
Agriculture and Food					
Marketing and Development					
R65-2	Utah Cherry Marketing Order	31007	5YR	02/15/2008	2008-5/38
R65-5	Utah Red Tart and Sour Cherry Marketing Order	31008	5YR	02/15/2008	2008-5/38
Plant Industry					
R68-5	Grain Inspection	31006	5YR	02/15/2008	2008-5/39
R68-7	Utah Pesticide Control Act	30611	AMD	01/07/2008	2007-22/11
R68-14	Quarantine Pertaining to Gypsy Moth - Lymantria Dispar	31125	5YR	04/04/2008	2008-9/52
R68-17	Quarantine Pertaining to Necrotic Strain of the Potato Virus Y	31009	REP	04/11/2008	2008-5/4
Alcoholic Beverage Control					
Administration					
R81-4C	Limited Restaurant Licenses	31154	NSC	05/01/2008	Not Printed
R81-4D	On-Premise Banquet License	31155	NSC	05/01/2008	Not Printed
Auditor					
Administration					
R123-3-1	Definitions	31257	NSC	05/05/2008	Not Printed
R123-3-2	Designation	31260	NSC	05/05/2008	Not Printed
R123-3-3	Adjudicative Proceedings	31261	NSC	05/05/2008	Not Printed
R123-4-1	Authority	31262	NSC	05/05/2008	Not Printed
R123-4-2	Definitions	31263	NSC	05/05/2008	Not Printed
R123-4-5	Intervention	31265	NSC	05/05/2008	Not Printed
R123-4-6	Petition Review and Disposition	31266	NSC	05/05/2008	Not Printed
R123-4-7	Administrative Review	31267	NSC	05/05/2008	Not Printed
Capitol Preservation Board (State)					
Administration					
R131-1	Procurement of Architectural and Engineering Services	30591	AMD	02/29/2008	2007-21/11
R131-4	Procurement of Construction	30590	R&R	02/29/2008	2007-21/13

CODE REFERENCE	TITLE	FILE NUMBER	ACTION	EFFECTIVE DATE	BULLETIN ISSUE/PAGE
Commerce					
Administration					
R151-2	Government Records Access and Management Act Rule	31345	NSC	05/05/2008	Not Printed
R151-3-1	Authority and Purpose	31346	NSC	05/05/2008	Not Printed
R151-14-3	Adjudicative Proceedings	31354	NSC	05/05/2008	Not Printed
R151-35-3	Adjudicative Proceedings	31355	NSC	05/05/2008	Not Printed
Consumer Protection					
R152-1	Utah Division of Consumer Protection: "Buyer Beware List"	31184	NSC	05/05/2008	Not Printed
R152-11	Utah Consumer Sales Practices Act Rules	31213	NSC	05/05/2008	Not Printed
R152-15-2	Filing Requirements. Filing Fees	31214	NSC	05/05/2008	Not Printed
R152-20	New Motor Vehicle Warranties Rules	31215	NSC	05/05/2008	Not Printed
R152-22-9	Grounds for Denial, Suspension or Revocation Procedure	31216	NSC	05/05/2008	Not Printed
R152-23-1	Authority	31217	NSC	05/05/2008	Not Printed
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R612-9-1	Authority	31251	NSC	05/05/2008	Not Printed
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R861-1A-42	Waiver of Penalty and Interest for Reasonable Cause Pursuant to Utah Code Ann. Section 59-1-401	30835	AMD	02/25/2008	2008-1/33
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R865-6F-37	Disclosure of Reportable Transactions and Material Advisor List Pursuant to Utah Code Ann. Sections 59-1-1301 through 59-1-1309	30842	AMD	02/25/2008	2008-1/35
R865-9I-37	Enterprise Zone Individual Income Tax Credits Pursuant to Utah Code Ann. Sections 63-38f-401 through 63-38f-414	30916	AMD	03/14/2008	2008-3/63
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RULES INDEX - BY KEYWORD (SUBJECT)

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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	30811	R602-2-4	AMD	02/07/2008	2008-1/14
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	31198	R641-112	NSC	05/05/2008	Not Printed
	31199	R641-114	NSC	05/05/2008	Not Printed
	31200	R641-115	NSC	05/05/2008	Not Printed
	31201	R641-116	NSC	05/05/2008	Not Printed
Natural Resources, Forestry, Fire and State Lands	31268	R652-7	NSC	05/05/2008	Not Printed
	31269	R652-8	NSC	05/05/2008	Not Printed
	31110	R652-9-100	NSC	05/01/2008	Not Printed
	31270	R652-30-500	NSC	05/05/2008	Not Printed
	31112	R652-120	NSC	05/01/2008	Not Printed
	31108	R652-121	NSC	05/01/2008	Not Printed
	31111	R652-123	NSC	05/01/2008	Not Printed
administrative proceedings					
Public Safety, Driver License	31114	R708-22	NSC	05/05/2008	Not Printed
adult education					
Education, Administration	30883	R277-702	5YR	01/08/2008	2008-3/74
advertising					
Commerce, Consumer Protection	31213	R152-11	NSC	05/05/2008	Not Printed
agency					
Human Services, Aging and Adult Services	31378	R510-110	NSC	05/05/2008	Not Printed
air pollution					
Environmental Quality, Air Quality	30697	R307-101	AMD	02/08/2008	2007-23/21
	30959	R307-101	5YR	02/08/2008	2008-5/40
	30960	R307-102	5YR	02/08/2008	2008-5/40
	30698	R307-115	AMD	02/08/2008	2007-23/28
	30961	R307-115	5YR	02/08/2008	2008-5/41
	30889	R307-121-3	NSC	01/30/2008	Not Printed
	30962	R307-170	5YR	02/08/2008	2008-5/41
	30699	R307-170-7	AMD	02/08/2008	2007-23/29
	30963	R307-202	5YR	02/08/2008	2008-5/42
	30964	R307-203	5YR	02/08/2008	2008-5/43

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	30895	R307-214	5YR	01/11/2008	2008-3/77
	30965	R307-220	5YR	02/08/2008	2008-5/43
	30701	R307-221	AMD	02/08/2008	2007-23/32
	30966	R307-221	5YR	02/08/2008	2008-5/44
	30832	R307-221-2	NSC	02/08/2008	Not Printed
	30702	R307-222	AMD	02/08/2008	2007-23/36
	30967	R307-222	5YR	02/08/2008	2008-5/44
	30833	R307-222-1	NSC	02/08/2008	Not Printed
	30703	R307-223	AMD	02/08/2008	2007-23/38
	30968	R307-223	5YR	02/08/2008	2008-5/45
	30969	R307-224	5YR	02/08/2008	2008-5/45
	30704	R307-224-2	AMD	02/08/2008	2007-23/39
	30970	R307-250	5YR	02/08/2008	2008-5/46
	30971	R307-310	5YR	02/08/2008	2008-5/46
	30705	R307-310-2	AMD	02/08/2008	2007-23/40
	30709	R307-401-14	AMD	02/08/2008	2007-23/42
	30431	R307-405	AMD	01/11/2008	2007-19/15
	30972	R307-801	5YR	02/08/2008	2008-5/47
	30707	R307-801	AMD	02/08/2008	2007-23/45
	30973	R307-840	5YR	02/08/2008	2008-5/47
	30708	R307-840	AMD	02/08/2008	2007-23/48
air quality Environmental Quality, Air Quality	30700	R307-215	REP	02/08/2008	2007-23/31
	30706	R307-417	AMD	02/08/2008	2007-23/43
air travel Administrative Services, Finance	31319	R25-7	5YR	04/29/2008	2008-10/146
aircraft Tax Commission, Motor Vehicle	30844	R873-22M-34	AMD	02/25/2008	2008-1/38
alarm company Commerce, Occupational and Professional Licensing	31181	R156-55d	NSC	05/05/2008	Not Printed
alcoholic beverages Alcoholic Beverage Control, Administration	31154	R81-4C	NSC	05/01/2008	Not Printed
	31155	R81-4D	NSC	05/01/2008	Not Printed
alternative fuels Environmental Quality, Air Quality	30889	R307-121-3	NSC	01/30/2008	Not Printed
alternative school Education, Administration	30888	R277-730	5YR	01/08/2008	2008-3/77
Americans with Disabilities Act 1992 Human Services, Administration	31367	R495-878	NSC	05/05/2008	Not Printed
amphibians Natural Resources, Wildlife Resources	31051	R657-53	AMD	05/08/2008	2008-7/50

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	31053	R657-3	AMD	05/08/2008	2008-7/45
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Administrative Services, Administration	31342	R13-1	NSC	05/05/2008	Not Printed
Administrative Services, Fleet Operations, Surplus Property	31117	R28-3	5YR	04/04/2008	2008-9/52
Auditor, Administration	31257	R123-3-1	NSC	05/05/2008	Not Printed
	31260	R123-3-2	NSC	05/05/2008	Not Printed
	31261	R123-3-3	NSC	05/05/2008	Not Printed
Workforce Services, Unemployment Insurance	30771	R994-508	AMD	02/15/2008	2007-24/30
	31020	R994-508-117	NSC	03/11/2008	Not Printed
	31071	R994-508-118	NSC	04/14/2008	Not Printed
application					
Health, Health Care Financing, Coverage and Reimbursement Policy	30938	R414-308	5YR	01/31/2008	2008-4/46
	30927	R414-308-7	AMD	04/01/2008	2008-4/16
applications					
Natural Resources, Water Rights	31130	R655-5	5YR	04/08/2008	2008-9/54
applied technology education					
Education, Administration	30878	R277-518	5YR	01/08/2008	2008-3/72
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Tax Commission, Property Tax	30931	R884-24P-62	AMD	03/28/2008	2008-4/30
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Environmental Quality, Air Quality	30709	R307-401-14	AMD	02/08/2008	2007-23/42
architects					
Capitol Preservation Board (State), Administration	30591	R131-1	AMD	02/29/2008	2007-21/11
Commerce, Occupational and Professional Licensing	30935	R156-3a-303	AMD	03/27/2008	2008-4/5
area					
Human Services, Aging and Adult Services	31378	R510-110	NSC	05/05/2008	Not Printed
asbestos					
Environmental Quality, Air Quality	30972	R307-801	5YR	02/08/2008	2008-5/47
	30707	R307-801	AMD	02/08/2008	2007-23/45
asbestos hazard emergency response					
Environmental Quality, Air Quality	30972	R307-801	5YR	02/08/2008	2008-5/47
	30707	R307-801	AMD	02/08/2008	2007-23/45
assistance					
Natural Resources, Parks and Recreation	30899	R651-301	AMD	03/10/2008	2008-3/37

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auditing					
Auditor, Administration	31257	R123-3-1	NSC	05/05/2008	Not Printed
	31260	R123-3-2	NSC	05/05/2008	Not Printed
	31261	R123-3-3	NSC	05/05/2008	Not Printed
automatic fire sprinklers					
Public Safety, Fire Marshal	31088	R710-5	5YR	03/28/2008	2008-8/54
	30896	R710-5-1	AMD	03/10/2008	2008-3/51
automobile repair					
Commerce, Consumer Protection	31215	R152-20	NSC	05/05/2008	Not Printed
automobiles					
Commerce, Administration	31354	R151-14-3	NSC	05/05/2008	Not Printed
Commerce, Consumer Protection	31215	R152-20	NSC	05/05/2008	Not Printed
bait and switch					
Commerce, Consumer Protection	31213	R152-11	NSC	05/05/2008	Not Printed
banks and banking					
Human Services, Recovery Services	30982	R527-928	AMD	04/07/2008	2008-5/26
bear					
Natural Resources, Wildlife Resources	30906	R657-33	AMD	03/10/2008	2008-3/44
bed allocations					
Human Services, Substance Abuse and Mental Health	31089	R523-1	5YR	03/31/2008	2008-8/53
	30767	R523-1	NSC	03/31/2008	Not Printed
benefits					
Health, Health Care Financing, Coverage and Reimbursement Policy	30921	R414-302	5YR	01/25/2008	2008-4/43
Labor Commission, Industrial Accidents	31230	R612-3	5YR	04/28/2008	2008-10/151
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Natural Resources, Wildlife Resources	30829	R657-5	AMD	02/07/2008	2008-1/18
board meetings					
Environmental Quality, Administration	30506	R305-3	NSC	02/15/2008	Not Printed
	30766	R305-3	REP	02/15/2008	2007-24/6
boards					
Administrative Services, Finance	31317	R25-5	5YR	04/29/2008	2008-10/145
boating					
Natural Resources, Parks and Recreation	30900	R651-205-17	AMD	03/10/2008	2008-3/36
boilers					
Labor Commission, Safety	31246	R616-2	NSC	05/05/2008	Not Printed
bonds					
Treasurer, Unclaimed Property	30596	R966-1-2	AMD	01/07/2008	2007-22/87

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	31029	R859-1-302	AMD	05/01/2008	2008-6/16
breaks					
Human Resource Management, Administration	30778	R477-8-5	AMD	01/22/2008	2007-24/16
broadband					
Governor, Economic Development	30788	R357-2	NEW	01/30/2008	2007-24/9
	30859	R357-2-7	NSC	01/30/2008	Not Printed
budgeting					
Health, Health Care Financing, Coverage and Reimbursement Policy	30924	R414-304	5YR	01/25/2008	2008-4/44
	30652	R414-304	AMD	01/28/2008	2007-23/54
building codes					
Commerce, Occupational and Professional Licensing	30574	R156-56	AMD	01/01/2008	2007-21/38
	30573	R156-56-420	AMD	01/01/2008	2007-21/57
building inspection					
Commerce, Occupational and Professional Licensing	30574	R156-56	AMD	01/01/2008	2007-21/38
	30573	R156-56-420	AMD	01/01/2008	2007-21/57
burglar alarms					
Commerce, Occupational and Professional Licensing	31181	R156-55d	NSC	05/05/2008	Not Printed
burns					
Natural Resources, Forestry, Fire and State Lands	31112	R652-120	NSC	05/01/2008	Not Printed
capacity development					
Environmental Quality, Drinking Water	31157	R309-352	5YR	04/18/2008	2008-10/146
capital punishment					
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capitol preservation					
Capitol Preservation Board (State), Administration	30591	R131-1	AMD	02/29/2008	2007-21/11
career education					
Education, Administration	30885	R277-718	5YR	01/08/2008	2008-3/75
case					
Human Services, Aging and Adult Services	31378	R510-110	NSC	05/05/2008	Not Printed
case management					
Health, Health Care Financing, Coverage and Reimbursement Policy	31169	R414-6	5YR	04/21/2008	2008-10/147
caseworker training					
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CERCLA					
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cerfitication					
Labor Commission, Safety	31253	R616-3	NSC	05/05/2008	Not Printed
certificate of registration					
Natural Resources, Wildlife Resources	31399	R657-45	5YR	05/08/2008	Not Printed
	31050	R657-45-2	AMD	05/08/2008	2008-7/49
certification					
Labor Commission, Safety	31233	R616-1	5YR	04/28/2008	2008-10/153
	31249	R616-1	NSC	05/05/2008	Not Printed
	31246	R616-2	NSC	05/05/2008	Not Printed
	30943	R616-3-3	AMD	03/24/2008	2008-4/21
certification of instructors					
Human Services, Substance Abuse and Mental Health	31352	R523-22-9	NSC	05/05/2008	Not Printed
certifications					
Transportation, Motor Carrier	30785	R909-19	AMD	02/12/2008	2007-24/26
charities					
Commerce, Consumer Protection	31216	R152-22-9	NSC	05/05/2008	Not Printed
Tax Commission, Auditing	30841	R865-19S-121	AMD	02/25/2008	2008-1/37
charter schools					
Education, Administration	30846	R277-470-7	AMD	02/07/2008	2008-1/9
child abuse					
Human Services, Child and Family Services	30716	R512-20	REP	01/07/2008	2007-23/58
	30720	R512-20	NSC	01/07/2008	Not Printed
	31043	R512-204	NEW	05/08/2008	2008-7/31
child care					
Workforce Services, Employment Development	31033	R986-700	AMD	05/01/2008	2008-6/21
child support					
Human Services, Recovery Services	30891	R527-39	5YR	01/10/2008	2008-3/78
	30939	R527-56	5YR	01/31/2008	2008-4/46
	31054	R527-258	AMD	05/14/2008	2008-7/33
	30978	R527-305	5YR	02/12/2008	2008-5/58
	31025	R527-305	AMD	04/21/2008	2008-6/8
	30905	R527-430	5YR	01/14/2008	2008-3/78
	31161	R527-475	5YR	04/21/2008	2008-10/150
child welfare					
Human Services, Child and Family Services	30716	R512-20	REP	01/07/2008	2007-23/58
	30720	R512-20	NSC	01/07/2008	Not Printed
	31043	R512-204	NEW	05/08/2008	2008-7/31

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childs support					
Human Services, Recovery Services	31160	R527-302	5YR	04/21/2008	2008-10/149
chronically ill					
Corrections, Administration	30803	R251-114	NEW	03/11/2008	2008-1/6
citation monitoring service					
Public Safety, Driver License	31123	R708-44-4	NSC	05/05/2008	Not Printed
civil rights					
Natural Resources, Administration	30923	R634-1	5YR	01/25/2008	2008-4/47
	30875	R634-1	NSC	01/25/2008	Not Printed
Civil Rights Act 1964					
Human Services, Administration	31367	R495-878	NSC	05/05/2008	Not Printed
Class I area					
Environmental Quality, Air Quality	30431	R307-405	AMD	01/11/2008	2007-19/15
client rights					
Health, Health Care Financing, Coverage and Reimbursement Policy	30936	R414-301	5YR	01/31/2008	2008-4/43
coal mines					
Natural Resources, Oil, Gas and Mining; Coal	30932	R645-100-200	AMD	03/26/2008	2008-4/23
	31204	R645-100-500	NSC	05/05/2008	Not Printed
	30934	R645-300-100	AMD	03/26/2008	2008-4/24
	30933	R645-301	AMD	03/26/2008	2008-4/25
comments					
Environmental Quality, Radiation Control	31171	R313-17	NSC	05/05/2008	Not Printed
commerce					
Commerce, Corporations and Commercial Code	30642	R154-10	REP	03/03/2008	2007-22/16
commercial motor vehicle insurance					
Insurance, Administration	30490	R590-243	NEW	01/11/2008	2007-20/28
complaint procedures					
Corrections, Administration	30713	R251-112	AMD	03/11/2008	2007-23/19
complaints					
Public Service Commission, Administration	31370	R746-500	NSC	05/05/2008	Not Printed
concealed firearm permit					
Public Safety, Criminal Investigations and Technical Services, Criminal Identification	31349	R722-300	NSC	05/01/2008	Not Printed
	30928	R722-300	NSC	05/01/2008	Not Printed
conduct					
Professional Practices Advisory Commission, Administration	30951	R686-100	5YR	02/04/2008	2008-5/59
confidential					
Community and Culture, Home Energy Assistance Target (HEAT)	31331	R195-1	NSC	05/05/2008	Not Printed

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confidentiality of information					
Administrative Services, Administration	31343	R13-2	NSC	05/05/2008	Not Printed
Environmental Quality, Air Quality	30960	R307-102	5YR	02/08/2008	2008-5/40
consumer protection					
Commerce, Consumer Protection	31184	R152-1	NSC	05/05/2008	Not Printed
	31213	R152-11	NSC	05/05/2008	Not Printed
	31214	R152-15-2	NSC	05/05/2008	Not Printed
	31215	R152-20	NSC	05/05/2008	Not Printed
	31216	R152-22-9	NSC	05/05/2008	Not Printed
	31217	R152-23-1	NSC	05/05/2008	Not Printed
contamination					
Environmental Quality, Radiation Control	30865	R313-15	AMD	03/17/2008	2008-2/10
continuing professional education					
Commerce, Occupational and Professional Licensing	30715	R156-26a	AMD	03/31/2008	2007-23/4
	30715	R156-26a	CPR	03/31/2008	2008-4/35
continuous monitoring					
Environmental Quality, Air Quality	30962	R307-170	5YR	02/08/2008	2008-5/41
	30699	R307-170-7	AMD	02/08/2008	2007-23/29
contractors					
Commerce, Occupational and Professional Licensing	30654	R156-38a	AMD	01/07/2008	2007-23/14
	31176	R156-38a-105a	NSC	05/05/2008	Not Printed
	30892	R156-55a	AMD	03/11/2008	2008-3/3
	30574	R156-56	AMD	01/01/2008	2007-21/38
	30573	R156-56-420	AMD	01/01/2008	2007-21/57
contracts					
Capitol Preservation Board (State), Administration	30590	R131-4	R&R	02/29/2008	2007-21/13
	30952	R251-304	5YR	02/05/2008	2008-5/39
cooperative agreement					
Natural Resources, Forestry, Fire and State Lands	31109	R652-122-100	NSC	05/01/2008	Not Printed
cooperative wildlife management unit					
Natural Resources, Wildlife Resources	31401	R657-37	5YR	05/08/2008	Not Printed
corrections					
Corrections, Administration	30952	R251-304	5YR	02/05/2008	2008-5/39
cosmetologists/barbers					
Commerce, Occupational and Professional Licensing	30953	R156-11a	AMD	04/10/2008	2008-5/5
	31174	R156-11a-601	NSC	05/05/2008	Not Printed
costs					
Administrative Services, Finance	31316	R25-6	5YR	04/29/2008	2008-10/145
Financial Institutions, Administration	31315	R331-22-1	NSC	05/05/2008	Not Printed

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coverage groups					
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cultural resources					
Natural Resources, Forestry, Fire and State Lands	31271	R652-60-1000	NSC	05/05/2008	Not Printed
curricula					
Education, Administration	30882	R277-700	5YR	01/08/2008	2008-3/74
	30977	R277-703-6	NSC	02/27/2008	Not Printed
data standards					
Education, Administration	31005	R277-484	AMD	04/11/2008	2008-5/17
deadlines					
Education, Administration	31005	R277-484	AMD	04/11/2008	2008-5/17
declaratory orders					
Auditor, Administration	31262	R123-4-1	NSC	05/05/2008	Not Printed
	31263	R123-4-2	NSC	05/05/2008	Not Printed
	31265	R123-4-5	NSC	05/05/2008	Not Printed
	31266	R123-4-6	NSC	05/05/2008	Not Printed
	31267	R123-4-7	NSC	05/05/2008	Not Printed
	31281	R380-1	NSC	05/05/2008	Not Printed
	31282	R380-5	NSC	05/05/2008	Not Printed
	31237	R600-1	NSC	05/05/2008	Not Printed
	31232	R600-1	5YR	04/28/2008	2008-10/150
definitions					
Community and Culture, Home Energy Assistance Target (HEAT)	31331	R195-1	NSC	05/05/2008	Not Printed
Environmental Quality, Air Quality	30697	R307-101	AMD	02/08/2008	2007-23/21
	30959	R307-101	5YR	02/08/2008	2008-5/40
Environmental Quality, Radiation Control	31170	R313-12-1	NSC	05/05/2008	Not Printed
	30774	R313-12-111	AMD	04/11/2008	2007-24/8
	30774	R313-12-111	CPR	04/11/2008	2008-5/34
developmentally disabled					
Commerce, Administration	31346	R151-3-1	NSC	05/05/2008	Not Printed
	31367	R495-878	NSC	05/05/2008	Not Printed
	30688	R861-1A-20	AMD	01/11/2008	2007-23/68
	30589	R861-1A-24	AMD	01/11/2008	2007-21/69
	30717	R861-1A-26	AMD	01/11/2008	2007-23/69
	30838	R861-1A-40	AMD	02/25/2008	2008-1/32
	30835	R861-1A-42	AMD	02/25/2008	2008-1/33
	30780	R861-1A-43	AMD	01/25/2008	2007-24/24
dietitians					
Commerce, Occupational and Professional Licensing	31180	R156-49	NSC	05/05/2008	Not Printed
	31073	R156-49	5YR	03/24/2008	2008-8/52

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digital signature					
Commerce, Corporations and Commercial Code	30642	R154-10	REP	03/03/2008	2007-22/16
disabilities					
Human Services, Services for People with Disabilities	30877	R539-1-8	AMD	04/01/2008	2008-3/32
	30926	R539-1-8	EMR	01/28/2008	2008-4/38
disabled persons					
Corrections, Administration	30713	R251-112	AMD	03/11/2008	2007-23/19
	31285	R380-100	NSC	05/05/2008	Not Printed
Natural Resources, Wildlife Resources	30777	R657-12	AMD	01/22/2008	2007-24/19
Public Service Commission, Administration	31370	R746-500	NSC	05/05/2008	Not Printed
disables					
Human Services, Aging and Adult Services	31027	R510-105	5YR	02/27/2008	2008-6/26
discharge					
Environmental Quality, Water Quality	30636	R317-14	NEW	02/04/2008	2007-22/62
disciplinary actions					
Education, Administration	30847	R277-609	AMD	02/07/2008	2008-1/10
	30958	R277-609-5	NSC	02/29/2008	Not Printed
	31016	R686-103	REP	04/21/2008	2008-6/12
disclosure requirements					
Tax Commission, Administration	30688	R861-1A-20	AMD	01/11/2008	2007-23/68
	30589	R861-1A-24	AMD	01/11/2008	2007-21/69
	30717	R861-1A-26	AMD	01/11/2008	2007-23/69
	30838	R861-1A-40	AMD	02/25/2008	2008-1/32
	30835	R861-1A-42	AMD	02/25/2008	2008-1/33
	30780	R861-1A-43	AMD	01/25/2008	2007-24/24
discretion clauses					
Insurance, Administration	30897	R590-218	5YR	01/11/2008	2008-3/80
discrimination					
Labor Commission, Antidiscrimination and Labor, Antidiscrimination	31241	R606-1	NSC	05/05/2008	Not Printed
	31242	R606-2	NSC	05/05/2008	Not Printed
Labor Commission, Antidiscrimination and Labor, Fair Housing	31240	R608-1	NSC	05/05/2008	Not Printed
disruptive students					
Education, Administration	30958	R277-609-5	NSC	02/29/2008	Not Printed
diversion programs					
Commerce, Occupational and Professional Licensing	30655	R156-1-102a	AMD	01/08/2008	2007-23/3
drinking water					
Environmental Quality, Drinking Water	31157	R309-352	5YR	04/18/2008	2008-10/146
driver address record					
Public Safety, Driver License	31121	R708-42-4	NSC	05/05/2008	Not Printed

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driver education					
Education, Administration	31039	R277-746	5YR	03/03/2008	2008-7/64
	31040	R277-747	5YR	03/03/2008	2008-7/64
Public Safety, Driver License	31105	R708-2-25	NSC	05/05/2008	Not Printed
	31113	R708-18-1	NSC	05/05/2008	Not Printed
driver license					
Public Safety, Driver License	31119	R708-36-1	NSC	05/05/2008	Not Printed
	31123	R708-44-4	NSC	05/05/2008	Not Printed
driver license verification					
Public Safety, Driver License	31122	R708-43	NSC	05/05/2008	Not Printed
driver training					
Public Safety, Driver License	31120	R708-37-11	NSC	05/05/2008	Not Printed
dual employment					
Human Resource Management, Administration	30778	R477-8-5	AMD	01/22/2008	2007-24/16
due process					
Human Services, Substance Abuse and Mental Health	31089	R523-1	5YR	03/31/2008	2008-8/53
	30767	R523-1	NSC	03/31/2008	Not Printed
DUI programs					
Human Services, Substance Abuse and Mental Health	31352	R523-22-9	NSC	05/05/2008	Not Printed
education					
Commerce, Consumer Protection	31218	R152-34-10	NSC	05/05/2008	Not Printed
Education, Administration	30846	R277-470-7	AMD	02/07/2008	2008-1/9
	30884	R277-709	5YR	01/08/2008	2008-3/75
	30885	R277-718	5YR	01/08/2008	2008-3/75
	30888	R277-730	5YR	01/08/2008	2008-3/77
education finance					
Education, Administration	30845	R277-423	AMD	02/07/2008	2008-1/8
educational testing					
Education, Administration	30883	R277-702	5YR	01/08/2008	2008-3/74
educator					
Education, Administration	30976	R277-515-3	NSC	02/27/2008	Not Printed
educator licensing					
Education, Administration	30944	R277-502	AMD	03/24/2008	2008-4/6
	30878	R277-518	5YR	01/08/2008	2008-3/72
educators					
Professional Practices Advisory Commission, Administration	31016	R686-103	REP	04/21/2008	2008-6/12
effluent standards					
Environmental Quality, Water Quality	30639	R317-1-4	AMD	02/04/2008	2007-22/52
	30637	R317-13	NEW	02/04/2008	2007-22/61

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eldercare					
Human Services, Aging and Adult Services	31378	R510-110	NSC	05/05/2008	Not Printed
elderly					
Human Services, Aging and Adult Services	31379	R510-200	NSC	05/05/2008	Not Printed
electric generating unit					
Environmental Quality, Air Quality	30965	R307-220	5YR	02/08/2008	2008-5/43
	30969	R307-224	5YR	02/08/2008	2008-5/45
	30704	R307-224-2	AMD	02/08/2008	2007-23/39
electrologists					
Commerce, Occupational and Professional Licensing	30953	R156-11a	AMD	04/10/2008	2008-5/5
	31174	R156-11a-601	NSC	05/05/2008	Not Printed
electronic commerce					
Commerce, Corporations and Commercial Code	30642	R154-10	REP	03/03/2008	2007-22/16
electronic communication					
Commerce, Corporations and Commercial Code	30642	R154-10	REP	03/03/2008	2007-22/16
electronic preliminary lien filing					
Commerce, Occupational and Professional Licensing	31177	R156-38b-703	NSC	05/05/2008	Not Printed
elevators					
Labor Commission, Safety	31253	R616-3	NSC	05/05/2008	Not Printed
	30943	R616-3-3	AMD	03/24/2008	2008-4/21
eligibility					
Health, Health Care Financing, Coverage and Reimbursement Policy	30938	R414-308	5YR	01/31/2008	2008-4/46
	30927	R414-308-7	AMD	04/01/2008	2008-4/16
Human Services, Child and Family Services	30718	R512-50	REP	01/07/2008	2007-23/60
	30721	R512-50	NSC	01/07/2008	Not Printed
emergency medical services					
Health, Health Systems Improvement, Emergency Medical Services	30758	R426-6	AMD	02/07/2008	2007-24/14
emergency meetings					
Environmental Quality, Administration	30506	R305-3	NSC	02/15/2008	Not Printed
	30766	R305-3	REP	02/15/2008	2007-24/6
employer					
Labor Commission, Industrial Accidents	31229	R612-5	5YR	04/28/2008	2008-10/152
employment					
Labor Commission, Antidiscrimination and Labor, Antidiscrimination	31241	R606-1	NSC	05/05/2008	Not Printed
	31242	R606-2	NSC	05/05/2008	Not Printed
employment agencies					
Labor Commission, Antidiscrimination and Labor, Labor	31239	R610-4	NSC	05/05/2008	Not Printed

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endangered species					
Natural Resources, Forestry, Fire and State Lands	31112	R652-120	NSC	05/01/2008	Not Printed
energy					
Community and Culture, Home Energy Assistance Target (HEAT)	31331	R195-1	NSC	05/05/2008	Not Printed
Natural Resources, Geological Survey	30902	R638-2-6	AMD	03/10/2008	2008-3/35
energy utility					
Public Service Commission, Administration	31072	R746-440	NSC	04/11/2008	Not Printed
engineers					
Capitol Preservation Board (State), Administration	30591	R131-1	AMD	02/29/2008	2007-21/11
Commerce, Occupational and Professional Licensing	31175	R156-22-305	NSC	05/05/2008	Not Printed
enrollment					
Education, Administration	31037	R277-485	5YR	03/03/2008	2008-7/63
enterprise zones					
Tax Commission, Auditing	30916	R865-9I-37	AMD	03/14/2008	2008-3/63
	30849	R865-9I-53	AMD	02/25/2008	2008-1/36
environmental protection					
Environmental Quality, Air Quality	30698	R307-115	AMD	02/08/2008	2007-23/28
	30961	R307-115	5YR	02/08/2008	2008-5/41
essential facilities					
Public Service Commission, Administration	31374	R746-349	NSC	05/05/2008	Not Printed
estheticians					
Commerce, Occupational and Professional Licensing	30953	R156-11a	AMD	04/10/2008	2008-5/5
	31174	R156-11a-601	NSC	05/05/2008	Not Printed
exceptional children					
Education, Administration	31041	R277-751	5YR	03/03/2008	2008-7/65
exemptions					
Environmental Quality, Radiation Control	31170	R313-12-1	NSC	05/05/2008	Not Printed
	30774	R313-12-111	AMD	04/11/2008	2007-24/8
	30774	R313-12-111	CPR	04/11/2008	2008-5/34
exemptions to wildland fire suppression fund					
Natural Resources, Forestry, Fire and State Lands	31111	R652-123	NSC	05/01/2008	Not Printed
expelled					
Education, Administration	31036	R277-483	5YR	03/03/2008	2008-7/62
extended area service					
Public Service Commission, Administration	31045	R746-347	5YR	03/07/2008	2008-7/66
extracurricular activities					
Education, Administration	30880	R277-605	5YR	01/08/2008	2008-3/73

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eyeglasses					
Health, Health Care Financing, Coverage and Reimbursement Policy	30776	R414-53	AMD	02/01/2008	2007-24/13
facility notice					
Corrections, Administration	30803	R251-114	NEW	03/11/2008	2008-1/6
fair housing					
Labor Commission, Antidiscrimination and Labor, Fair Housing	31240	R608-1	NSC	05/05/2008	Not Printed
family employment program					
Workforce Services, Employment Development	31032	R986-200	AMD	05/01/2008	2008-6/18
	30864	R986-200-214	AMD	02/26/2008	2008-2/25
fees					
Administrative Services, Finance	31363	R25-14	EMR	05/05/2008	2008-10/142
Human Services, Child and Family Services	30718	R512-50	REP	01/07/2008	2007-23/60
	30721	R512-50	NSC	01/07/2008	Not Printed
Human Services, Substance Abuse and Mental Health	31089	R523-1	5YR	03/31/2008	2008-8/53
	30767	R523-1	NSC	03/31/2008	Not Printed
Labor Commission, Industrial Accidents	31234	R612-2	5YR	04/28/2008	2008-10/151
Natural Resources, Parks and Recreation	30621	R651-611	AMD	01/01/2008	2007-22/80
	30898	R651-611	AMD	03/10/2008	2008-3/39
Public Safety, Driver License	31113	R708-18-1	NSC	05/05/2008	Not Printed
filing deadlines					
Labor Commission, Adjudication	31250	R602-1	NSC	05/05/2008	Not Printed
Labor Commission, Industrial Accidents	31235	R612-1	NSC	05/05/2008	Not Printed
filing requirements					
Public Service Commission, Administration	31072	R746-440	NSC	04/11/2008	Not Printed
finance					
Administrative Services, Finance	31318	R25-2	NSC	05/05/2008	Not Printed
	31316	R25-6	5YR	04/29/2008	2008-10/145
financial aid					
Regents (Board Of), Administration	31402	R765-605	5YR	05/09/2008	Not Printed
	31405	R765-606	5YR	05/09/2008	Not Printed
	30957	R765-607	5YR	02/08/2008	2008-5/60
financial disclosures					
Health, Health Care Financing, Coverage and Reimbursement Policy	30924	R414-304	5YR	01/25/2008	2008-4/44
	30652	R414-304	AMD	01/28/2008	2007-23/54
financial institutions					
Financial Institutions, Administration	31256	R331-20	NSC	05/05/2008	Not Printed
	31315	R331-22-1	NSC	05/05/2008	Not Printed
fire marshal					
Environmental Quality, Air Quality	30963	R307-202	5YR	02/08/2008	2008-5/42

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fire prevention					
Public Safety, Fire Marshal	30919	R710-9-6	AMD	03/10/2008	2008-3/52
fire training					
Public Safety, Fire Marshal	30894	R710-10	AMD	03/10/2008	2008-3/56
firearms					
Natural Resources, Parks and Recreation	30901	R651-612	AMD	03/10/2008	2008-3/42
fireworks					
Public Safety, Fire Marshal	30918	R710-2-4	AMD	03/10/2008	2008-3/50
fiscal					
Natural Resources, Parks and Recreation	30899	R651-301	AMD	03/10/2008	2008-3/37
fish					
Natural Resources, Wildlife Resources	31219	R657-2	NSC	05/05/2008	Not Printed
	31220	R657-3	NSC	05/05/2008	Not Printed
	31221	R657-12-1	NSC	05/05/2008	Not Printed
	30676	R657-13	AMD	01/07/2008	2007-23/61
	31048	R657-13-3	AMD	05/08/2008	2008-7/47
	30904	R657-13-4	AMD	03/10/2008	2008-3/43
	31222	R657-22-1	NSC	05/05/2008	Not Printed
	31223	R657-26	NSC	05/05/2008	Not Printed
	31224	R657-27-11	NSC	05/05/2008	Not Printed
	31225	R657-29	NSC	05/05/2008	Not Printed
	31226	R657-48-7	NSC	05/05/2008	Not Printed
	31227	R657-52-6	NSC	05/05/2008	Not Printed
	31228	R657-53	NSC	05/05/2008	Not Printed
	30903	R657-58	NEW	03/10/2008	2008-3/47
	31052	R657-58	NSC	03/26/2008	Not Printed
fishing					
Natural Resources, Wildlife Resources	31219	R657-2	NSC	05/05/2008	Not Printed
	31220	R657-3	NSC	05/05/2008	Not Printed
	31221	R657-12-1	NSC	05/05/2008	Not Printed
	30676	R657-13	AMD	01/07/2008	2007-23/61
	31048	R657-13-3	AMD	05/08/2008	2008-7/47
	30904	R657-13-4	AMD	03/10/2008	2008-3/43
	31222	R657-22-1	NSC	05/05/2008	Not Printed
	31223	R657-26	NSC	05/05/2008	Not Printed
	31224	R657-27-11	NSC	05/05/2008	Not Printed
	31225	R657-29	NSC	05/05/2008	Not Printed
	31226	R657-48-7	NSC	05/05/2008	Not Printed
	31227	R657-52-6	NSC	05/05/2008	Not Printed
	31228	R657-53	NSC	05/05/2008	Not Printed
	30903	R657-58	NEW	03/10/2008	2008-3/47
	31052	R657-58	NSC	03/26/2008	Not Printed

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fleet expansion					
Administrative Services, Fleet Operations	30618	R27-4	AMD	03/06/2008	2007-22/9
food aid programs					
Education, Administration	30886	R277-721	5YR	01/08/2008	2008-3/76
	31014	R277-721	REP	04/21/2008	2008-6/5
	30887	R277-722	5YR	01/08/2008	2008-3/76
	31015	R277-722	REP	04/21/2008	2008-6/6
foods					
Education, Administration	30848	R277-719	NEW	02/07/2008	2008-1/12
franchises					
Commerce, Administration	31354	R151-14-3	NSC	05/05/2008	Not Printed
	31355	R151-35-3	NSC	05/05/2008	Not Printed
Commerce, Consumer Protection	31214	R152-15-2	NSC	05/05/2008	Not Printed
Tax Commission, Auditing	30913	R865-6F-28	AMD	03/14/2008	2008-3/61
	30842	R865-6F-37	AMD	02/25/2008	2008-1/35
fraud					
Human Services, Recovery Services	30982	R527-928	AMD	04/07/2008	2008-5/26
freedom of information					
Administrative Services, Administration	31343	R13-2	NSC	05/05/2008	Not Printed
	31345	R151-2	NSC	05/05/2008	Not Printed
fuel composition					
Environmental Quality, Air Quality	30964	R307-203	5YR	02/08/2008	2008-5/43
fuel oil					
Environmental Quality, Air Quality	30964	R307-203	5YR	02/08/2008	2008-5/43
funding					
Environmental Quality, Drinking Water	31157	R309-352	5YR	04/18/2008	2008-10/146
game laws					
Natural Resources, Wildlife Resources	30829	R657-5	AMD	02/07/2008	2008-1/18
	30828	R657-23	AMD	02/07/2008	2008-1/25
	30955	R657-23-5	AMD	04/07/2008	2008-5/31
	30906	R657-33	AMD	03/10/2008	2008-3/44
	31398	R657-34	5YR	05/08/2008	Not Printed
general assistance					
Workforce Services, Employment Development	31034	R986-400-406	AMD	05/01/2008	2008-6/20
general conformity					
Environmental Quality, Air Quality	30698	R307-115	AMD	02/08/2008	2007-23/28
	30961	R307-115	5YR	02/08/2008	2008-5/41
geology					
Commerce, Occupational and Professional Licensing	30694	R156-76	AMD	01/08/2008	2007-23/17

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government documents					
Commerce, Administration	31345	R151-2	NSC	05/05/2008	Not Printed
	31284	R380-20	NSC	05/05/2008	Not Printed
	31368	R495-810	NSC	05/05/2008	Not Printed
Natural Resources, Forestry, Fire and State Lands	31259	R652-6	NSC	05/05/2008	Not Printed
government hearings					
Administrative Services, Administrative Rules	31143	R15-1	NSC	05/05/2008	Not Printed
Administrative Services, Finance	31318	R25-2	NSC	05/05/2008	Not Printed
Commerce, Occupational and Professional Licensing	31179	R156-46b	NSC	05/05/2008	Not Printed
Financial Institutions, Administration	31256	R331-20	NSC	05/05/2008	Not Printed
	30949	R671-403	5YR	02/04/2008	2008-5/59
	31373	R746-100	NSC	05/05/2008	Not Printed
	31372	R746-101	NSC	05/05/2008	Not Printed
graduation requirements					
Education, Administration	30977	R277-703-6	NSC	02/27/2008	Not Printed
GRAMA					
Health, Administration	31284	R380-20	NSC	05/05/2008	Not Printed
Natural Resources, Forestry, Fire and State Lands	31259	R652-6	NSC	05/05/2008	Not Printed
Regents (Board Of), Salt Lake Community College	31344	R784-1	NSC	05/05/2008	Not Printed
Regents (Board Of), University of Utah, Administration	31340	R805-2	NSC	05/05/2008	Not Printed
grants					
Community and Culture, Housing and Community Development	30451	R199-8	AMD	01/01/2008	2007-19/6
grievance procedures					
Health, Administration	31285	R380-100	NSC	05/05/2008	Not Printed
	30688	R861-1A-20	AMD	01/11/2008	2007-23/68
	30589	R861-1A-24	AMD	01/11/2008	2007-21/69
	30717	R861-1A-26	AMD	01/11/2008	2007-23/69
	30838	R861-1A-40	AMD	02/25/2008	2008-1/32
	30835	R861-1A-42	AMD	02/25/2008	2008-1/33
	30780	R861-1A-43	AMD	01/25/2008	2007-24/24
hazardous air pollutant					
Environmental Quality, Air Quality	30430	R307-214	AMD	01/11/2008	2007-19/12
	30895	R307-214	5YR	01/11/2008	2008-3/77
hazardous materials					
Public Safety, Fire Marshal	30893	R710-12	NEW	03/10/2008	2008-3/58
hazardous substances priority list					
Environmental Quality, Environmental Response and Remediation	30567	R311-401-2	AMD	01/02/2008	2007-21/59
hazardous waste					
Environmental Quality, Solid and Hazardous Waste	31377	R315-2	NSC	05/05/2008	Not Printed

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	31065	R315-3	NSC	04/11/2008	Not Printed
	31376	R315-12	NSC	05/05/2008	Not Printed
	30907	R315-15-1	AMD	03/13/2008	2008-3/16
	30908	R315-15-10	AMD	03/13/2008	2008-3/19
	30909	R315-15-11	AMD	03/13/2008	2008-3/21
	30910	R315-15-12	AMD	03/13/2008	2008-3/23
	30911	R315-15-17	AMD	03/13/2008	2008-3/29
health					
Health, Center for Health Data, Health Care Statistics	31021	R428-11	NSC	04/21/2008	Not Printed
	31167	R428-11	5YR	04/21/2008	2008-10/148
	31168	R428-13	5YR	04/21/2008	2008-10/148
	31022	R428-13	NSC	04/21/2008	Not Printed
health administration					
Health, Administration	31283	R380-10	NSC	05/05/2008	Not Printed
health facilities					
Health, Health Systems Improvement, Licensing	30975	R432-16	5YR	02/11/2008	2008-5/58
health planning					
Health, Center for Health Data, Health Care Statistics	31021	R428-11	NSC	04/21/2008	Not Printed
	31167	R428-11	5YR	04/21/2008	2008-10/148
	31168	R428-13	5YR	04/21/2008	2008-10/148
	31022	R428-13	NSC	04/21/2008	Not Printed
health policy					
Health, Center for Health Data, Health Care Statistics	31021	R428-11	NSC	04/21/2008	Not Printed
	31168	R428-13	5YR	04/21/2008	2008-10/148
	31022	R428-13	NSC	04/21/2008	Not Printed
health spas					
Commerce, Consumer Protection	31217	R152-23-1	NSC	05/05/2008	Not Printed
hearing impaired					
Public Service Commission, Administration	31375	R746-510	NSC	05/05/2008	Not Printed
hearings					
Community and Culture, Home Energy Assistance Target (HEAT)	31331	R195-1	NSC	05/05/2008	Not Printed
Environmental Quality, Radiation Control	31171	R313-17	NSC	05/05/2008	Not Printed
Environmental Quality, Water Quality	30948	R317-9	5YR	02/01/2008	2008-4/42
Labor Commission, Adjudication	31236	R602-2-1	NSC	05/05/2008	Not Printed
	30811	R602-2-4	AMD	02/07/2008	2008-1/14
	31238	R602-3	NSC	05/05/2008	Not Printed
	30810	R602-3-3	AMD	02/07/2008	2008-1/16
Professional Practices Advisory Commission, Administration	30951	R686-100	5YR	02/04/2008	2008-5/59
higher education					
Regents (Board Of), Administration	31325	R765-134	NSC	05/05/2008	Not Printed

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	31326	R765-136	NSC	05/05/2008	Not Printed
	31402	R765-605	5YR	05/09/2008	Not Printed
	31405	R765-606	5YR	05/09/2008	Not Printed
	30957	R765-607	5YR	02/08/2008	2008-5/60
	31327	R765-993	NSC	05/05/2008	Not Printed
historic preservation					
Tax Commission, Auditing	30913	R865-6F-28	AMD	03/14/2008	2008-3/61
	30842	R865-6F-37	AMD	02/25/2008	2008-1/35
	30916	R865-9I-37	AMD	03/14/2008	2008-3/63
	30849	R865-9I-53	AMD	02/25/2008	2008-1/36
hospital					
Health, Administration	31286	R380-200	NSC	05/05/2008	Not Printed
	31280	R380-210-6	NSC	05/05/2008	Not Printed
hospital policy					
Health, Center for Health Data, Health Care Statistics	31167	R428-11	5YR	04/21/2008	2008-10/148
hospitals					
Environmental Quality, Air Quality	30702	R307-222	AMD	02/08/2008	2007-23/36
	30967	R307-222	5YR	02/08/2008	2008-5/44
	30833	R307-222-1	NSC	02/08/2008	Not Printed
housing					
Labor Commission, Antidiscrimination and Labor, Fair Housing	31240	R608-1	NSC	05/05/2008	Not Printed
human services					
Human Services, Administration, Administrative Services, Licensing	31017	R501-16	5YR	02/22/2008	2008-6/25
	31026	R501-17	5YR	02/27/2008	2008-6/25
Human Services, Services for People with Disabilities	30877	R539-1-8	AMD	04/01/2008	2008-3/32
	30926	R539-1-8	EMR	01/28/2008	2008-4/38
hunter education					
Natural Resources, Wildlife Resources	30828	R657-23	AMD	02/07/2008	2008-1/25
	30955	R657-23-5	AMD	04/07/2008	2008-5/31
hunting closures					
Natural Resources, Wildlife Resources	31398	R657-34	5YR	05/08/2008	Not Printed
impairment ratings					
Labor Commission, Industrial Accidents	31231	R612-7	5YR	04/28/2008	2008-10/152
implements of husbandry					
Transportation, Motor Carrier	30783	R909-1-1	AMD	02/15/2008	2007-24/25
import restrictions					
Natural Resources, Wildlife Resources	31047	R657-3	5YR	03/11/2008	2008-7/65
	31053	R657-3	AMD	05/08/2008	2008-7/45
	31051	R657-53	AMD	05/08/2008	2008-7/50

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imputation					
Public Service Commission, Administration	31374	R746-349	NSC	05/05/2008	Not Printed
incinerators					
Environmental Quality, Air Quality	30965	R307-220	5YR	02/08/2008	2008-5/43
income					
Health, Health Care Financing, Coverage and Reimbursement Policy	30921	R414-302	5YR	01/25/2008	2008-4/43
	30925	R414-303	5YR	01/25/2008	2008-4/44
	30924	R414-304	5YR	01/25/2008	2008-4/44
	30652	R414-304	AMD	01/28/2008	2007-23/54
income distribution					
Human Services, Child and Family Services	30716	R512-20	REP	01/07/2008	2007-23/58
	30720	R512-20	NSC	01/07/2008	Not Printed
income tax					
Tax Commission, Auditing	30916	R865-9I-37	AMD	03/14/2008	2008-3/63
	30849	R865-9I-53	AMD	02/25/2008	2008-1/36
income withholding fees					
Human Services, Recovery Services	31160	R527-302	5YR	04/21/2008	2008-10/149
independent foster care adolescent					
Health, Health Care Financing, Coverage and Reimbursement Policy	30925	R414-303	5YR	01/25/2008	2008-4/44
industrial waste					
Environmental Quality, Water Quality	30639	R317-1-4	AMD	02/04/2008	2007-22/52
	30637	R317-13	NEW	02/04/2008	2007-22/61
infectious waste					
Environmental Quality, Air Quality	30702	R307-222	AMD	02/08/2008	2007-23/36
	30967	R307-222	5YR	02/08/2008	2008-5/44
	30833	R307-222-1	NSC	02/08/2008	Not Printed
informal adjudicative proceedings					
Labor Commission, Industrial Accidents	31251	R612-9-1	NSC	05/05/2008	Not Printed
injury prevention					
Health, Administration	31280	R380-210-6	NSC	05/05/2008	Not Printed
inspections					
Agriculture and Food, Plant Industry	31006	R68-5	5YR	02/15/2008	2008-5/39
	30611	R68-7	AMD	01/07/2008	2007-22/11
Environmental Quality, Radiation Control	31170	R313-12-1	NSC	05/05/2008	Not Printed
	30774	R313-12-111	AMD	04/11/2008	2007-24/8
	30774	R313-12-111	CPR	04/11/2008	2008-5/34
instructional materials					
Education, Administration	30781	R277-469	AMD	01/22/2008	2007-24/4
	31035	R277-469	5YR	03/03/2008	2008-7/62

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insurance					
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	30508	R590-175	AMD	02/08/2008	2007-20/24
	30897	R590-218	5YR	01/11/2008	2008-3/80
Labor Commission, Industrial Accidents	31229	R612-5	5YR	04/28/2008	2008-10/152
insurance fee					
Insurance, Administration	30890	R590-157	5YR	01/10/2008	2008-3/79
insurance law					
Insurance, Administration	31132	R590-94	5YR	04/09/2008	2008-9/53
	31030	R590-164	AMD	05/08/2008	2008-6/10
interpreters					
Public Service Commission, Administration	31375	R746-510	NSC	05/05/2008	Not Printed
interstate					
Human Services, Recovery Services	30978	R527-305	5YR	02/12/2008	2008-5/58
	31025	R527-305	AMD	04/21/2008	2008-6/8
intrastate driver license waivers					
Public Safety, Driver License	31116	R708-34	NSC	05/05/2008	Not Printed
job creation					
Governor, Economic Development	30788	R357-2	NEW	01/30/2008	2007-24/9
	30859	R357-2-7	NSC	01/30/2008	Not Printed
juvenile courts					
Education, Administration	30884	R277-709	5YR	01/08/2008	2008-3/75
labor					
Labor Commission, Antidiscrimination and Labor, Labor	31247	R610-1	NSC	05/05/2008	Not Printed
	31245	R610-2	NSC	05/05/2008	Not Printed
	30942	R610-2-6	AMD	03/24/2008	2008-4/19
	31243	R610-3	NSC	05/05/2008	Not Printed
	30876	R610-3-4	EMR	01/03/2008	2008-3/70
	30941	R610-3-4	AMD	03/24/2008	2008-4/20
Labor Commission, Safety	31233	R616-1	5YR	04/28/2008	2008-10/153
	31249	R616-1	NSC	05/05/2008	Not Printed
labor commission					
Labor Commission, Administration	31237	R600-1	NSC	05/05/2008	Not Printed
	31232	R600-1	5YR	04/28/2008	2008-10/150
landfills					
Environmental Quality, Air Quality	30965	R307-220	5YR	02/08/2008	2008-5/43
landscape architects					
Commerce, Occupational and Professional Licensing	31074	R156-53	5YR	03/24/2008	2008-8/52
language proficiency					
Regents (Board Of), Administration	31326	R765-136	NSC	05/05/2008	Not Printed

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law					
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lead-based paint					
Environmental Quality, Air Quality	30973	R307-840	5YR	02/08/2008	2008-5/47
	30708	R307-840	AMD	02/08/2008	2007-23/48
leases					
Natural Resources, Forestry, Fire and State Lands	31270	R652-30-500	NSC	05/05/2008	Not Printed
liberties					
Natural Resources, Administration	30923	R634-1	5YR	01/25/2008	2008-4/47
	30875	R634-1	NSC	01/25/2008	Not Printed
license					
Natural Resources, Wildlife Resources	31399	R657-45	5YR	05/08/2008	Not Printed
	31050	R657-45-2	AMD	05/08/2008	2008-7/49
license plates					
Tax Commission, Motor Vehicle	30844	R873-22M-34	AMD	02/25/2008	2008-1/38
licensing					
Commerce, Occupational and Professional Licensing	30655	R156-1-102a	AMD	01/08/2008	2007-23/3
	30935	R156-3a-303	AMD	03/27/2008	2008-4/5
	30715	R156-26a	AMD	03/31/2008	2007-23/4
	30715	R156-26a	CPR	03/31/2008	2008-4/35
	31094	R156-31b	5YR	04/01/2008	2008-8/51
	30654	R156-38a	AMD	01/07/2008	2007-23/14
	31176	R156-38a-105a	NSC	05/05/2008	Not Printed
	31178	R156-40-302e	NSC	05/05/2008	Not Printed
	30853	R156-47b	AMD	02/21/2008	2008-2/4
	31180	R156-49	NSC	05/05/2008	Not Printed
	31073	R156-49	5YR	03/24/2008	2008-8/52
	31074	R156-53	5YR	03/24/2008	2008-8/52
	30892	R156-55a	AMD	03/11/2008	2008-3/3
	31181	R156-55d	NSC	05/05/2008	Not Printed
	30574	R156-56	AMD	01/01/2008	2007-21/38
	30573	R156-56-420	AMD	01/01/2008	2007-21/57
	30915	R156-61	AMD	05/08/2008	2008-3/6
	30915	R156-61	CPR	05/08/2008	2008-7/55
	31182	R156-63	NSC	05/05/2008	Not Printed
	31183	R156-67	NSC	05/05/2008	Not Printed
	31185	R156-68	NSC	05/05/2008	Not Printed
	31083	R156-68	5YR	03/27/2008	2008-8/53
	30694	R156-76	AMD	01/08/2008	2007-23/17
Human Services, Administration, Administrative Services, Licensing	31017	R501-16	5YR	02/22/2008	2008-6/25
	31026	R501-17	5YR	02/27/2008	2008-6/25
Labor Commission, Antidiscrimination and Labor, Labor	31239	R610-4	NSC	05/05/2008	Not Printed

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Sports Authority (Utah), Pete Suazo Utah Athletic Commission	31028	R859-1	AMD	05/01/2008	2008-6/15
	31029	R859-1-302	AMD	05/01/2008	2008-6/16
liens					
Commerce, Occupational and Professional Licensing	30654	R156-38a	AMD	01/07/2008	2007-23/14
	31176	R156-38a-105a	NSC	05/05/2008	Not Printed
liquefied petroleum gas					
Public Safety, Fire Marshal	30862	R710-6	AMD	02/21/2008	2008-2/22
loans					
Environmental Quality, Water Quality	31103	R317-101	5YR	04/02/2008	2008-9/53
LTCO					
Human Services, Aging and Adult Services	31379	R510-200	NSC	05/05/2008	Not Printed
MACT					
Environmental Quality, Air Quality	30430	R307-214	AMD	01/11/2008	2007-19/12
	30895	R307-214	5YR	01/11/2008	2008-3/77
maps					
Natural Resources, Water Rights	31130	R655-5	5YR	04/08/2008	2008-9/54
market trading program					
Environmental Quality, Air Quality	30970	R307-250	5YR	02/08/2008	2008-5/46
marketing					
Commerce, Consumer Protection	31214	R152-15-2	NSC	05/05/2008	Not Printed
massage therapy					
Commerce, Occupational and Professional Licensing	30853	R156-47b	AMD	02/21/2008	2008-2/4
match requirement					
Human Services, Administration	30773	R495-861	AMD	01/30/2008	2007-24/18
Medicaid					
Health, Health Care Financing	30981	R410-14-17	EMR	02/15/2008	2008-5/36
Health, Health Care Financing, Coverage and Reimbursement Policy	31169	R414-6	5YR	04/21/2008	2008-10/147
	30653	R414-21	R&R	01/10/2008	2007-23/50
	30920	R414-27	5YR	01/17/2008	2008-4/42
	31046	R414-27	NSC	03/25/2008	Not Printed
	30775	R414-52	AMD	02/01/2008	2007-24/12
	30776	R414-53	AMD	02/01/2008	2007-24/13
	30378	R414-71	CPR	03/31/2008	2008-3/66
	30378	R414-71	AMD	03/31/2008	2007-18/40
	30936	R414-301	5YR	01/31/2008	2008-4/43
	30937	R414-305	5YR	01/31/2008	2008-4/45
	30945	R414-305	AMD	04/01/2008	2008-4/9
	30938	R414-308	5YR	01/31/2008	2008-4/46
	30927	R414-308-7	AMD	04/01/2008	2008-4/16

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medical incinerator					
Environmental Quality, Air Quality	30702	R307-222	AMD	02/08/2008	2007-23/36
	30967	R307-222	5YR	02/08/2008	2008-5/44
	30833	R307-222-1	NSC	02/08/2008	Not Printed
medical malpractice					
Commerce, Occupational and Professional Licensing	31055	R156-78A	NSC	03/26/2008	Not Printed
medical practitioner					
Labor Commission, Industrial Accidents	31234	R612-2	5YR	04/28/2008	2008-10/151
medical transportation					
Health, Health Care Financing, Coverage and Reimbursement Policy	30922	R414-306	5YR	01/25/2008	2008-4/45
mercury					
Environmental Quality, Air Quality	30969	R307-224	5YR	02/08/2008	2008-5/45
	30704	R307-224-2	AMD	02/08/2008	2007-23/39
minerals reclamation					
Natural Resources, Oil, Gas and Mining; Non-Coal	31205	R647-1-106	NSC	05/05/2008	Not Printed
	31206	R647-5	NSC	05/05/2008	Not Printed
minimum standards					
Natural Resources, Forestry, Fire and State Lands	31109	R652-122-100	NSC	05/01/2008	Not Printed
mining					
Labor Commission, Safety	31233	R616-1	5YR	04/28/2008	2008-10/153
	31249	R616-1	NSC	05/05/2008	Not Printed
minors					
Labor Commission, Antidiscrimination and Labor, Labor	31247	R610-1	NSC	05/05/2008	Not Printed
	31245	R610-2	NSC	05/05/2008	Not Printed
	30942	R610-2-6	AMD	03/24/2008	2008-4/19
	31243	R610-3	NSC	05/05/2008	Not Printed
	30876	R610-3-4	EMR	01/03/2008	2008-3/70
	30941	R610-3-4	AMD	03/24/2008	2008-4/20
monitoring					
Environmental Quality, Air Quality	30962	R307-170	5YR	02/08/2008	2008-5/41
	30699	R307-170-7	AMD	02/08/2008	2007-23/29
motor vehicle record					
Public Safety, Driver License	31119	R708-36-1	NSC	05/05/2008	Not Printed
	31123	R708-44-4	NSC	05/05/2008	Not Printed
motor vehicles					
Commerce, Administration	31354	R151-14-3	NSC	05/05/2008	Not Printed
Commerce, Consumer Protection	31215	R152-20	NSC	05/05/2008	Not Printed
Environmental Quality, Air Quality	30889	R307-121-3	NSC	01/30/2008	Not Printed

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motorcycle rider training schools					
Public Safety, Driver License	31115	R708-30-14	NSC	05/05/2008	Not Printed
motorcycles					
Commerce, Administration	31355	R151-35-3	NSC	05/05/2008	Not Printed
municipal landfills					
Environmental Quality, Air Quality	30701	R307-221	AMD	02/08/2008	2007-23/32
	30966	R307-221	5YR	02/08/2008	2008-5/44
	30832	R307-221-2	NSC	02/08/2008	Not Printed
municipal waste incinerator					
Environmental Quality, Air Quality	30703	R307-223	AMD	02/08/2008	2007-23/38
	30968	R307-223	5YR	02/08/2008	2008-5/45
mutual water corporations					
Public Service Commission, Administration	31095	R746-331	5YR	04/01/2008	2008-8/55
nail technician					
Commerce, Occupational and Professional Licensing	31174	R156-11a-601	NSC	05/05/2008	Not Printed
nail technicians					
Commerce, Occupational and Professional Licensing	30953	R156-11a	AMD	04/10/2008	2008-5/5
notice of commencement					
Commerce, Occupational and Professional Licensing	31177	R156-38b-703	NSC	05/05/2008	Not Printed
notice of completion					
Commerce, Occupational and Professional Licensing	31177	R156-38b-703	NSC	05/05/2008	Not Printed
nurses					
Commerce, Occupational and Professional Licensing	31094	R156-31b	5YR	04/01/2008	2008-8/51
nutrition					
Education, Administration	30848	R277-719	NEW	02/07/2008	2008-1/12
occupational licensing					
Commerce, Occupational and Professional Licensing	30655	R156-1-102a	AMD	01/08/2008	2007-23/3
	31179	R156-46b	NSC	05/05/2008	Not Printed
	30892	R156-55a	AMD	03/11/2008	2008-3/3
off road vehicles					
Commerce, Administration	31355	R151-35-3	NSC	05/05/2008	Not Printed
off-premise					
Human Services, Substance Abuse and Mental Health	31353	R523-24-13	NSC	05/05/2008	Not Printed
oil and gas law					
Natural Resources, Oil, Gas and Mining; Oil and Gas	31207	R649-10-3	NSC	05/05/2008	Not Printed

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ombudsman					
Human Services, Aging and Adult Services	31379	R510-200	NSC	05/05/2008	Not Printed
open burning					
Environmental Quality, Air Quality	30963	R307-202	5YR	02/08/2008	2008-5/42
operating permits					
Environmental Quality, Air Quality	30700	R307-215	REP	02/08/2008	2007-23/31
	30706	R307-417	AMD	02/08/2008	2007-23/43
optometry					
Health, Health Care Financing, Coverage and Reimbursement Policy	30775	R414-52	AMD	02/01/2008	2007-24/12
orders					
Environmental Quality, Radiation Control	31171	R313-17	NSC	05/05/2008	Not Printed
osteopathic physician					
Commerce, Occupational and Professional Licensing	31185	R156-68	NSC	05/05/2008	Not Printed
	31083	R156-68	5YR	03/27/2008	2008-8/53
osteopaths					
Commerce, Occupational and Professional Licensing	31185	R156-68	NSC	05/05/2008	Not Printed
	31083	R156-68	5YR	03/27/2008	2008-8/53
overtime					
Human Resource Management, Administration	30778	R477-8-5	AMD	01/22/2008	2007-24/16
paint					
Environmental Quality, Air Quality	30973	R307-840	5YR	02/08/2008	2008-5/47
	30708	R307-840	AMD	02/08/2008	2007-23/48
parking facilities					
Administrative Services, Facilities Construction and Management	31063	R23-13	5YR	03/17/2008	2008-8/50
Regents (Board Of), University of Utah, Parking and Transportation Services	30712	R810-1	AMD	03/06/2008	2007-23/65
	30722	R810-2	AMD	03/06/2008	2007-23/67
	30727	R810-3	REP	03/06/2008	2007-24/21
	30728	R810-4	REP	03/06/2008	2007-24/22
	30779	R810-5	AMD	03/06/2008	2007-24/23
	30809	R810-6	AMD	03/06/2008	2008-1/26
	30831	R810-7	REP	03/06/2008	2008-1/27
	30834	R810-8	AMD	03/06/2008	2008-1/28
	30836	R810-9	AMD	03/06/2008	2008-1/29
	30839	R810-10	AMD	03/06/2008	2008-1/30
	30840	R810-11	AMD	03/06/2008	2008-1/31
	30843	R810-12	NEW	03/06/2008	2008-1/32
parks					
Natural Resources, Parks and Recreation	30900	R651-205-17	AMD	03/10/2008	2008-3/36
	30621	R651-611	AMD	01/01/2008	2007-22/80

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	31012	R651-612	NSC	03/10/2008	Not Printed
	30901	R651-612	AMD	03/10/2008	2008-3/42
parole					
Pardons (Board Of), Administration	30949	R671-403	5YR	02/04/2008	2008-5/59
patient safety					
Health, Administration	31286	R380-200	NSC	05/05/2008	Not Printed
	31280	R380-210-6	NSC	05/05/2008	Not Printed
paying standards					
Public Service Commission, Administration	31092	R746-342	5YR	04/01/2008	2008-8/56
peer review					
Commerce, Occupational and Professional Licensing	30715	R156-26a	AMD	03/31/2008	2007-23/4
	30715	R156-26a	CPR	03/31/2008	2008-4/35
penalties					
Labor Commission, Industrial Accidents	31251	R612-9-1	NSC	05/05/2008	Not Printed
per diem allowance					
Administrative Services, Finance	31317	R25-5	5YR	04/29/2008	2008-10/145
per diem allowances					
Administrative Services, Finance	31319	R25-7	5YR	04/29/2008	2008-10/146
permit					
Natural Resources, Wildlife Resources	31399	R657-45	5YR	05/08/2008	Not Printed
	31050	R657-45-2	AMD	05/08/2008	2008-7/49
permits					
Environmental Quality, Air Quality	30709	R307-401-14	AMD	02/08/2008	2007-23/42
Natural Resources, Forestry, Fire and State Lands	31112	R652-120	NSC	05/01/2008	Not Printed
Natural Resources, Wildlife Resources	31400	R657-42	5YR	05/08/2008	Not Printed
	31049	R657-42-8	AMD	05/08/2008	2008-7/48
permitting authority					
Environmental Quality, Air Quality	30700	R307-215	REP	02/08/2008	2007-23/31
	30706	R307-417	AMD	02/08/2008	2007-23/43
persistently dangerous schools					
Education, Administration	31036	R277-483	5YR	03/03/2008	2008-7/62
personal property					
Tax Commission, Property Tax	30931	R884-24P-62	AMD	03/28/2008	2008-4/30
physically handicapped persons					
Commerce, Administration	31346	R151-3-1	NSC	05/05/2008	Not Printed
physicians					
Commerce, Occupational and Professional Licensing	31183	R156-67	NSC	05/05/2008	Not Printed

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	30705	R307-310-2	AMD	02/08/2008	2007-23/40
point-system					
Public Safety, Driver License	31106	R708-3-2	NSC	05/05/2008	Not Printed
post-conviction					
Administrative Services, Finance	31363	R25-14	EMR	05/05/2008	2008-10/142
postsecondary proprietary school					
Commerce, Consumer Protection	31218	R152-34-10	NSC	05/05/2008	Not Printed
POTW					
Environmental Quality, Water Quality	30636	R317-14	NEW	02/04/2008	2007-22/62
powersport vehicles					
Commerce, Administration	31355	R151-35-3	NSC	05/05/2008	Not Printed
preliminary notice					
Commerce, Occupational and Professional Licensing	31177	R156-38b-703	NSC	05/05/2008	Not Printed
prelitigation					
Commerce, Occupational and Professional Licensing	31055	R156-78A	NSC	03/26/2008	Not Printed
privacy					
Public Safety, Driver License	31119	R708-36-1	NSC	05/05/2008	Not Printed
private schools					
Education, Administration	31040	R277-747	5YR	03/03/2008	2008-7/64
private security officers					
Commerce, Occupational and Professional Licensing	31182	R156-63	NSC	05/05/2008	Not Printed
procedures					
Environmental Quality, Radiation Control	31171	R313-17	NSC	05/05/2008	Not Printed
procurement					
Capitol Preservation Board (State), Administration	30591	R131-1	AMD	02/29/2008	2007-21/11
	30590	R131-4	R&R	02/29/2008	2007-21/13
professional					
Education, Administration	30976	R277-515-3	NSC	02/27/2008	Not Printed
professional competency					
Education, Administration	30944	R277-502	AMD	03/24/2008	2008-4/6
	31038	R277-508	5YR	03/03/2008	2008-7/63
professional education					
Education, Administration	30878	R277-518	5YR	01/08/2008	2008-3/72
professional engineers					
Commerce, Occupational and Professional Licensing	31175	R156-22-305	NSC	05/05/2008	Not Printed

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professional geologists					
Commerce, Occupational and Professional Licensing	30694	R156-76	AMD	01/08/2008	2007-23/17
professional land surveyors					
Commerce, Occupational and Professional Licensing	31175	R156-22-305	NSC	05/05/2008	Not Printed
program benefits					
Health, Health Care Financing, Coverage and Reimbursement Policy	30922	R414-306	5YR	01/25/2008	2008-4/45
prohibited items and devices					
Human Services, Substance Abuse and Mental Health	31089	R523-1	5YR	03/31/2008	2008-8/53
	30767	R523-1	NSC	03/31/2008	Not Printed
Human Services, Substance Abuse and Mental Health, State Hospital	31031	R525-6	NEW	05/01/2008	2008-6/7
promotions					
Agriculture and Food, Marketing and Development	31007	R65-2	5YR	02/15/2008	2008-5/38
	31008	R65-5	5YR	02/15/2008	2008-5/38
proof					
Natural Resources, Water Rights	31130	R655-5	5YR	04/08/2008	2008-9/54
property claims					
Treasurer, Unclaimed Property	30596	R966-1-2	AMD	01/07/2008	2007-22/87
property tax					
Tax Commission, Property Tax	30931	R884-24P-62	AMD	03/28/2008	2008-4/30
PSD					
Environmental Quality, Air Quality	30431	R307-405	AMD	01/11/2008	2007-19/15
psychologists					
Commerce, Occupational and Professional Licensing	30915	R156-61	AMD	05/08/2008	2008-3/6
	30915	R156-61	CPR	05/08/2008	2008-7/55
public assistance programs					
Health, Health Care Financing, Coverage and Reimbursement Policy	30938	R414-308	5YR	01/31/2008	2008-4/46
	30927	R414-308-7	AMD	04/01/2008	2008-4/16
Human Services, Recovery Services	30982	R527-928	AMD	04/07/2008	2008-5/26
public buildings					
Administrative Services, Facilities Construction and Management	31064	R23-14	5YR	03/17/2008	2008-8/50
Capitol Preservation Board (State), Administration	30590	R131-4	R&R	02/29/2008	2007-21/13
public information					
Administrative Services, Administration	31343	R13-2	NSC	05/05/2008	Not Printed
public petitions					
Natural Resources, Forestry, Fire and State Lands	31268	R652-7	NSC	05/05/2008	Not Printed

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public records					
Commerce, Administration	31345	R151-2	NSC	05/05/2008	Not Printed
	31284	R380-20	NSC	05/05/2008	Not Printed
Natural Resources, Oil, Gas and Mining; Administration	31202	R642-100	NSC	05/05/2008	Not Printed
	31203	R642-200	NSC	05/05/2008	Not Printed
Natural Resources, Forestry, Fire and State Lands	31259	R652-6	NSC	05/05/2008	Not Printed
public utilities					
Public Service Commission, Administration	31373	R746-100	NSC	05/05/2008	Not Printed
	31372	R746-101	NSC	05/05/2008	Not Printed
	31369	R746-110	NSC	05/05/2008	Not Printed
	31044	R746-330	5YR	03/07/2008	2008-7/66
	31095	R746-331	5YR	04/01/2008	2008-8/55
	31091	R746-332	5YR	04/01/2008	2008-8/55
	31092	R746-342	5YR	04/01/2008	2008-8/56
	31045	R746-347	5YR	03/07/2008	2008-7/66
	31374	R746-349	NSC	05/05/2008	Not Printed
	31371	R746-400	NSC	05/05/2008	Not Printed
	31093	R746-402	5YR	04/01/2008	2008-8/56
	31101	R746-405	5YR	04/01/2008	2008-8/57
quality improvement					
Health, Administration	31286	R380-200	NSC	05/05/2008	Not Printed
	31280	R380-210-6	NSC	05/05/2008	Not Printed
quarantine					
Agriculture and Food, Plant Industry	31125	R68-14	5YR	04/04/2008	2008-9/52
	31009	R68-17	REP	04/11/2008	2008-5/4
radioactive material					
Environmental Quality, Radiation Control	30865	R313-15	AMD	03/17/2008	2008-2/10
rates					
Administrative Services, Finance	31317	R25-5	5YR	04/29/2008	2008-10/145
Labor Commission, Industrial Accidents	30594	R612-4-2	AMD	01/01/2008	2007-22/76
real estate business					
Commerce, Real Estate	31003	R162-2-2	AMD	04/07/2008	2008-5/7
	31001	R162-8-4	AMD	04/07/2008	2008-5/10
reclamation					
Natural Resources, Oil, Gas and Mining; Coal	30932	R645-100-200	AMD	03/26/2008	2008-4/23
	31204	R645-100-500	NSC	05/05/2008	Not Printed
	30934	R645-300-100	AMD	03/26/2008	2008-4/24
	30933	R645-301	AMD	03/26/2008	2008-4/25
records					
Regents (Board Of), University of Utah, Administration	31340	R805-2	NSC	05/05/2008	Not Printed

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records access Regents (Board Of), Administration	31327	R765-993	NSC	05/05/2008	Not Printed
recreation Natural Resources, Parks and Recreation	30899	R651-301	AMD	03/10/2008	2008-3/37
recreation therapy Commerce, Occupational and Professional Licensing	31178	R156-40-302e	NSC	05/05/2008	Not Printed
recreational therapy Commerce, Occupational and Professional Licensing	31178	R156-40-302e	NSC	05/05/2008	Not Printed
recreational vehicles Commerce, Administration	31354	R151-14-3	NSC	05/05/2008	Not Printed
regionalization Environmental Quality, Drinking Water	31157	R309-352	5YR	04/18/2008	2008-10/146
registration Commerce, Consumer Protection	31218	R152-34-10	NSC	05/05/2008	Not Printed
rehabilitation Education, Rehabilitation	31042	R280-200	5YR	03/03/2008	2008-7/65
Rehabilitation Act 1973 Human Services, Administration	31367	R495-878	NSC	05/05/2008	Not Printed
reimbursements Administrative Services, Finance	31316	R25-6	5YR	04/29/2008	2008-10/145
religious activities Tax Commission, Auditing	30841	R865-19S-121	AMD	02/25/2008	2008-1/37
religious education Education, Administration	30881	R277-610	5YR	01/08/2008	2008-3/73
relocation benefits Administrative Services, Finance	31316	R25-6	5YR	04/29/2008	2008-10/145
renewable Natural Resources, Geological Survey	30902	R638-2-6	AMD	03/10/2008	2008-3/35
reporting Labor Commission, Industrial Accidents	31252	R612-10	NSC	05/05/2008	Not Printed
reports Education, Administration	31005	R277-484	AMD	04/11/2008	2008-5/17
	31371	R746-400	NSC	05/05/2008	Not Printed
reptiles Natural Resources, Wildlife Resources	31051	R657-53	AMD	05/08/2008	2008-7/50
residential mortgage loan origination Commerce, Real Estate	31002	R162-207-6	AMD	04/07/2008	2008-5/12
	31004	R162-210-4	AMD	04/07/2008	2008-5/13

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resource decision					
Public Service Commission, Administration	31072	R746-440	NSC	04/11/2008	Not Printed
restitution					
Pardons (Board Of), Administration	30949	R671-403	5YR	02/04/2008	2008-5/59
right of petition					
Natural Resources, Forestry, Fire and State Lands	31110	R652-9-100	NSC	05/01/2008	Not Printed
roofs					
Administrative Services, Facilities Construction and Management	31064	R23-14	5YR	03/17/2008	2008-8/50
rules and procedures					
Health, Administration	31281	R380-1	NSC	05/05/2008	Not Printed
	31282	R380-5	NSC	05/05/2008	Not Printed
Public Safety, Driver License	31105	R708-2-25	NSC	05/05/2008	Not Printed
Public Service Commission, Administration	31373	R746-100	NSC	05/05/2008	Not Printed
	31372	R746-101	NSC	05/05/2008	Not Printed
	31369	R746-110	NSC	05/05/2008	Not Printed
	31091	R746-332	5YR	04/01/2008	2008-8/55
	31092	R746-342	5YR	04/01/2008	2008-8/56
	31371	R746-400	NSC	05/05/2008	Not Printed
	31093	R746-402	5YR	04/01/2008	2008-8/56
	31101	R746-405	5YR	04/01/2008	2008-8/57
Rural Broadband Service Fund					
Governor, Economic Development	30788	R357-2	NEW	01/30/2008	2007-24/9
	30859	R357-2-7	NSC	01/30/2008	Not Printed
rural economic development					
Governor, Economic Development	30788	R357-2	NEW	01/30/2008	2007-24/9
	30859	R357-2-7	NSC	01/30/2008	Not Printed
safety					
Environmental Quality, Radiation Control	30865	R313-15	AMD	03/17/2008	2008-2/10
Labor Commission, Occupational Safety and Health	31244	R614-1	NSC	05/05/2008	Not Printed
	31248	R614-3-1	NSC	05/05/2008	Not Printed
Labor Commission, Safety	31246	R616-2	NSC	05/05/2008	Not Printed
	31253	R616-3	NSC	05/05/2008	Not Printed
	30943	R616-3-3	AMD	03/24/2008	2008-4/21
safety regulations					
Transportation, Motor Carrier	30785	R909-19	AMD	02/12/2008	2007-24/26
sales tax					
Tax Commission, Auditing	30841	R865-19S-121	AMD	02/25/2008	2008-1/37
school buses					
Education, Administration	30879	R277-600	5YR	01/08/2008	2008-3/72

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school choice					
Education, Administration	31036	R277-483	5YR	03/03/2008	2008-7/62
school personnel					
Education, Administration	31038	R277-508	5YR	03/03/2008	2008-7/63
school transportation					
Education, Administration	30879	R277-600	5YR	01/08/2008	2008-3/72
school year					
Education, Administration	31041	R277-751	5YR	03/03/2008	2008-7/65
schools					
Education, Administration	30848	R277-719	NEW	02/07/2008	2008-1/12
Environmental Quality, Air Quality	30972	R307-801	5YR	02/08/2008	2008-5/47
	30707	R307-801	AMD	02/08/2008	2007-23/45
Public Safety, Driver License	31105	R708-2-25	NSC	05/05/2008	Not Printed
secure areas					
Human Services, Substance Abuse and Mental Health, State Hospital	31031	R525-6	NEW	05/01/2008	2008-6/7
security					
Administrative Services, Facilities Construction and Management	31064	R23-14	5YR	03/17/2008	2008-8/50
security guards					
Commerce, Occupational and Professional Licensing	31182	R156-63	NSC	05/05/2008	Not Printed
self insurance plans					
Labor Commission, Industrial Accidents	31230	R612-3	5YR	04/28/2008	2008-10/151
seminars					
Human Services, Substance Abuse and Mental Health	31353	R523-24-13	NSC	05/05/2008	Not Printed
seniors					
Human Services, Aging and Adult Services	31027	R510-105	5YR	02/27/2008	2008-6/26
sentinel event					
Health, Administration	31286	R380-200	NSC	05/05/2008	Not Printed
server training					
Human Services, Substance Abuse and Mental Health	31351	R523-23-13	NSC	05/05/2008	Not Printed
settlements					
Labor Commission, Adjudication	31236	R602-2-1	NSC	05/05/2008	Not Printed
	30811	R602-2-4	AMD	02/07/2008	2008-1/14
	31238	R602-3	NSC	05/05/2008	Not Printed
	30810	R602-3-3	AMD	02/07/2008	2008-1/16
Labor Commission, Industrial Accidents	31252	R612-10	NSC	05/05/2008	Not Printed
sewage effluent use					
Natural Resources, Water Rights	30947	R655-7	5YR	02/01/2008	2008-4/47

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sewage treatment					
Environmental Quality, Water Quality	31103	R317-101	5YR	04/02/2008	2008-9/53
sewerage					
Public Service Commission, Administration	31044	R746-330	5YR	03/07/2008	2008-7/66
skills tests					
Public Safety, Driver License	31120	R708-37-11	NSC	05/05/2008	Not Printed
SLCC					
Regents (Board Of), Salt Lake Community College	31344	R784-1	NSC	05/05/2008	Not Printed
social security numbers					
Human Services, Services for People with Disabilities	30877	R539-1-8	AMD	04/01/2008	2008-3/32
	30926	R539-1-8	EMR	01/28/2008	2008-4/38
social services					
Human Services, Administration	30773	R495-861	AMD	01/30/2008	2007-24/18
Human Services, Child and Family Services	30718	R512-50	REP	01/07/2008	2007-23/60
	30721	R512-50	NSC	01/07/2008	Not Printed
solar					
Natural Resources, Geological Survey	30902	R638-2-6	AMD	03/10/2008	2008-3/35
solicitations					
Commerce, Consumer Protection	31216	R152-22-9	NSC	05/05/2008	Not Printed
solid waste management					
Environmental Quality, Solid and Hazardous Waste	30990	R315-301	5YR	02/14/2008	2008-5/48
	30986	R315-302	5YR	02/14/2008	2008-5/49
	30992	R315-303	5YR	02/14/2008	2008-5/49
	30991	R315-305	5YR	02/14/2008	2008-5/50
	30985	R315-306	5YR	02/14/2008	2008-5/51
	30993	R315-307	5YR	02/14/2008	2008-5/51
	30995	R315-308	5YR	02/14/2008	2008-5/52
	30994	R315-309	5YR	02/14/2008	2008-5/52
	30996	R315-310	5YR	02/14/2008	2008-5/53
	30983	R315-311	5YR	02/14/2008	2008-5/53
	30997	R315-312	5YR	02/14/2008	2008-5/54
	30998	R315-313	5YR	02/14/2008	2008-5/54
	30999	R315-314	5YR	02/14/2008	2008-5/55
	30989	R315-315	5YR	02/14/2008	2008-5/55
	30988	R315-316	5YR	02/14/2008	2008-5/56
	30984	R315-317	5YR	02/14/2008	2008-5/57
	30987	R315-318	5YR	02/14/2008	2008-5/57
speech impaired					
Public Service Commission, Administration	31375	R746-510	NSC	05/05/2008	Not Printed

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standards					
Education, Administration	30976	R277-515-3	NSC	02/27/2008	Not Printed
state employees					
Administrative Services, Finance	31317	R25-5	5YR	04/29/2008	2008-10/145
	31319	R25-7	5YR	04/29/2008	2008-10/146
state hospital					
Human Services, Substance Abuse and Mental Health, State Hospital	31031	R525-6	NEW	05/01/2008	2008-6/7
stocks					
Treasurer, Unclaimed Property	30596	R966-1-2	AMD	01/07/2008	2007-22/87
student					
Education, Administration	31037	R277-485	5YR	03/03/2008	2008-7/63
student competency					
Education, Administration	30883	R277-702	5YR	01/08/2008	2008-3/74
student financial aid					
Education, Administration	30885	R277-718	5YR	01/08/2008	2008-3/75
students					
Education, Administration	30884	R277-709	5YR	01/08/2008	2008-3/75
substance abuse					
Human Services, Substance Abuse and Mental Health	31351	R523-23-13	NSC	05/05/2008	Not Printed
sulfur dioxide					
Environmental Quality, Air Quality	30970	R307-250	5YR	02/08/2008	2008-5/46
superfund					
Environmental Quality, Environmental Response and Remediation	30567	R311-401-2	AMD	01/02/2008	2007-21/59
supervision					
Commerce, Occupational and Professional Licensing	30655	R156-1-102a	AMD	01/08/2008	2007-23/3
surplus property					
Administrative Services, Fleet Operations, Surplus Property	31117	R28-3	5YR	04/04/2008	2008-9/52
surveyors					
Commerce, Occupational and Professional Licensing	31175	R156-22-305	NSC	05/05/2008	Not Printed
tariffs					
Public Service Commission, Administration	31101	R746-405	5YR	04/01/2008	2008-8/57
tax credits					
Environmental Quality, Air Quality	30889	R307-121-3	NSC	01/30/2008	Not Printed
Natural Resources, Geological Survey	30902	R638-2-6	AMD	03/10/2008	2008-3/35
tax exemptions					
Tax Commission, Auditing	30841	R865-19S-121	AMD	02/25/2008	2008-1/37

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tax returns					
Tax Commission, Auditing	30916	R865-9I-37	AMD	03/14/2008	2008-3/63
	30849	R865-9I-53	AMD	02/25/2008	2008-1/36
taxation					
Tax Commission, Administration	30688	R861-1A-20	AMD	01/11/2008	2007-23/68
	30589	R861-1A-24	AMD	01/11/2008	2007-21/69
	30717	R861-1A-26	AMD	01/11/2008	2007-23/69
	30838	R861-1A-40	AMD	02/25/2008	2008-1/32
	30835	R861-1A-42	AMD	02/25/2008	2008-1/33
	30780	R861-1A-43	AMD	01/25/2008	2007-24/24
Tax Commission, Auditing	30913	R865-6F-28	AMD	03/14/2008	2008-3/61
	30842	R865-6F-37	AMD	02/25/2008	2008-1/35
Tax Commission, Motor Vehicle	30844	R873-22M-34	AMD	02/25/2008	2008-1/38
Tax Commission, Property Tax	30931	R884-24P-62	AMD	03/28/2008	2008-4/30
taxes					
Insurance, Administration	30890	R590-157	5YR	01/10/2008	2008-3/79
teacher licensing					
Professional Practices Advisory Commission, Administration	30951	R686-100	5YR	02/04/2008	2008-5/59
teachers					
Education, Administration	31038	R277-508	5YR	03/03/2008	2008-7/63
telecommunications					
Public Service Commission, Administration	31092	R746-342	5YR	04/01/2008	2008-8/56
	31045	R746-347	5YR	03/07/2008	2008-7/66
	31374	R746-349	NSC	05/05/2008	Not Printed
telecommuting					
Human Resource Management, Administration	30778	R477-8-5	AMD	01/22/2008	2007-24/16
terminally ill					
Corrections, Administration	30803	R251-114	NEW	03/11/2008	2008-1/6
time					
Labor Commission, Adjudication	31250	R602-1	NSC	05/05/2008	Not Printed
Labor Commission, Antidiscrimination and Labor, Antidiscrimination	31241	R606-1	NSC	05/05/2008	Not Printed
	31242	R606-2	NSC	05/05/2008	Not Printed
Labor Commission, Antidiscrimination and Labor, Fair Housing	31240	R608-1	NSC	05/05/2008	Not Printed
Labor Commission, Antidiscrimination and Labor, Labor	31247	R610-1	NSC	05/05/2008	Not Printed
	31245	R610-2	NSC	05/05/2008	Not Printed
	30942	R610-2-6	AMD	03/24/2008	2008-4/19
	31243	R610-3	NSC	05/05/2008	Not Printed
	30876	R610-3-4	EMR	01/03/2008	2008-3/70
	30941	R610-3-4	AMD	03/24/2008	2008-4/20
Labor Commission, Industrial Accidents	31235	R612-1	NSC	05/05/2008	Not Printed

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towing					
Transportation, Motor Carrier	30785	R909-19	AMD	02/12/2008	2007-24/26
traffic violations					
Public Safety, Driver License	31106	R708-3-2	NSC	05/05/2008	Not Printed
training					
Human Services, Substance Abuse and Mental Health	31353	R523-24-13	NSC	05/05/2008	Not Printed
Public Service Commission, Administration	31375	R746-510	NSC	05/05/2008	Not Printed
transportation					
Administrative Services, Finance	31319	R25-7	5YR	04/29/2008	2008-10/146
Human Services, Aging and Adult Services	31027	R510-105	5YR	02/27/2008	2008-6/26
transportation conformity					
Environmental Quality, Air Quality	30971	R307-310	5YR	02/08/2008	2008-5/46
	30705	R307-310-2	AMD	02/08/2008	2007-23/40
transportation law					
Administrative Services, Facilities Construction and Management	31063	R23-13	5YR	03/17/2008	2008-8/50
transportation safety					
Transportation, Motor Carrier	30783	R909-1-1	AMD	02/15/2008	2007-24/25
trucking industries					
Tax Commission, Auditing	30913	R865-6F-28	AMD	03/14/2008	2008-3/61
	30842	R865-6F-37	AMD	02/25/2008	2008-1/35
trucks					
Transportation, Motor Carrier	30783	R909-1-1	AMD	02/15/2008	2007-24/25
	30785	R909-19	AMD	02/12/2008	2007-24/26
unarmed combat					
Sports Authority (Utah), Pete Suazo Utah Athletic Commission	31028	R859-1	AMD	05/01/2008	2008-6/15
	31029	R859-1-302	AMD	05/01/2008	2008-6/16
unemployment compensation					
Workforce Services, Unemployment Insurance	30771	R994-508	AMD	02/15/2008	2007-24/30
	31020	R994-508-117	NSC	03/11/2008	Not Printed
	31071	R994-508-118	NSC	04/14/2008	Not Printed
uninsured employers					
Labor Commission, Industrial Accidents	31251	R612-9-1	NSC	05/05/2008	Not Printed
units					
Environmental Quality, Radiation Control	31170	R313-12-1	NSC	05/05/2008	Not Printed
	30774	R313-12-111	AMD	04/11/2008	2007-24/8
	30774	R313-12-111	CPR	04/11/2008	2008-5/34
university					
Regents (Board Of), University of Utah, Administration	31340	R805-2	NSC	05/05/2008	Not Printed

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used oil					
Environmental Quality, Solid and Hazardous Waste	30907	R315-15-1	AMD	03/13/2008	2008-3/16
	30908	R315-15-10	AMD	03/13/2008	2008-3/19
	30909	R315-15-11	AMD	03/13/2008	2008-3/21
	30910	R315-15-12	AMD	03/13/2008	2008-3/23
	30911	R315-15-17	AMD	03/13/2008	2008-3/29
Utah Housing Opportunity Restricted Account					
Commerce, Real Estate	31000	R162-12	NEW	04/07/2008	2008-5/11
utility regulation					
Public Service Commission, Administration	31101	R746-405	5YR	04/01/2008	2008-8/57
variances					
Environmental Quality, Air Quality	30960	R307-102	5YR	02/08/2008	2008-5/40
vehicle replacement					
Administrative Services, Fleet Operations	30618	R27-4	AMD	03/06/2008	2007-22/9
vending machines					
Education, Administration	30848	R277-719	NEW	02/07/2008	2008-1/12
victim compensation					
Crime Victim Reparations, Administration	31322	R270-1	NSC	05/05/2008	Not Printed
	30593	R270-1-11	AMD	01/02/2008	2007-22/33
	31323	R270-2	NSC	05/05/2008	Not Printed
	31324	R270-4	NSC	05/05/2008	Not Printed
victims of crime					
Crime Victim Reparations, Administration	31322	R270-1	NSC	05/05/2008	Not Printed
	31323	R270-2	NSC	05/05/2008	Not Printed
	31324	R270-4	NSC	05/05/2008	Not Printed
victims of crimes					
Crime Victim Reparations, Administration	30593	R270-1-11	AMD	01/02/2008	2007-22/33
vocational education					
Education, Rehabilitation	31042	R280-200	5YR	03/03/2008	2008-7/65
wages					
Labor Commission, Antidiscrimination and Labor, Labor	31247	R610-1	NSC	05/05/2008	Not Printed
	31245	R610-2	NSC	05/05/2008	Not Printed
	30942	R610-2-6	AMD	03/24/2008	2008-4/19
	31243	R610-3	NSC	05/05/2008	Not Printed
	30876	R610-3-4	EMR	01/03/2008	2008-3/70
	30941	R610-3-4	AMD	03/24/2008	2008-4/20
waste disposal					
Environmental Quality, Radiation Control	30865	R313-15	AMD	03/17/2008	2008-2/10
Environmental Quality, Solid and Hazardous Waste	30990	R315-301	5YR	02/14/2008	2008-5/48
	30986	R315-302	5YR	02/14/2008	2008-5/49

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	30991	R315-305	5YR	02/14/2008	2008-5/50
	30985	R315-306	5YR	02/14/2008	2008-5/51
	30993	R315-307	5YR	02/14/2008	2008-5/51
	30995	R315-308	5YR	02/14/2008	2008-5/52
	30994	R315-309	5YR	02/14/2008	2008-5/52
	30996	R315-310	5YR	02/14/2008	2008-5/53
	30983	R315-311	5YR	02/14/2008	2008-5/53
	30997	R315-312	5YR	02/14/2008	2008-5/54
	30999	R315-314	5YR	02/14/2008	2008-5/55
	30989	R315-315	5YR	02/14/2008	2008-5/55
	30988	R315-316	5YR	02/14/2008	2008-5/56
	30984	R315-317	5YR	02/14/2008	2008-5/57
	30987	R315-318	5YR	02/14/2008	2008-5/57
Environmental Quality, Water Quality	30639	R317-1-4	AMD	02/04/2008	2007-22/52
	30637	R317-13	NEW	02/04/2008	2007-22/61
waste to energy plant					
Environmental Quality, Air Quality	30703	R307-223	AMD	02/08/2008	2007-23/38
	30968	R307-223	5YR	02/08/2008	2008-5/45
wastewater					
Environmental Quality, Water Quality	30638	R317-3-11	AMD	02/04/2008	2007-22/57
	30636	R317-14	NEW	02/04/2008	2007-22/62
	31103	R317-101	5YR	04/02/2008	2008-9/53
water					
Public Service Commission, Administration	31044	R746-330	5YR	03/07/2008	2008-7/66
	31095	R746-331	5YR	04/01/2008	2008-8/55
	31091	R746-332	5YR	04/01/2008	2008-8/55
water funding					
Natural Resources, Water Resources	30855	R653-2	NEW	02/25/2008	2008-2/20
	30940	R653-2	NSC	02/25/2008	Not Printed
water pollution					
Environmental Quality, Water Quality	30639	R317-1-4	AMD	02/04/2008	2007-22/52
	30638	R317-3-11	AMD	02/04/2008	2007-22/57
	30948	R317-9	5YR	02/01/2008	2008-4/42
	30637	R317-13	NEW	02/04/2008	2007-22/61
water quality					
Environmental Quality, Water Quality	30638	R317-3-11	AMD	02/04/2008	2007-22/57
	31103	R317-101	5YR	04/02/2008	2008-9/53
Public Service Commission, Administration	31044	R746-330	5YR	03/07/2008	2008-7/66
water rights					
Natural Resources, Water Rights	31130	R655-5	5YR	04/08/2008	2008-9/54

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weapons					
Human Services, Substance Abuse and Mental Health, State Hospital	31031	R525-6	NEW	05/01/2008	2008-6/7
	31348	R525-6	NSC	05/01/2008	Not Printed
Natural Resources, Parks and Recreation	31012	R651-612	NSC	03/10/2008	Not Printed
white-collar contests					
Sports Authority (Utah), Pete Suazo Utah Athletic Commission	31028	R859-1	AMD	05/01/2008	2008-6/15
	31029	R859-1-302	AMD	05/01/2008	2008-6/16
wildland fire fund					
Natural Resources, Forestry, Fire and State Lands	31108	R652-121	NSC	05/01/2008	Not Printed
wildland urban interface					
Natural Resources, Forestry, Fire and State Lands	31109	R652-122-100	NSC	05/01/2008	Not Printed
wildlife					
Natural Resources, Wildlife Resources	31219	R657-2	NSC	05/05/2008	Not Printed
	31220	R657-3	NSC	05/05/2008	Not Printed
	31053	R657-3	AMD	05/08/2008	2008-7/45
	31047	R657-3	5YR	03/11/2008	2008-7/65
	30829	R657-5	AMD	02/07/2008	2008-1/18
	30777	R657-12	AMD	01/22/2008	2007-24/19
	31221	R657-12-1	NSC	05/05/2008	Not Printed
	30676	R657-13	AMD	01/07/2008	2007-23/61
	31048	R657-13-3	AMD	05/08/2008	2008-7/47
	30904	R657-13-4	AMD	03/10/2008	2008-3/43
	31222	R657-22-1	NSC	05/05/2008	Not Printed
	30828	R657-23	AMD	02/07/2008	2008-1/25
	30955	R657-23-5	AMD	04/07/2008	2008-5/31
	31223	R657-26	NSC	05/05/2008	Not Printed
	31224	R657-27-11	NSC	05/05/2008	Not Printed
	31225	R657-29	NSC	05/05/2008	Not Printed
	30906	R657-33	AMD	03/10/2008	2008-3/44
	31398	R657-34	5YR	05/08/2008	Not Printed
	31401	R657-37	5YR	05/08/2008	Not Printed
	31400	R657-42	5YR	05/08/2008	Not Printed
	31049	R657-42-8	AMD	05/08/2008	2008-7/48
	31226	R657-48-7	NSC	05/05/2008	Not Printed
	31227	R657-52-6	NSC	05/05/2008	Not Printed
	31228	R657-53	NSC	05/05/2008	Not Printed
	31051	R657-53	AMD	05/08/2008	2008-7/50
	30903	R657-58	NEW	03/10/2008	2008-3/47
	31052	R657-58	NSC	03/26/2008	Not Printed
wildlife law					
Natural Resources, Wildlife Resources	31219	R657-2	NSC	05/05/2008	Not Printed
	31220	R657-3	NSC	05/05/2008	Not Printed

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	30777	R657-12	AMD	01/22/2008	2007-24/19
	31221	R657-12-1	NSC	05/05/2008	Not Printed
	30676	R657-13	AMD	01/07/2008	2007-23/61
	31048	R657-13-3	AMD	05/08/2008	2008-7/47
	30904	R657-13-4	AMD	03/10/2008	2008-3/43
	31222	R657-22-1	NSC	05/05/2008	Not Printed
	31223	R657-26	NSC	05/05/2008	Not Printed
	31224	R657-27-11	NSC	05/05/2008	Not Printed
	31225	R657-29	NSC	05/05/2008	Not Printed
	31226	R657-48-7	NSC	05/05/2008	Not Printed
	31227	R657-52-6	NSC	05/05/2008	Not Printed
	31228	R657-53	NSC	05/05/2008	Not Printed
	30903	R657-58	NEW	03/10/2008	2008-3/47
	31052	R657-58	NSC	03/26/2008	Not Printed
witness fees					
Labor Commission, Adjudication	31250	R602-1	NSC	05/05/2008	Not Printed
workers' compensation					
Labor Commission, Adjudication	31236	R602-2-1	NSC	05/05/2008	Not Printed
	30811	R602-2-4	AMD	02/07/2008	2008-1/14
	31238	R602-3	NSC	05/05/2008	Not Printed
	30810	R602-3-3	AMD	02/07/2008	2008-1/16
Labor Commission, Industrial Accidents	31235	R612-1	NSC	05/05/2008	Not Printed
	31234	R612-2	5YR	04/28/2008	2008-10/151
	31230	R612-3	5YR	04/28/2008	2008-10/151
	30594	R612-4-2	AMD	01/01/2008	2007-22/76
	31229	R612-5	5YR	04/28/2008	2008-10/152
	31231	R612-7	5YR	04/28/2008	2008-10/152
	31251	R612-9-1	NSC	05/05/2008	Not Printed
	31252	R612-10	NSC	05/05/2008	Not Printed
working toward employment					
Workforce Services, Employment Development	31034	R986-400-406	AMD	05/01/2008	2008-6/20
youth					
Human Services, Administration, Administrative Services, Licensing	31017	R501-16	5YR	02/22/2008	2008-6/25
zoological animals					
Natural Resources, Wildlife Resources	31047	R657-3	5YR	03/11/2008	2008-7/65
	31053	R657-3	AMD	05/08/2008	2008-7/45